

**Minutes of 867th Meeting of the
Town Planning Board held at 9:00 a.m. on 22 September 2006**

Present

Permanent Secretary for Housing, Planning and Lands
(Planning & Lands)
Mrs. Rita Lau

Chairperson

Dr. Peter K.K. Wong

Vice-Chairman

Mr. Michael K.C. Lai

Dr. Greg C.Y. Wong

Mr. Erwin A. Hardy

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Dr. Lily Chiang

Professor David Dudgeon

Professor Peter R. Hills

Mr. Edmund K.H. Leung

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Ms. Starry W.K. Lee

Mr. K.Y. Leung

Director of Lands
Mr. Patrick L.C. Lau

Director of Environmental Protection
Dr. Michael Chiu

Principal Assistant Secretary (Transport),
Environment, Transport and Works Bureau
Mr. K.S. Ng

Director of Planning
Miss Ophelia Y.S. Wong

Deputy Director of Planning/District
Mr. Augustine Ng

Secretary

Absent with Apologies

Ms. Carmen K.M. Chan

Professor Nora F.Y. Tam

Mr. Tony C.N. Kan

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Mr. Alfred Donald Yap

Mr. Raymond Y.M. Chan

Professor Paul K.S. Lam

Assistant Director (2), Home Affairs Department
Ms. Margaret Hsia

In Attendance

Assistant Director of Planning/Board
Mr. Lau Sing

Chief Town Planner/Town Planning Board
Ms. Brenda K.Y. Au (a.m.)
Mr. C.T. Ling (p.m.)

Senior Town Planner/Town Planning Board
Mr. Tom C.K. Yip (a.m.)
Ms. Teresa L.Y. Chu (p.m.)

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 866th Meeting held on 8.9.2006

1. The minutes of the 866th meeting held on 8.9.2006 were confirmed without amendment.

[Mr. Y.K. Cheng and Dr. James C.W. Lau arrived to join the meeting at this point.]

Agenda Item 2

[Open Meeting]

Matters Arising

Judicial Review of the Town Planning Board's Decision
with respect to the Draft Quarry Bay Outline Zoning Plan No. S/H21/18

2. The Secretary briefly introduced the Paper on the subject. The subject judicial review (JR) was related to two lots (No. I.L. 8590RP and I.L. 8723RP) at the Hoi Yu Street waterfront covered by the Quarry Bay Outline Zoning Plan (OZP). The lots were restricted to industrial and/or godown uses under the lease. They were rezoned from "Industrial" and "Government, Institution or Community" to "Other Specified Uses (1)" annotated "Cultural and/or Commercial, Leisure and Tourism Related Uses" and "Open Space" in April 2003. The owners of the lots, the Fine Tower Associates Ltd. (the Applicant for the JR), raised an objection to the rezoning. After giving preliminary and further considerations to the objection, the Board decided on 26.9.2003 not to uphold the objection. On 16.1.2004, the Applicant filed an application for leave for JR of the Board's decision on the following two grounds:

- (a) the Board's decision amounted to a deprivation of the Applicant's property right; and
- (b) the hearing of the Applicant's objection was marred by procedural

unfairness, in that the Board had not disclosed the advice and information obtained from the Lands Department and the Department of Justice to the Applicant.

3. The Secretary went on to say that on 25.4.2005, the Court of First Instance (CFI) delivered the judgment ruling that the requirements of procedural fairness had not been fully met by the Board as it failed to disclose to the Applicant the advice it received on facts and law. The Board's decision was quashed and the matter was remitted to the Board for a new hearing. The judgment of the first JR was reported to the Board in May 2005. On 10.2.2006, after rehearing the objection, the Board maintained its previous decision of not upholding the objection. On 9.5.2006, the Applicant filed another application for leave for JR of the Board's decision mainly on the ground that the draft OZP amounted to a de facto expropriation of property and a resumption of land without compensation.

4. The Secretary said that the CFI delivered the judgment on the second JR on 8.9.2006 dismissing the application for JR on the following main grounds:

- (a) the zoning regulations on OZP might impose restriction on uses to which a property might be put, including those allowed under the lease. Hong Kong law had long recognized that zoning restrictions imposed in the public interest would not normally amount to a 'deprivation of property';
- (b) the two lots still had economic value with development potential under the OZP. They were not valueless and were capable of being sold for more than a nominal sum in the open market; and
- (c) the Government affirmed that it was possible to implement the "Other Specified Uses" zoning on the draft OZP through a lease modification in respect of the lots, subject to payment of a premium.

5. The Secretary said that a copy of the judgment on the second JR was at the Annex to the Paper. As there might be further legal proceedings on the matter, Members agreed that the remaining part of the discussion on the item should be conducted in closed meeting.

[Professor David Dudgeon arrived to join the meeting at this point.]

6. The Chairperson said that, pursuant to section 8(2) of the Town Planning Ordinance (the Ordinance), the Board should submit the draft Quarry Bay OZP to the Chief Executive in Council (CE in C) for approval before the expiration of a period of 9 months after the close of the last exhibition period of the draft OZP, i.e. before 20.10.2006. As it was uncertain at this stage whether the Applicant would appeal against the decision of CFI, the Board agreed to seek the Chief Executive's agreement to extend the time limit for submission of the OZP to the CE in C for a period of 6 months to 20.4.2007 under section 8(2) of the Ordinance.

[Mr. Erwin A. Hardy, Mr. Nelson W.Y. Chan and Ms. Sylvia S.F. Yau arrived to join the meeting at this point.]

Agenda Item 3

[Open Meeting]

Study on Land Use Planning for the Closed Area
(TPB Paper No. 7680)

[The item was conducted in Cantonese and English.]

7. The following Government's representatives were invited to the meeting at this point:

Ms. Manda Chan - Principal Assistant Secretary (Security)A, Security Bureau (SB)

Miss Jane Lee - Assistant Secretary (Security)A2, SB

Mr. Raymond Wong - Assistant Director of Planning/Territorial, Planning Department (PlanD)

Mr. David Ng - Senior Town Planner/Sub-Regional 2, PlanD

8. The Chairperson extended a welcome and invited the Government's representatives to introduce the Paper. Ms. Manda Chan introduced the review of the Frontier Closed Area (FCA) and made the following main points:

- (a) the FCA was first established in 1951, with its present boundary specified since 1962. It covered about 2,800 ha of land south of the boundary between Hong Kong and Shenzhen. The FCA was an integral part of the security measures for maintaining the integrity of the boundary for combating illegal immigration and cross-boundary criminal activities. Access to the FCA was controlled by the Police through the issuance of FCA permits. Other security measures included a boundary fence and frequent security patrols;
- (b) illegal immigration and cross-boundary criminal activities had been under control in recent years. The number of illegal immigrants arrested had dropped from 2,404 in 1997 to 564 in 2005, representing a more than 70% decrease. The upgrading of the boundary fence system in April 2002 had enhanced the ability to combat illegal immigration;
- (c) after review, it was concluded that with the installation of a new secondary fence, the objective of maintaining the integrity of the boundary might still be achieved with the coverage of the FCA substantially reduced;
- (d) on 7.9.2006, the Government announced the new boundary of the FCA, which included the narrow strip of boundary patrol road plus the areas with boundary-crossing points (i.e. Boundary Control Points and Sha Tau Kok town). The coverage of the FCA would be significantly reduced to 800 ha; and

[Dr. C.N. Ng arrived to join the meeting at this point.]

- (e) most sections of the boundary fence were on the northern edge of the boundary patrol road. It was proposed to construct a secondary boundary fence on the southern edge to ensure that the road and the boundary fence would be free from deliberate or inadvertent interference. As parts of the

proposed secondary fence fell within the “Green Belt” and “Conservation Area” zones on the relevant Outline Zoning Plans (OZPs), the project would be submitted to the Board for consideration. The project was also a designated project under the Environmental Impact Assessment Ordinance, and an environmental impact assessment would be required. After completion of these statutory procedures, an application for funding for the project would be submitted to the Legislative Council in 2008. The project was scheduled for completion in 2010. The Government would then amend the Frontier Closed Area Order under the Public Order Ordinance to specify the reduced coverage of the FCA.

9. With the aid of a PowerPoint presentation, Mr. Raymond Wong briefed Members on the study on land use planning for the FCA (the Study) covering the following major aspects as detailed in the Paper:

- (a) the background to the Study and the Study Area which covered some 2,000 ha of land to be released from the FCA and about 300 ha of land immediately outside the FCA;
- (b) the objective of the Study which was to formulate a planning framework to guide the conservation and development of the Study Area, based on the principles of sustainable development;
- (c) the two stages of the Study: Stage 1 would focus on the formulation of a Concept Plan, which would show the broadbrush land use framework for the Study Area and form the basis for the preparation of development permission area (DPA) plan. Stage 2 would focus on the formulation of a Development Plan, which would show the more detailed land use framework for the Study Area and form the basis for the preparation of OZPs;
- (d) the 12 key tasks of the Study and the interface with the Strategic Environmental Assessment process; and
- (e) the Study programme, which would last for about 30 months from early

2007 to mid-2009, and the public consultation process. The public would be consulted on the broad proposals in the Concept Plan at around 6 months after the commencement of the Study.

10. After the presentation, Members had the following questions and comments:
- (a) the Government should, in consultation with the stakeholders, work out practical management and implementation plans beforehand to avoid sprawling of unauthorized developments into the FCA when the current restriction on access was lifted;
 - (b) the Study Area had conservation and heritage values, and its existing character should be preserved. The need for the opening up of the FCA and for the Study should be justified;
 - (c) the Study Area contained natural areas and fishponds which were free from human disturbance. It was an important asset of Hong Kong as well as a buffer between Hong Kong and Shenzhen. Any need for development had to be carefully scrutinized within the strategic planning framework for Hong Kong based on the principles of sustainable development, and be subject to proper planning control;
 - (d) in the absence of detailed information on the conservation value of the land in the Study Area, a precautionary approach should be adopted in planning so as to avoid causing any irreversible impacts on the Study Area. In particular, the ecological linkage within the Study Area should be preserved and the off-site impacts of the proposed land uses should be carefully assessed. There should also be proper planning and control of new roads which would become a catalyst for developments;
 - (e) while a major part of the Study Area should be preserved for conservation purpose, certain areas within the Study Area could have potential for development;
 - (f) certain areas within the Study Area were identified as having potential for

development under the Study on 'Hong Kong 2030: Planning Vision and Strategy' (HK2030 Study). How would this recommendation affect the Study;

- (g) the Study should give comprehensive and careful consideration to various relevant factors and examine the integration with various Government policies, e.g. the connection with Shenzhen, strategic economic consideration, the planning of railway network and the demand for open storage sites. The feasibility of having manufacturing industries, local shopping centres and an educational hub in the Study Area should also be studied. There should also be a mechanism to resolve possible conflicts between different policy objectives, e.g. conservation and tourism development, and to ensure better coordination;
- (h) landslides frequently occurred in the area south of Wu Tong Shan and to the west of Sha Tau Kok. The Study should consider measures, e.g. tree planting, to prevent soil erosion and improve the landscape in the area;
- (i) after completion of Stage 1 of the Study, some pilot schemes could be conducted to test the feasibility of the preliminary land use proposals;
- (j) the public might raise detailed land use proposals even at the Stage 1 consultation. There might be a need to allow some adjustment of the time frame of the two stages of the Study having regard to the public comments received;
- (k) with the reduced FCA, the public would have access close to the boundary fence at certain locations, e.g. the areas near Luo Fang Cun and Chang Ling Cun in Shenzhen. This might pose a security concern. Consideration should be given to retaining a wider strip of closed area at the said locations to serve as a buffer; and
- (l) to familiarize Members of the various planning issues facing the FCA, a site visit should be arranged for Members.

[Mr. Patrick L.C. Lau arrived to join the meeting during the question session.]

11. In response to Members' questions and comments, Ms. Manda Chan and Mr. Raymond Wong made the following main points:

- (a) the existing FCA was declared by order under the Public Order Ordinance based on security and public order considerations. Upon review, the Government concluded that the coverage of the FCA could be significantly reduced without affecting the integrity of the boundary. The opening up of part of the existing FCA was due to security considerations rather than development needs. There was a need to study the future uses of the land to be released from the FCA and to prepare statutory plans to guide the use and control of such land. The Chairperson added that the Study was necessary to ascertain the proper land uses within the Study Area and balance the interests of different sectors of the community based on the principles of sustainable development;
- (b) before the completion of the secondary boundary fence in 2010, the existing FCA would be maintained and access to the FCA would still be controlled by permits issued by the Police. Taking into account the proposed developments and transport capacity, the Study would examine whether there was still a need for restricted road access based on considerations other than security reasons;
- (c) the existing boundary fence had a height of 3.5m and an electronic detection equipment. Control points were set up along the fences for surveillance purpose. The existing boundary fence and the proposed secondary fence would be sufficient to ensure the integrity of the boundary, despite the short physical distance from Shenzhen at certain points. Moreover, conservation-related land use zones could also serve as buffer areas;
- (d) the conservation value of the Study Area would be ascertained in the Study and practical mitigation measures would be proposed to conserve the natural environment in the Study Area;

- (e) the eastern and western parts of the Study Area were respectively Hung Fa Ling which linked with the Wu Tong Shan National Forest Park in Shenzhen, and a large area of fishponds. The central part of the Study Area appeared to have greater development potential. The Study would consider the locational requirements of the relevant uses, local and territorial needs, possible ecological impact, and strike a proper balance among them;
- (f) three areas near the boundary, namely Heung Yuen Wai, Kong Nga Po and the Lok Ma Chau Loop, were identified as having potential for development under the HK2030 Study, as they covered mostly flat abandoned agricultural land and were close to Shenzhen. It had been recommended that further studies should be conducted to ascertain the development potential of these areas. Kong Nga Po, which was mostly outside the existing FCA, and Heung Yuen Wai to be released from the FCA were included in the Study Area. The Study would take the research in HK2030 Study as a basis and study in greater detail the potential of these two areas. The Lok Ma Chau Loop was excluded as it would be retained in the FCA;
- (g) geotechnical assessment would be conducted in the Study and measures including tree planting would be proposed to address the soil erosion problem and to improve the landscape; and
- (h) the views of stakeholders were expected to be diverse. While there was a certain degree of flexibility in the Study programme, the Study involved many tasks which were subject to tight time frame and contractual obligation. If necessary, a pragmatic approach would be adopted in adjusting the Study programme.

12. In summing up, the Chairperson said that the Study should examine and balance the different needs of the community from a broader perspective through detailed and objective assessments at both the macro and micro levels. The Board would be closely involved in the Study process, particularly in the preparation of DPA plans and OZPs for the Study Area. The Chairperson requested the PlanD to take into account the comments of Members in the Study.

13. As Members had no question to raise, the Chairperson thanked the Government's representatives for attending the meeting. They all left the meeting at this point.

[The meeting was adjourned for a break of 10 minutes.]

Agenda Item 4

[Open Meeting]

Draft Cha Kwo Ling, Yau Tong and Lei Yue Mun

Outline Zoning Plan No. S/K15/15

Review of Yau Tong Bay "Comprehensive Development Area" Zone
(TPB Paper No. 7681)

[The item was conducted in Cantonese.]

14. The Secretary reported that Mr. Raymond Y.M. Chan had declared an interest on this item as he had current business dealings with the Henderson Real Estate Agency Limited, which was the proponent of the proposed development at the "Comprehensive Development Area" ("CDA") zone at Yau Tong Bay. Members noted that Mr. Chan had tendered his apologies for being unable to attend the meeting.

15. Dr. Greg. C.Y. Wong, Mr. Nelson W.Y. Chan, Ms. Starry W.K. Lee and Mr. K.Y. Leung declared interests on the item as they were members of the Harbour-front Enhancement Committee (HEC) which was consulted on a proposal submitted by the proponent, i.e. 'Sunshine Island Scheme' on 6.4.2006. Dr. C.N. Ng and Professor Peter R. Hills also declared interests on the item as they were members of the Advisory Council on the Environment which had approved the environmental impact assessment for the original reclamation proposal for the "CDA" zone. The Chairperson said that the interests of these Members were considered indirect and remote. As such, they could be allowed to stay in the meeting and participate in the discussion on the item. Members agreed.

16. Mr. Raymond Lee, the District Planning Officer/Kowloon of the Planning Department (PlanD), was invited to the meeting at this point.

17. The Chairperson extended a welcome and invited Mr. Raymond Lee to introduce the Paper. With the aid of a PowerPoint presentation, Mr. Raymond Lee covered the following major aspects as detailed in the Paper:

- (a) the zoning history of the “CDA” zone at Yau Tong Bay and the court’s ruling relating to the interpretation of the Protection of the Harbour Ordinance (PHO);
- (b) the three development options submitted by the proponent, i.e. the ‘2001 Submission’, ‘Sunshine Island Scheme’ and ‘No-reclamation Scheme’ and the proponent’s justifications to support the first two options;
- (c) PlanD’s assessment on the options including the compliance with the ‘overriding public need test’ laid down by the Court of Final Appeal (CFA) and the views of the Department of Justice and the Environmental Protection Department (EPD);
- (d) the views of the HEC on the ‘Sunshine Island Scheme’; and
- (e) the proposed way forward on the review of the “CDA” zone.

18. The questions and comments raised by Members were summarized as follows:

- (a) apart from reclamation, whether there were any measures to address the existing seabed contamination problem at Yau Tong Bay, and if yes, whether there was any information on the timing and cost of such measures;
- (b) whether it was a normal practice for the Board and the PlanD to engage the proponent in preparing the development schemes for the “CDA” zone;
- (c) whether the PlanD would prepare a planning brief to set out the major development parameters to guide the future development in the “CDA” zone;

- (d) the residents in the future development at the “CDA” zone might be subject to odour impacts from Yau Tong Bay. To achieve a win-win situation, whether it was possible to allow a limited extent of reclamation at Yau Tong Bay to address the odour problem and to provide greater room for reducing the intensity of the proposed development; and
- (e) whether there was room to improve the design of the ‘No-reclamation Scheme’, e.g. by reducing the building height and deleting the podium structure.

19. In response to Members’ questions and comments, Mr. Raymond Lee made the following main points:

- (a) the EPD had advised that the contaminated sediments at the seabed of Yau Tong Bay should be kept intact as far as possible. Apart from reclamation, there were other measures to address the problem, including treating the contaminated sediments at source. After the development intensity and zoning boundary of the “CDA” zone were determined, the proponent would still need to submit a planning application including a Master Layout Plan to the Board for consideration. At that stage, the proponent had to provide detailed technical assessments to demonstrate that the proposed development was acceptable from environmental viewpoint, and to propose suitable mitigation measures to address the contamination problem. Information on the cost of such mitigation measures might possibly be included. Dr. Michael Chui added that the contamination problem at Yau Tong Bay was not serious and there were other possible measures to address the problem. The EPD would carefully scrutinize the environmental impact assessment to be submitted by the proponent;
- (b) in the light of the CFA’s ruling in relation to the presumption against reclamation under the PHO, the Board agreed in February 2004 to review the “CDA” zone at Yau Tong Bay. Since about 95% of the land within the “CDA” zone was under private ownership and both the Board and the landowners shared the common intention of comprehensive redevelopment of the area, the Board had agreed that the concerned developer should be

engaged in the process of the review;

- (c) the proponent had been asked to make reference to the urban design guidelines in the Hong Kong Planning Standards and Guidelines and the harbour planning principles adopted by the HEC. A planning brief for the “CDA” zone would be prepared if necessary;
- (d) any reclamation proposal in the harbour had to meet the requirements of the PHO. According to the CFA’s judgment, the presumption against reclamation under the PHO could only be rebutted by establishing an overriding public need for reclamation. The proponent had not provided sufficient information to demonstrate that the proposed reclamation at Yau Tong Bay could meet the ‘overriding public need test’; and
- (e) the PlanD had advised the proponent not to adopt a massive podium and to consider other innovative ways to address the possible noise impacts from the adjoining roads.

20. The Chairperson requested PlanD to relay Members’ comments to the proponent for consideration with a view to coming up with a more acceptable scheme, and to report to the Board upon completion of the review of the “CDA” zone. The Chairperson thanked Mr. Raymond Lee for the briefing. Mr. Raymond Lee left the meeting at this point.

[Dr. Greg C.Y. Wong and Dr. James C.W. Lau left the meeting temporarily at this point.]

Agenda Item 5

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/TP/357

Proposed Residential Development and Minor Relaxation

of Number of Storeys in “Residential (Group B)1” and “Green Belt” Zones

Tai Po Town Lot 179, Ma Wo, Tai Po, New Territories

(TPB Paper No. 7674)

[The hearing was conducted in English and Cantonese.]

21. The Secretary reported that the following Members had declared interests on the application:

Dr. James C.W. Lau - having current business dealings with the applicant's consultants, i.e. Hyder Consulting Ltd. and Wong & Cheng Consulting Engineers Ltd.

Dr. Greg C.Y. Wong - having current business dealings with the Sino Land Company Ltd., the parent company of the applicant

Professor Bernard V.W.F. Lim - being a professor in the Department of Architecture of the Chinese University of Hong Kong, whose Centre for Housing Innovations was one of the applicant's consultants

22. Members noted that Dr. Greg C.Y. Wong and Dr. James C.W. Lau had left the meeting temporarily and Professor Bernard V.W.F. Lim had tendered his apologies for being unable to attend the meeting.

Presentation and Question Session

23. Mr. W.K. Hui, the District Planning Officer/Sharing Tin, Tai Po and North (DPO/STN) of the Planning Department (PlanD), and the following applicant's representatives were invited to the meeting at this point:

Ms. Keren Seddon

Mr. Coway Chan

Mr. Yu Wai-wai

Mr. Stanley Yiu

Mr. Kenny Wong

Ms. Helen Chau

Mr. Benny Chow

Mr. Lawrence Kuk

24. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited the DPO/STN to brief Members on the background to the application.

25. Mr. W.K. Hui did so as detailed in the Paper and made the following main points:

- (a) the application site was mostly zoned “Residential (Group B)1” (“R(B)1”) on the approved Tai Po Outline Zoning Plan (OZP), subject to a maximum plot ratio of 1.8 and a maximum building height of 7 storeys over car park. The applicant sought planning permission for a relaxation of the building height restriction to allow an additional storey of ‘Communal Sky Garden’ at podium level of the development;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 23.12.2005 for the reason that there were no strong planning justifications and no special design merits to justify the proposed relaxation of the building height restriction for the proposed garden;
- (c) upon consideration of the application upon review on 21.4.2006, the Board decided to defer a decision on the application pending the submission of further information from the applicant. The applicant on 26.6.2006 submitted a revised scheme proposing to reduce the storey height and headroom of the proposed garden to 6.5m and 4.5m respectively;
- (d) the applicant’s further representations – the applicant claimed that the proposed garden would improve the air ventilation and visual amenity in the surrounding areas, including the adjacent Grand Dynasty View. The applicant stated that the reduced headroom of the garden, i.e. 4.5m, was the minimum headroom for ‘Communal Sky Garden’ as stipulated in the Joint Practice Note No. 1 for Green and Innovative Buildings (JPN No. 1) issued by the Buildings Department (BD), Lands Department (LandsD) and PlanD. The overall building height of the proposed development at 59.5mPD was compatible with the surrounding residential developments;

- (e) departmental comments – the District Lands Officer/Tai Po advised that the maximum building height for the site under the lease was only 53mPD, which was based on the rezoning proposal agreed by the Board in 1999. The BD advised that the proposed garden was not a Communal Sky Garden under the definition of JPN No. 1. According to JPN No. 1, a building with less than 15 residential storeys was not entitled for a Sky Garden. Hence, the minimum headroom of 4.5m for Sky Garden under JPN No. 1 was not applicable to the application. Also, the proposed garden was not a ‘Communal Podium Garden’ specified in JPN No. 1, which should be for industrial or commercial tower only. There was no stipulated standard on the headroom for a normal garden on the podium;
- (f) public comments – there were strong objections from the Owner Committee and the residents of the GDV on the grounds of landscape, air ventilation and environmental aspects. The locals considered that there were other means to improve the air ventilation in the nearby areas and some suggested that the site should be developed for three-storey detached buildings; and
- (g) PlanD’s view – the PlanD maintained its previous view of not supporting the application. JPN No. 1 was not applicable to the proposed podium garden. The building height restriction on the OZP was based on the rezoning proposal agreed by the Board in 1999. The proposed inclusion of a 6.5m high podium garden represented a 25% increase in building height above ground, and would have adverse visual impacts on the surrounding areas.

26. With the aid of a PowerPoint presentation, Ms. Keren Seddon made the following main points:

- (a) the application site was intended for medium-density residential development under the “R(B)1” zone. Despite the local objections, the proposed development was permissible in law. The proposed Sky Garden with a headroom of 4.5m was allowed under JPN No. 1;
- (b) although the originally proposed storey height of 9m for the Sky Garden

was more desirable from the air ventilation point of view, the applicant had reduced it to 6m to address the Board's concern on visual impacts. The PlanD was the only Government department objecting to the application. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L) of the PlanD had no objection to the revised scheme, and advised that the 4.5m headroom was moderate and the proposed Sky Garden might enhance the air ventilation in the nearby areas;

- (c) without the proposed Sky Garden, the proposed development and its surrounding developments would suffer from air stagnation and ineffective dispersal of heat and pollutants, particularly at the pedestrian level;
- (d) the overall building height of the proposed development had been reduced by 4% from 62 mPD to 59.5 mPD, which was lower than the heights of the adjacent buildings ranging from 60 to 65 mPD. The storey height and headroom of the Sky Garden were reduced from 9m and 6m to 6.5m and 4.5m respectively. The thickness of the transfer plate and of the E/M services zone were both reduced to 1m each, which was the absolute minimum and to which the CTP/UD&L had no objection;
- (e) if the building height restriction was not relaxed, the site coverage of the proposed development would have to be increased to 50% to accommodate the Sky Garden, resulting in more slope excavation and tree felling;
- (f) as shown in the applicant's photomontages, even with the proposed Sky Garden, the visual impact on the landscape in the area was minimal. The proposed garden would provide a visual extension of the existing greenery on the slopes, maximize visual permeability within and through the site, minimize any wall effect and soften the appearance of the development. More open space, greenery and planting could be provided on the site to achieve better integration with the surrounding environment;
- (g) the proposed increase in the building height of the proposed development was not noticeable and could maintain the stepped height profile in the area. The application site was located within a sunken topographical basin

surrounded by two residential developments, namely the Grand Dynasty View and Classical Garden, hilly terrain and elevated Tolo Highway, and was not at a sensitive location;

- (h) application for minor relaxation of the building height restriction was allowed under the Notes for the “R(B)1” zone. The intention was to provide flexibility to encourage innovative design;
- (i) according to the air ventilation study conducted, the proposed Sky Garden would, on annual average, promote a 13% improvement in the air flow in the nearby areas. The improvement would reach 31% in summer;
- (j) the low-density residential development proposed by the local residents was not in line with the planning intention of the “R(B)1” zone. The Board should not reject the application merely on the basis of the local objections which might be based on the consideration of property value;
- (k) the main entrance to the domestic towers of the proposed development was via ground floor, instead of the Sky Garden as claimed by the BD. The proposed Sky Garden complied with all the criteria for a Communal Sky Garden in JPN No. 1. It was only stated in JPN No. 1 that *“in addition to podium gardens, the maximum number of sky gardens provided is equal to or less than the number of residential storeys divided by 15.”* There was reference to podium garden and it did not preclude the provision of it as a green feature in a residential development. Moreover, in accordance with the spirit to encourage green features, the 4.5m minimum headroom for Sky Garden should also be applicable to normal podium gardens. The BD and LandsD had no objection to the application;
- (l) the increase in building height should be measured on the basis of the number of storeys as adopted in the Notes for the “R(B)1” zone. As such, the proposed additional storey only represented an increase of 12.5%. If measured by mPD, the increase as compared with that permitted in the lease was only 12%. If the transfer plate and E/M zone were excluded, the increase was only 16% in terms of metres above ground. In 2003, the

Board approved an application for relaxation of the building height restriction by 32% with the provision of a 9m high Sky Garden at Caldecott Road. A 9m high Sky Garden was also proposed in two recent applications approved by the Board;

- (m) the 1m transfer plate was required to ensure that the Sky Garden was open in design with less vertical walls, and the E/M zone had to be located beneath the residential towers to accommodate conduits to achieve environmental sustainability. The revised scheme had addressed the local concern on the visual impacts of the proposed development on the surrounding areas effectively; and
- (n) some RNTPC Members were of the view that the incorporation of the Sky Garden was mainly to elevate the whole building for more open view. However, the relaxation of building height restriction would not offer better view for the proposed development as the site was within a basin. Instead, it would increase the construction cost by 10%. It was merely an endeavour to improve the air ventilation and greenery in the area for the benefits of all local residents.

[Ms. Maggie M.K. Chan arrived to join the meeting at this point.]

27. Members raised the following questions to the applicant's representatives:
- (a) whether it was possible to relocate the Sky Garden from the podium level to an upper level;
 - (b) as stated in the applicant's air ventilation study in Annex Ia to Annex A in Attachment I of the Paper, a 9m high garden would improve the mean air velocity of the nearby areas by 45%, and the mean air velocity of 0.56 meter per second (m/s) achieved by a 5m high garden was lower than the recommended 1 m/s criterion for effective pollution dispersion. It was therefore doubtful whether a 5m high garden could achieve a reasonable improvement of the air ventilation in the surrounding areas;

- (c) whether it was possible to relocate the E/M zone to the basement;
- (d) the height of the void of the podium garden of the Grand Dynasty View;
and
- (e) if the application were rejected, whether the future development on the site would be similar to that shown in the photomontage under the 'no Sky Garden' scenario.

[Professor Peter R. Hills left the meeting at this point.]

28. In response, Ms. Keren Seddon, Mr. Benny Chow, Mr. Stanley Yiu and Mr. Kenny Wong made the following main points:

- (a) the proposed Sky Garden at podium level was more effective in improving air circulation, more accessible to residents, and have better linkage to the surrounding landscape. The proposed Sky Garden, with an area of 1,600m², would provide a better environment for the users of the garden, and improve the cross ventilation between the garden and the podium gardens of the adjacent buildings. These effects would be reduced if the garden was relocated to an upper floor. The location of the Sky Garden was carefully decided having regard to the air ventilation study and its integration with the Grand Dynasty View;
- (b) a 9m high Sky Garden was considered more desirable. However, in view of the Board's concern, the applicant proposed to reduce the height of the Sky Garden to 6.5m, which could still bring about significant benefits in terms of air ventilation, i.e. 13% improvement on annual average and 31% improvement in summer. A mean air velocity of 1.23 m/s for the south-westerly wind could be achieved as compared with 0.94 m/s under the 'no Sky Garden' scenario. The CTP/UD&L agreed that the proposed garden could promote air ventilation in the neighbourhood;
- (c) if the E/M zone was relocated to the basement, many vertical conduits would have to run across the Sky Garden, posing constraints on the use of

the garden and creating undesirable visual impact. It was a usual practice to lay the conduits horizontally and concentrate them at strategic points before connecting to other floors. A thickness of 1m was required for the E/M zone to accommodate the various installations in a gentle gradient;

- (d) the void of the podium garden of the Grand Dynasty View had a height of about 5m, but the garden was not a Communal Sky Garden under JPN No. 1;
- (e) constrained by the slopes within the site, the proposed development would be similar to the one shown in the applicant's photomontage on the 'no Sky Garden' scenario, but the applicant would try to improve the appearance of the building through other measures; and
- (f) the applicant had no idea of the requirement that one level of Communal Sky Garden was allowed for every 15 residential storeys when submitting the application. The provision of Sky Garden in residential developments with less than 15 residential storeys had been allowed by the Board in some approved similar applications.

29. In relation to the applicant's air ventilation study, the DPO/STN clarified that the mean air velocity of 1 m/s was not an international standard and was not adopted in the Study on Air Ventilation Assessment (AVA) conducted by the PlanD. According to the applicant's assessment, the proposed garden would not bring about any improvement in air velocity for the easterly wind, which account for 20% in terms of frequency in a year, and the mean air velocity for the northerly wind would even decrease.

30. In response to the DPO/STN's comments, Mr. Benny Chow said that although there was no international standard on the desirable level of air velocity, a higher air velocity would generally be better. The applicant's air ventilation study was different from the AVA in that the latter focused on a wider area. Based on local experience, the applicant had adopted 1 m/s as the yardstick.

31. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairperson informed the applicant's representatives that

the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairperson thanked the applicant's representatives and DPO/STN for attending the meeting. They all left the meeting at this point.

Deliberation Session

32. Sharing PlanD's view of not supporting the application, a Member remarked that the main consideration should be on the merits of the application rather than the detailed figures on air velocity in the applicant's air ventilation study. The Chairperson concurred and added that the Board should consider the application in its totality. The building height restriction of the application site was imposed on the OZP based on the rezoning proposal approved by the Board in 1999. Any minor relaxation of the restriction had to be fully justified. In this regard, Members considered that the applicant had not provided sufficient justifications for and planning merits to justify the proposed relaxation.

33. After deliberation, the Board decided to reject the application on review and the reasons were:

- (a) there were no strong planning justifications and no special design merits to justify the proposed relaxation of the building height restriction for the 6.5m high garden;
- (b) an inclusion of a 6.5m high garden in the proposed development represented a 25% increase in building height above ground. Such an increase could not be regarded as minor; and
- (c) the approval of the application would set an undesirable precedent for similar applications for other developments/redevelopments in the area. The cumulative effects of approving such similar applications would have adverse impacts on the character and visual quality of the area.

[Dr. James C.W. Lau returned to join the meeting at this point.]

Vote of Thanks

34. The Chairperson said that Mr. Erwin A. Hardy had tendered his resignation from the Board with effect from the end of September 2006 and it was the last Board's meeting for Mr. Hardy. The Chairperson expressed a vote of thanks to Mr. Hardy on behalf of all Members for his past contributions to the Board. Mr. Hardy said he was honoured to have participated in the planning work of the Board, which was very meaningful and interesting. He wished the Board every success in future.

[Mr. Erwin A. Hardy, Mr. Stanley Y.F. Wong, Mr. B.W. Chan, Mr. Felix W. Fong and Ms. Starry W.K. Lee left the meeting, while Mr. Edmund K.H. Leung, Mr. Walter K.W. Chan, and Ms. Anna S.Y. Kwong left the meeting temporarily at this point.]

Agenda Item 6

Review of Application No. A/YL-NSW/167
Proposed Low Density Residential Development
in "Other Specified Uses" annotated for
"Comprehensive Development to Include Wetland Restoration Area" Zone at
Lot 3719 S.H ss.1 RP in D.D. 104 and Adjoining Government Land,
Tai Sang Wai, Yuen Long
(TPB Paper No. 7675)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

35. Mr. Wilson So, the District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL) of the Planning Department (PlanD), and the following applicant's representatives were invited to the meeting at this point:

Mr. Yung Ming-fung

Mr. Lam Kwan-pui

36. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited the DPO/TMYL to brief Members on the

background to the application.

37. Mr. Wilson So did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for a proposed low density residential development on the application site which was zoned “Other Specified Uses” annotated “Comprehensive Development to Include Wetland Restoration Area” (“OU(CDWRA)”) on the draft Nam Sang Wai Outline Zoning Plan (OZP) and had an area of about 1,575m². The proposed development included 4 houses of 2 domestic storeys over a car port with a total plot ratio of 0.4;
- (b) on 2.6.2006, the Rural and New Town Planning Committee rejected the application for the reasons detailed in paragraph 1.2 of the Paper;
- (c) the applicant had not submitted any written representation to support the review application;
- (d) departmental comments – according to the District Lands Officer/Yuen Long, the applicant had not demonstrated that the long-term management and maintenance of the proposed fresh water marsh with an area of 236m² at the application site could be sustained. The Agriculture, Fisheries and Conservation Department had reservation on the applicant’s ecological assessment, which could not demonstrate that the proposed development would not have negative off-site disturbance impact on the fishponds in the Wetland Conservation Area (WCA). The Environmental Protection Department advised that the application site was next to open storage sites, godowns and roads used by heavy vehicles, and there was no information to demonstrate that the proposed development was acceptable from the environmental viewpoint. The Transport Department and Drainage Services Department also raised technical concerns on traffic and drainage aspects;
- (e) public comments - a Yuen Long District Council (DC) Member maintained

her previous objection because the vehicular access arrangement of Fairview Park Boulevard and Kam Pok Road had not yet been determined by the Transport Department and the ingress/egress point of the application site was not certain. Five public comments objecting to the application mainly on traffic grounds were received at the s.16 planning application stage; and

- (f) PlanD's view – the review application was not supported for the reasons detailed in paragraph 6.3 of the Paper. The proposed development did not comply with the Town Planning Board Guidelines for “Application for Developments within Deep Bay Area” in that the applicant had not submitted adequate technical assessments to address the concerns of the relevant Government departments on ecological, environmental, traffic and drainage aspects.

38. The Chairperson then invited the applicant's representatives to elaborate on the application.

39. Mr. Yung Ming-fung made the following main points:

- (a) there were many temporary vehicle parks, warehouses and a vehicle servicing office as well as a restaurant in the vicinity of the application site. As compared with such uses, the proposed development, which included only 4 houses, would generate less environmental impact on the surrounding areas. The applicant had taken the initiative to provide a fresh water marsh at the application site, which would bring about positive impacts on the surrounding areas;
- (b) the applicant had successfully resolved the issue on the right of using the access roads to the application site managed by the management office of the Fairview Park in another project. The applicant had also discussed with the concerned DC member on the issue in another project;
- (c) in view of EPD's objection to the proposed use of septic tank and soakaway system, the applicant would consider other means of sewage treatment for

the proposed development, e.g. collection of sewage by vehicles; and

- (d) it was impossible for the applicant to manage all the wetlands in the surrounding areas. However, the applicant pledged to set up a fund to manage the proposed fresh water marsh within the application site. The area of the marsh could also be enlarged to the satisfaction of the concerned Government departments.

40. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairperson informed the applicant's representatives that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairperson thanked the applicant's representatives and DPO/TMYL for attending the meeting. They all left the meeting at this point.

Deliberation Session

41. The Chairperson said that the concerned Government departments had reservation on the applicant's ecological assessment and the applicant had not provided sufficient information to demonstrate that the proposed development was in line with the planning intention of the "OU(CDWRA)" zone.

42. A Member said that the application site abutted on a nullah, a road and some tolerated open storage uses in the east, west and south respectively. Given the location of the site and the small scale of the proposed development, it was doubtful whether the applicant should be required to provide restored wetland at the application site. Another Member pointed out that the planning intention of the "OU(CDWRA)" zone was to encourage comprehensive development with the provision of restored wetland. Such intention could be achieved through site amalgamation for comprehensive development. Approval of the application might set an undesirable precedent for similar piecemeal developments within the zone and frustrate the planning intention.

43. Miss Ophelia Y.S. Wong said that the "OU(CDWRA)" zone was intended for comprehensive development with the provision of wetland restoration area, rather than small scale piecemeal development as proposed by the applicant. There would be better chance to

achieve the planning intention if the application site covered a larger area. Members shared the same view.

44. After deliberation, the Board decided to reject the application on review and the reasons were:

- (a) the proposed development at the application site, which fell within the Wetland Buffer Area, did not comply with the Town Planning Board Guidelines for “Application for Developments within Deep Bay Area” (TPB PG-No. 12B) in that there was insufficient information in the submission to demonstrate that the proposed development would not have negative off-site disturbance impact on the fish ponds and wetland within the Wetland Conservation Area and that there was also insufficient information on the maintenance and management plan, in particular the arrangement of funding and monitoring proposal to ensure the long-term management of the restored wetland; and
- (b) there was insufficient information in the submission to demonstrate that the proposed development would not have adverse ecological, environmental, sewage, traffic and drainage impacts on the surrounding areas.

45. The meeting was adjourned for lunch at 12:50 p.m.

46. The meeting was resumed at 2:30 p.m.
47. The following Members and the Secretary were present in the afternoon session:

Mrs. Rita Lau

Dr. K.K. Wong

Mr. Michael K.C. Lai

Dr. Greg C.Y. Wong

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Dr. Lily Chiang

Mr. Edmund K.H. Leung

Ms. Sylvia S.F. Yau

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Y.K. Cheng

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Mr. K.Y. Leung

Principal Assistant Secretary (Transport)
Environment, Transport and Works Bureau

Mr. K.S. Ng

Director of Environmental Protection

Dr. Michael Chiu

Director of Lands

Mr. Patrick L.C. Lau

Director of Planning

Miss Ophelia Wong

Agenda Item 7

[Open meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-PH/523

Temporary Religious Institution (Assembly Hall) for a Period of 1 Year

in “Village Type Development” zone,
Lots 2018C1B(Part) and 2018B2(Part) in DD 111, Pat Heung, Yuen Long
(TPB Paper No. 7676)

[The hearing was conducted in English.]

Presentation and Question Session

48. Mr. Wilson So, District Planning Officer/Tuen Mun and Yuen Long of the Planning Department (PlanD) and the following applicant’s representatives were invited to the meeting at this point:

Mr. M.J. Shahab]	
Mr. S.J. Raghbi]	Applicant’s Representatives
Mr. Ch. Iftikhar Hussain]	
Mr. Imtiaz Hussain]	

49. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson So to brief Members on the background to the application. With the aid of some plans, Mr. So did so as detailed in the Paper and made the following main points:

- (a) the reasons of the Rural and New Town Planning Committee (RNTPC) to reject the proposed application for temporary religious institution (assembly hall) for 1 year on a site zoned “Village Type Development” (“V”) on the Pat Heung Outline Zoning Plan (OZP) on 2.6.2006;
- (b) the justifications put forth by the applicant in support of the review application;
- (c) departmental comments – District Lands Officer/Yuen Long (DLO/YL, LandsD) advised that a Small House application to the immediate north of the application site was under active processing. Chief Engineer/Mainland North, Drainage Services Department considered that submission of and

implementation of drainage proposals would be required. Chief Town Planner/Urban Design and Landscape, PlanD pointed out the need for submission and implementation of landscape proposal;

- (d) two public comments were received during the statutory public inspection period from a Yuen Long District Council (YLDC) Member and the Village Representatives (VRs) of Wang Toi Shan, raising strong objections as the assembly hall would generate noise nuisance to nearby residents, create conflicts and destroy the serenity of the village and traditions. There was a Small House application nearby. District Officer (Yuen Long) (DO(YL)) advised that due regard should be given to the strong local objections as the religious activities would cause nuisances to surrounding villagers, affect local customs and attract strangers; and
- (e) PlanD's view – not supporting the application as there was no technical submissions nor information to demonstrate that the development would have no adverse impacts on the surrounding areas. Of the 3 previous applications for similar use on this application site, Application Nos. A/YL-PH/445 and A/YL-PH/457 were rejected in 2003 and 2004 respectively. No. A/YL-PH/481 was approved on review on 11.3.2005 for 2 years on an exceptional basis to tally with the tenancy contract and allow time for the applicant who undertook to relocate the proposed use elsewhere. The approval was revoked on 11.9.2005 due to non-compliance with approval conditions relating to submission of proposals for landscape, drainage facilities, emergency vehicular access (EVA) and water supplies for fire services. There was no information in the current submission to demonstrate that the applicant had made genuine effort to comply with the previous approval conditions or to seek alternative sites for relocation.

50. The Chairperson then invited the applicant's representatives to elaborate on the application. Mr. M.J. Shahab, representative of the Pakistan Traders Association (HK) Ltd. made the following main points:

- (a) the development was only temporary in nature and not against the law; and

- (b) the delay in fulfilling the conditions of the previous approval was due to failure of their contractor to submit the necessary proposal and the time required to appoint another suitable contractor. Letters had been addressed to the Town Planning Board explaining the cause of the delay and seeking an extension of time for compliance. Given such experience, the applicant would commit to comply with the approval conditions. The applicant was seeking more time for compliance of the approval conditions for the previous permission which was supposed to expire in 2007 and hence the present application should not be regarded as a new application;
- (c) the applicant had also obtained planning permission for a canteen at the adjoining site under Application No. A/YL-PH/456 and invested substantial amount of money in the project. However, taking the advice of some local villagers, the applicant had given up the canteen to make way for the religious hall. The facility was intended for peaceful religious activities and unlikely to generate any noise nuisance. The objection on noise nuisance was not substantiated as no complaint had been raised by nearby villagers;
- (d) members of the Association were residents in the area and their request should be respected. The subject application should not be assessed on unfounded complaints by some local villagers who were not on good terms with them. As religious events would be conducted once a week on Friday and there were only a few worshippers on other days, the operation of the assembly hall would be similar to other Chinese temples commonly found in Hong Kong;
- (e) there was a genuine need for the facility at this location as the Pakistani visitors to the hall were in fact residents and businessmen in the area;
- (f) as the applicant had invested over \$1m on building the assembly hall, sympathetic consideration should be given for its continued operation. Although the applicant was willing to relocate, reasonable time would be required to identify alternative sites; and

- (g) if the application was rejected, the applicant might consider taking the matter up with the government at high level or instigating legal action against the Board's decision.

51. Members sought clarification from Mr. Wilson So on the following:

- (a) whether the applicant was aware of the need and time for fulfilment of the approval conditions of the previous permission;
- (b) whether any technical proposal had been submitted in fulfilment of these conditions; and
- (c) the specific issues raised in the local objections.

52. In response, Mr. So replied as follows:

- (a) the decision letter issued by the Secretary of the Board to the applicant on 8.4.2005 regarding the approval of No. A/YL-PH/481 had specified the approval conditions, including submission for proposals on landscape, drainage facilities, EVA and water supplies for fire services, and the time for compliance, i.e. within 6 months by 11.9.2005. The letter also reminded the applicant to strictly adhere to the time limit for compliance. Reminder for compliance had been sent to the applicant on 26.7.2005 prior to the expiry date of the conditions;
- (b) the applicant had indicated difficulty in complying with the conditions by the time limit in a letter dated 12.9.2005, i.e. after the expiry date. The approval was therefore revoked as the applicant was unable to meet the prescribed time-limited conditions; and
- (c) objections from the YLDC member and local VRs, as enclosed in Appendix E of the Paper, were on grounds of noise nuisance to nearby residents, conflicts due to difference in religions, impact on local tradition and tranquillity. Such views were also reported in a local newspaper after the approval of No. A/YL-PH/481 in 2004.

53. Members sought clarification from the applicant on the following:
- (a) whether any submission for compliance of approval conditions for the previous approval had been made;
 - (b) whether and what efforts had been taken to arrange for relocation; and
 - (c) whether a 12 month approval would be sufficient to find an alternative site for permanent relocation.
54. Mr. M.J. Shahab made the following main points:
- (a) the applicant had approached PlanD seeking extension of time for compliance with conditions due to delay of the former contractor in preparing the drainage proposal but the request was not accepted. The expiry date had already passed by the time they had secured the service of another contractor and a drainage proposal had since been submitted;
 - (b) the applicant would seek Government's permission to grant a piece of land for a permanent assembly hall. The Association would proceed with the long-term development once a site was available and would give up the temporary facility under the current application; and
 - (c) he was highly optimistic in being able to complete the relocation within 12 months.
55. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairperson informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairperson thanked the applicant's representatives and PlanD's representative for attending the meeting. They all left the meeting at this point.

Deliberation Session

56. The Chairperson reminded Members that the previous approval for Application No. A/YL-PH/481 was granted on an exceptional basis for a period of 2 years to tie in with the tenancy contract and allow time for the applicant to relocate the proposed use. The approval was revoked as the applicant had failed to comply with the relevant approval conditions. The relocation to a permanent site within 12 months, as envisaged by the applicant, appeared unrealistic given the need to obtain policy support, the time required for site search and the land-related issues to be processed.

57. A Member was unclear whether the applicant had indeed submitted proposals to fulfil the requirements of the previous permission. The Chairperson agreed that this had to be established as a matter of fact but more importantly, even if proposals had been submitted, the Board should consider whether they were submitted in time and discharged to the satisfaction of concerned authorities. Miss Ophelia Wong clarified that no technical submissions nor information had been received in the current application, nor was there any drainage proposal submitted as claimed by the applicant, to demonstrate that the proposed use had no impacts on the surrounding areas.

58. Members were generally not in support of the application and expressed the following views:

- (a) the applicant had not demonstrated genuine effort to comply with the previous approval conditions;
- (b) there were repeated local objections on the noise nuisance caused to the nearby villagers;
- (c) as the application site was in “V” zone with Small House application nearby under processing, the subject application was not in line with the planning intention and might jeopardize the planned village development in the vicinity;
- (d) places of religious worship should more appropriately be provided in permanent accommodation than in temporary venues requiring planning permission; and
- (e) consideration should be given to review the provision of “GIC” sites in the

Pat Heung area to serve religious purposes.

59. Miss Ophelia Wong remarked that only ‘ancestral hall’ serving the local community was permitted as of right in the “V” zone. For other religious institutions, PlanD would assist in conducting site search for such facilities subject to relevant policy support having been given.

60. The Chairperson concluded that given the applied use was incompatible with the planning intention, there was an approved Small House development in the vicinity and a lack of supporting assessments to demonstrate the technical acceptability of the proposal, there was insufficient justification to deviate from the decision of the RNTPC to reject the application. Members generally agreed that the application could not be supported on review.

61. After further deliberation, the Board decided to reject the application on review and the reasons were:

- (a) the development was not in line with the planning intention of the “Village Type Development” zone on the Outline Zoning Plan, which was to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. It was also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. There was no strong justification in the submission for a departure from such planning intention; and
- (b) there was no information to demonstrate that the development would have no adverse drainage and landscape impacts on the surrounding areas.

[Mr. Patrick L.C. Lau and Mr. Walter K.L. Chan arrived to join the meeting at this point.]

Agenda Item 8

[Open meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-PS/237

Temporary Open-air Barbecue Area for a Period of 3 Years in “Undetermined” zone,
Lots 384(Part), 387BRP, 387B1RP, 387B4, 387C1RP(Part), 387C2RP(Part),
388(Part), 390(Part) in DD 122 and Adjoining Government Land,
Ping Shan, Yuen Long
(TPB Paper No. 7677)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

62. Mr. Wilson So, District Planning Officer/Tuen Mun and Yuen Long of the Planning Department (PlanD) and the following applicant’s representatives were invited to the meeting at this point:

Mr. Tang Ping-fai]	Applicant’s Representatives
Miss Law Chiu-han]	

63. The Chairperson extended a welcome and explained briefly the procedures of the review hearing. The Chairperson then invited Mr. Wilson So to brief Members on the background to the application. With the aid of some plans, Mr. So did so as detailed in the Paper and made the following main points:

- (a) the reasons of the Rural and New Town Planning Committee (RNTPC) to reject the proposed application for temporary open-air barbecue area for a period of 3 years on a site zoned “Undetermined” (“U”) on the Ping Shan Outline Zoning Plan on 17.3.2006;
- (b) the justifications put forth by the applicant in support of the review application. The applicant would amend the application to seek permission for a period of 12 months with operation hours from 5pm to 11pm, that no loud speaker and public announcement system would be

used on site and his willingness to accept any reasonable planning conditions;

- (c) departmental comments – Director of Environmental Protection (DEP) advised that one complaint relating to water pollution was received in the past three years. Chief Engineer/Mainland North, Drainage Services Department and Chief Town Planner/Urban Design and Landscape, PlanD had no objection to the application on review, subject to implementation of the accepted drainage and landscape proposals;
- (d) no public comment was received during the public inspection period and no local objection was received from the District Officer/Yuen Long; and
- (e) PlanD's view – not supporting the application as the proposed development, operating in the evening from 5pm to 11pm, was not compatible with the nearby residential developments and would likely invite complaints from residents on operational nuisances. 3 similar cases (Nos. A/YL-PS/178, 215 & 225) for temporary barbecue area in the same "U" zone were rejected by the Board in 2004 and 2005 respectively due to incompatibility with the surrounding residential areas, insufficient information on technical acceptability, and setting of undesirable precedent. The current application, with a larger site area, would represent an intensification of development compared with the rejected cases. Given no change in planning circumstances, there was no strong justification to depart from the Board's previous decisions.

64. The Chairperson then invited the applicant's representatives to elaborate on the application. Ms. Law Chiu-han tabled a support letter and additional information for Members' reference and made the following main points:

- (a) a Yuen Long District Council member supported the proposed development as it would provide family recreation outlets and enhance local economy without causing nuisance to neighbouring residents; and
- (b) as there was no departmental objection and local objection, consideration

should be given to approve the case.

65. A Member enquired whether there was a lack of recreational and entertainment facilities in the area. Mr. Wilson So replied that some local facilities were provided in the vicinity and there were sites zoned "Recreation" which were located to the northeast of Ping Shan area for the development of a range of recreational uses subject to market initiatives. The application site was also close to Tin Shui Wai New Town where other recreational facilities were available.

66. Members sought clarification from the applicant's representatives on the following:

- (a) whether there was in fact no departmental objection to the subject application;
- (b) whether there was any complaint received on the operations in the past; and
- (c) the duration sought for the subject application.

67. Ms. Law Chiu-han replied and made the following main points:

- (a) the only objection from PlanD regarding nuisance to nearby residents was based on assumptions. The environmental complaint on water pollution was not related to the operation of their barbeque area which had no discharge of polluted sewerage;
- (b) being a resident in the area herself, she was not aware of any local complaint in the past when the site was used as a flea market and later turned into a barbeque area; and
- (c) she confirmed that the subject application was for a shorter period of 12 months.

68. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairperson informed them that the hearing

procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairperson thanked the applicant's representatives and PlanD's representative for attending the meeting. They all left the meeting at this point.

Deliberation Session

69. The Chairperson noted that there was no adverse departmental comments on the subject application other than PlanD mainly on land use compatibility ground and that the application was supported by a YLDC member.

70. Members had a lengthy discussion and had the following views on the application:

- (a) as the site was zoned "U", opportunity could be given to the applicant for the proposed development on a trial basis pending confirmation of the long term land use for the "U" zone area;
- (b) the duration of the subject application was shortened to a period of 12 months. This would allow close monitoring of compliance of approval conditions and its operation;
- (c) as the applicant was willing to accept any requirements imposed to resolve impacts arising from the operation, restriction for a shorter operation hour could be considered so as to reduce the potential noise impact to nearby residents; and
- (d) as 3 similar cases for temporary barbeque area in the same "U" zone were previously rejected by the Board in 2004 and 2005 respectively, whether there were any justifications in the current application that warranted a departure from the Board's previous decisions.

71. Dr. Michael Chiu advised that no complaint on noise nuisance had been received by the Environmental Protection Department (EPD). Regarding the complaint on water pollution, the applicant had demonstrated genuine effort in resolving the issue in a timely manner. He was of the view that the acceptability of the barbeque area would depend on the

proper management of the operation and the activities on site, which were found to be acceptable based on past record. Miss Ophelia Wong remarked that the present application was different from the previous ones in that there was support from a YLDC member and that there was no local complaint on the operation of the barbeque area. The application might be approved subject to conditions relating to restriction on operation hours and a shorter approval time of 12 months, as proposed by the applicant.

72. Since Members were generally sympathetic to the subject application and in order to address the concern on possible noise impacts, the Chairperson suggested and Members agreed that the approval condition proposed in paragraph 6.2(a) in the Paper, regarding restriction on operation hours, be amended to further restrict the operation hours from 5:00 p.m. to 10:00 p.m. so as to minimize nuisance to surrounding residents.

73. After further deliberation, the Board decided to approve the application on review, on a temporary basis for a period of 12 months until 22.9.2007, as proposed by the applicant, subject to the following conditions:

- (a) the operation hours of the development was restricted to 5:00 p.m. to 10:00 p.m. daily during the planning approval period;
- (b) the implementation of the accepted landscape proposals and tree preservation proposals within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 22.12.2006;
- (c) the provision of accepted drainage facilities within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22.12.2006;
- (d) the provision of a 9-litres water type/3kg dry powder fire extinguisher in the site office within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board 22.12.2006;
- (e) if the above planning condition (a) was not complied during the planning approval period, the approval hereby given should cease to have effect and

should be revoked immediately without further notice; and

- (f) if any of the above planning conditions (b), (c) or (d) was not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

74. The Board also decided to advise the applicant of the following:

- (a) resolve any land issues relating to the development with the concerned owner(s) of the application site;
- (b) shorter approval and compliance periods were granted in order to closely monitor the development;
- (c) note the comments of District Lands Officer/Yuen Long, Lands Department in paragraph 4.1.1 of the Paper to submit formal applications for regularization to his office for consideration once the planning permission was granted;
- (d) note the comments of Chief Engineer/Mainland North, Drainage Services Department in paragraph 4.1.2 of the Paper that District Officer/Yuen Long should be consulted and the relevant lot owners' consent should be presented as regards all proposed drainage works outside the site boundaries or outside the Applicant's jurisdiction and all proposed drainage facilities should be constructed and maintained by the applicant at his own costs;
- (e) note the comments of Chief Highway Engineer/New Territories West, Highways Department in paragraph 4.1.3 of the Paper that his office did not maintain the access track between Tsui Sing Road and the site;
- (f) follow the latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" issued by the Director of Environmental Protection;
- (g) note the comments of Chief Building Surveyor/New Territories West, Buildings Department in paragraph 9.1.5 of Annex A of the Paper that the granting of this planning approval should not be construed as condoning to

any structures existing on the site under the Buildings Ordinance (BO) and the allied regulations. Actions appropriate under the said Ordinance or other enactment might be taken if contravention was found. Formal submission of any proposed new works, including any temporary structure, for approval under the BO was required. If the site was not abutting on nor accessible from a street having a width of not less than 4.5m, the development intensity should be determined by the Building Authority under Building (Planning) Regulation 19(3) at the building plan submission stage;

- (h) note the comments of Chief Engineer (Development) 2, Water Supplies Department (WSD) in paragraph 9.1.8 of Annex A of the Paper that the developer shall bear the cost of any necessary diversion works affected by the proposed development. In case it was not feasible to divert the affected water mains, a waterworks reserve within 1.5m from the centerline of the water mains should be provided to WSD. No structure should be erected over this waterworks reserve and such area should not be used for storage purposes. The Water Authority and his officers and contractors, his or their workmen should have free access at all times to the said area with necessary plant and vehicles for the purpose of laying, repairing and maintenance of water mains and all other services across, through or under it which the Water Authority may require or authorize. Government should not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the site;
- (i) note the comments of Antiquities and Monuments Offices, Leisure and Cultural Services Department in paragraph 4.1.7 of the Paper that it was not preferable that the application site will extend into the existing van track on the north, thus reducing the width of the van track and causing likely undesirable impact on the fence wall of Tsui Sing Lau Pagoda, which was a Declared Monument; and
- (j) note the comments of Director of Food and Environmental Hygiene (DFEH) in paragraph 9.1.10 of Annex A of the Paper that the proprietor of the

barbecue area who intends to carry on at the site food business should obtain from DFEH a food licence as prescribed under Section 31 of the Food Business Regulation and the proprietor should take up the management responsibility and to prevent any nuisance arising from the premises.

[Mr. Michael K.C. Lai and Dr. James C.W. Lau left the meeting at this point.]

Agenda Item 10

[Open Meeting]

Submission of the Draft Peng Chau Outline Zoning Plan No. S/I-PC/7A
under Section 8 of the Town Planning Ordinance
to the Chief Executive in Council for Approval
(TPB Paper No. 7682)

[The meeting was conducted in Cantonese.]

90. The Secretary briefly introduced the Paper.
91. After deliberation, the Board:
 - (a) agreed that the draft Peng Chau Outline Zoning Plan (OZP) No. S/I-PC/7A and its Notes respectively were suitable for submission under section 8 of the Ordinance to the Chief Executive in Council (CE in C) for approval;
 - (b) endorsed the updated Explanatory Statement (ES) for the draft Peng Chau OZP No. S/I-PC/7A as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and
 - (c) agreed that the updated ES for the draft Peng Chau OZP No. S/I-PC/7A was

suitable for submission to the CE in C together with the draft OZP.

Agenda Item 12

Any Other Business

[Open Meeting. The meeting was conducted in Cantonese.]

93. There being no other business, the meeting was closed at 4.40 p.m.

(CHAIRPERSON)
TOWN PLANNING BOARD