

**Minutes of 921<sup>st</sup> Meeting of the  
Town Planning Board held on 17.10.2008**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Mr. Raymond Young

Chairman

Dr. Greg C.Y. Wong

Vice-chairman

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. B.W. Chan

Mr. Walter K.L. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Ms. Starry W.K. Lee

Mr. K.Y. Leung

Mr. Rock C.N. Chen

Dr. Winnie S.M. Tang

Principal Assistant Secretary (Transport)  
Transport and Housing Bureau  
Mr. Tony Lam

Assistant Director (Environmental Assessment)  
Environmental Protection Department  
Mr. C. W. Tse

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

Director of Lands  
Miss Annie Tam

Director of Planning  
Mrs. Ava S.Y. Ng

Deputy Director of Planning/District  
Miss Ophelia Y.S. Wong

Secretary

**Absent with Apologies**

Mr. Leslie H.C. Chen

Professor David Dudgeon

Mr. Stanley Y.F. Wong

Mr. Y.K. Cheng

Professor Paul K.S. Lam

Professor Edwin H.W. Chan

Dr. Ellen Y.Y. Lau

Mr. Maurice W.M. Lee

Mr. Timothy K.W. Ma

**In Attendance**

Assistant Director of Planning/Board

Mr. S. Lau

Chief Town Planner/Town Planning Board

Ms. Christine K.C. Tse (a.m.)

Mr. W.S. Lau (p.m.)

Senior Town Planner/Town Planning Board

Ms. Amy M.Y. Wu (a.m.)

Mr. Ivan Chung (p.m.)

### **Agenda Item 1**

[Open Meeting]

#### Confirmation of Minutes of the 920<sup>th</sup> Meeting held on 26.9.2008

[The meeting was conducted in Cantonese.]

1. The Chairman said that a copy of the proposed amendments had been tabled for Members' consideration. As Members had no comments on the proposed amendments, the minutes of the 920<sup>th</sup> meeting held on 26.9.2008 were confirmed subject to the said amendments.

### **Agenda Item 2**

#### Matters Arising

#### Request an Open Meeting for Hearing of Objections to the Draft Quarry Bay Outline Zoning Plan No. S/H21/25

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[Open Meeting. This item will be conducted in Cantonese]

2. The Secretary reported that on 25.7.2008, the draft Quarry Bay Outline Zoning Plan (OZP) No. S/H21/25 was exhibited for public inspection under s.7 of the pre-amended Town Planning Ordinance. During the plan exhibition period, 296 objections, mainly against the proposed building height restrictions and the rezoning of sites from "Commercial/Residential" ("C/R") to "Residential (Group A)" ("R(A)"), were received. Preliminary consideration of the objections was scheduled for 14.11.2008. Of these 296 objections, the majority of the objections (255) were standard letters submitted via Democratic Party and the Chairman of the Floridian Owners' Committee and 41 objections were from other Owners' Committees and individuals.

3. The Secretary informed the Board that on 19.9.2008, Objector No. 168, the Chairman of the Floridian Owners' Committee wrote to the Board requesting an open meeting for hearing of the objections. There were two similar requests from objectors

relating to the draft Wan Chai North OZP and draft South West Kowloon OZP for open hearing of the objections. For the draft Wan Chai North OZP, the Board decided not to agree to the objector's request in view of the practical difficulties in ascertaining the consent of all objectors on open hearing but agreed to conduct an open hearing for the further objections to the proposed amendments to the OZP under s.6(8). For the draft South West Kowloon OZP, the Board, having taken into account the hearing arrangement of the Wan Chai North OZP and the small number of objectors involved, agreed to open the further consideration of the objections subject to no objection from the other objectors.

4. The Secretary further stated that as the pre-amended Ordinance was silent on whether the Board meetings should be held in public or private, the Board had the discretion to determine its rules of meetings, but it needed to ensure that the conduct of open meetings would comply with the principles of protection of personal data under the Personal Data (Privacy) Ordinance and non-disclosure of confidential information under the equitable doctrine of confidentiality. Members were invited to consider whether the objector's request should be acceded to, taking into account the hearing arrangement of the draft Wan Chai North OZP and draft South West Kowloon OZP.

5. Members generally agreed that unless there was objection from other objectors, conducting the hearing in public was acceptable.

6. After deliberation, Members agreed to conduct open meeting for the hearing of objections subject to no objection from other objectors. The objectors would be notified of the hearing arrangement prior to the hearing.

### **Agenda Item 3**

7. This item was recorded under confidential cover.

**Agenda Item 4**

[Open Meeting (Presentation and Question Session only)]

Review of Section 16A Application No. A/H11/87-1

Proposed Minor Amendments to an Approved Scheme Residential Development at “Residential (Group A)” and “Residential (Group C)7” zones, 2A-2E Seymour Road, 23-29 Castle Road and 4, 4A, 6 & 6A Castle Steps, Mid-levels West, Hong Kong

(TPB Paper No. 8206)

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[The hearing was conducted in English.]

[Mr. Raymond Y.M. Chan left the meeting temporarily at this point.]

8. The Secretary reported that the application was submitted by International Trader Limited, which was a subsidiary of Swire Properties Ltd. (Swire). Mr. Raymond Y.M. Chan, having current business dealings with Swire, had declared an interest in this item. Members noted that Mr. Chan had left the meeting at this point.

Presentation and Question Session

9. The following representatives of the Planning Department (PlanD) and Department of Justice (DoJ) were invited to the meeting at this point:

Ms. Brenda Au - District Planning Officer/Hong Kong  
(DPO/HK), PlanD

Mr. Raymond Chan - Senior Assistant Law Officer (Civil  
Law), DoJ

10. The following applicant and his representatives were invited to the meeting at this point:

Mr. Ian Brownlee )  
Mr. Menachem Hasofer ) Applicant’s representatives  
Mr. F.K. Au )

Mr. Guy Bradley )  
Mr. Alan Brown ) Applicant  
Ms. Corina Yeung )

11. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman said that a petition against the application made by Mid-Levels Concern Group, a Central and Western District Council (C&WDC) member and a Legislative Council (LegCo) member, letters from the Mid-Levels Concern Group, the same C&WDC member, two individuals and solicitors representing the Robinson Place Concern Group, and the supplementary legal submission submitted by the applicant were tabled at the meeting. The Chairman then invited Government representatives to brief Members on the background to the application.

12. With the aid of a powerpoint presentation, Ms. Brenda Au did so as detailed in the Paper and made the following main points:

- (a) background – the background of the review application was set out in paragraph 1 of the Paper. The approved s.16A application (No.A/H11/87-1) was an amendment scheme involving a reduction in the number of car parking spaces based on the previously approved scheme (Option 6a) allowed by Town Planning Appeal Board (TPAB) on 25.2.2008, which related to the original s.16 application (No.A/H11/87). The applicant sought review of the Board’s decision to approve the s.16A application subject to condition (h) and requested the Board to delete the condition, i.e.:

“this approval is subject to the condition that, in the event that the Town Planning Appeal Board’s decision of 25.2.2008 in Town Planning Appeal No. 5 of 2005 is set aside, the approval given under section 16A of the Town Planning Ordinance should lapse automatically without any further act on the part of the Board” ;

- (b) justifications for the review application submitted by the applicant were summarised in paragraph 3 of the Paper. The applicant was of the view

that the imposition of condition (h) was inappropriate, unreasonable and unnecessary;

- (c) the site was related to an appeal and a Judicial Review (JR) of which the background was set out in paragraph 4 of the Paper;
- (d) DoJ's view – DoJ had been consulted on the legal arguments put forth by the applicant. DoJ's views were detailed in paragraph 5 of the Paper;
- (e) PlanD's view – Based on DoJ's advice, PlanD did not support the review application for reasons set out in paragraph 7 of the Paper. Condition (h) was to set out clearly the legal consequence that the approved amendment scheme would fall away if the JR application lodged by the Board succeeded in setting aside the decision of the TPAB to allow the original planning application. The condition was appropriate, reasonable and necessary;
- (f) a letter was received from a LegCo Member to Director of Planning objecting the application;

[Mr. Edmund K.H. Leung arrived to join the meeting at this point.]

13. Regarding the legal submissions made by the Applicant, Mr. Raymond Chan made the following response:

- (a) he would deal with two sets of legal arguments submitted by the applicant, i.e. a letter dated 29.7.2008 at Annex IV of the Paper and a letter dated 16.10.2008 with legal submission tabled at the meeting.

*First Set of Legal Arguments*

- (b) his comments on the first set of legal arguments were set out in paragraph 5 of the Paper. The rationale behind the imposition of condition (h) was to cater for the scenario that should the JR application



by the Board succeed in setting aside TPAB's decision, the approved amendment scheme would cease to have effect. It spelt out expressly the legal consequence of quashing the TPAB's decision;

- (c) Mr. Chan also referred to paragraph 76 of the Board's minutes on 26.9.2008 on the consideration of the s.16A application which stated that Members noted that if the s16A application was approved without conditions, the applicant could simply proceed with the revised scheme and abandon the original scheme, thus rendering the Board's JR academic. Members thus agreed that approval conditions should be imposed on the s.16A application;
- (d) the applicant was wrong to say that condition (h) was not related to implementation of the development, but related to the original approved scheme. The implementation of the development, the s.16 permission and s.16A permission were closely related. If there was no granting of s.16 permission, the development could not be implemented. As such, the s.16 permission was closely related to the implementation of the development. Since the s.16A permission and the s.16 permission was inextricably linked, it was therefore true that condition (h) as part of the s.16A permission was related to the implementation of the development;
- (e) the applicant was wrong to state that the scheme which had been approved under s.16A was a different scheme. Mr. Chan did not agree that the reduction in number of car parking spaces would render the amendment scheme a different scheme and the applicant had also described in their letter dated 30.4.2008 that the application only involved a "minor change". If the applicant's argument was correct, the application would have been made under a wrong provision (i.e. s.16A) and every application for amendment to a planning permission should be made under s.16 as a fresh application. This could not be right;
- (f) the applicant was wrong to state that the JR should be withdrawn as the Board had achieved its objective to impose conditions to regulate the

implementation of the development. Whether the JR should be withdrawn was irrelevant to the review application. Besides, condition (h) had an objective of its own and was different from the objective of imposing conditions (a) to (g) to regulate the implementation of the development;

- (g) the applicant was wrong to speculate that the Board did not apply for stay because the Board considered it not justified or did not wish to provide any security to the applicant for the loss and damage if the Board failed in the appeal. Whether or not the Board should apply for a stay was irrelevant to the review application. Applying for a stay was one of the ways in which the Board could seek a suspension of the court order. Imposing condition (h) was another lawful way of achieving the Board's objective of preserving the Board's position in the legal proceedings and should not be regarded as 'back-door';
- (h) whether condition (h) should or should not be linked to the outcome of the decision of the Court was not an issue. The real issue was whether the Board was justified in imposing condition (h). Having regard to the rationale behind, it was obvious that the Board was justified;
- (i) condition (h) did not give rise to any uncertainty or render the approval illusory as the building plans had been approved on 7.8.2008. The time required for completion of the legal proceedings also did not create any uncertainty;
- (j) condition (h) did not require anybody to take any action and the issue of the applicant not being able to take any action to comply did not exist;
- (k) to conclude, condition (h) had a planning purpose, was related to the permitted development and was reasonable;

*Second Set of Legal Arguments*

- (l) the second set of legal arguments mainly stemmed from the applicant's failure to understand the Board's rationale behind imposing condition (h) and the legal arguments overlapped to a large extent with the first set of legal arguments;
- (m) the lodging of the JR and appeal by the Board indicated the intention of the Board to have the matter decided by the higher Court. The Board had never suggested that anyone other than the Court should determine the legal issues or perform the judicial function. Besides, the Board was also not speculating any legal consequence;
- (n) as a matter of logic and fairness, the Board only stated clearly to the applicant that the granting of the s.16A permission depended on the validity of the s.16 permission. If the s.16 permission was invalid, the s.16A permission would need to disappear as the two were inextricably linked;
- (o) on the applicant's argument that the compliance of condition (h) was outside the applicant's control, Mr. Chan reiterated that the Board did not ask anybody to take any positive action to comply with the condition but only spelt out the consequence; and
- (p) on whether the Board was using its powers for an ulterior purpose, Mr. Chan reiterated that imposing condition (h) was only one of the lawful ways to preserve the Board's legal position and it was not correct to use the term 'back door'. The applicant was only speculating the reason for the Board not applying for a stay.

14. The Chairman then invited the applicant's representatives to elaborate on the application.

15. Mr. Ian Brownlee made the following main points:

- (a) the proposed development had involved in complex legal matters which had become rather irrelevant with the s.16A approval. The planning procedures had been hijacked by the legal procedures. The legal process had a negative effect on the planning process in the way that the applicant was rejected by the Government for a meeting to resolve the matter by conciliation and negotiation;
- (b) the subject application which involved a reduction of car parks to the previously approved scheme was made under s.16A, instead of under s.16. The current review application was to remove condition (h). From the planning point of view, the only points relevant to the review hearing were as follows:
  - the Court of Final Instance (CFI) judgment to quash TPAB decision and the Court order for TPAB to allow the appeal on 15.11.2007;
  - TPAB allowed the appeal without conditions on 25.2.2008 (Option 6a scheme);
  - Building Authority (BA) rejected the building plans on 28.2.2008 on car parking ground (Option 6a scheme);
  - S.16A application approved by the Board on 27.6.2008 with condition (h) which was not related to the planning aspects of development (Option 6b scheme); and
  - BA approved the building plans on 7.8.2008 (Option 6b scheme). Construction of foundations at the application site was now at an advance stage.
- (c) after a long period of applications and appeals, the development had all the relevant approvals and was being implemented in accordance with the approval given by the Board. There was sufficient planning conditions for a good development under conditions (a) to (g);
- (d) the Board should not have any cause for concern on the need for

conditions to be imposed on Option 6a scheme as the building plans had been rejected. Option 6b had now been approved with reasonable conditions, except condition (h). The Board had rectified the problem;

- (e) Option 6b under the subject s.16A application was a separate development from Option 6a from planning perspective. It had fewer car parks and substantially lower building height and was approved by the BA. If the applicant proceeded with the construction of Option 6b, the s16 approval related to the JR would be superseded. The current scheme had a life of its own. The question of whether or not conditions should be imposed on Option 6a did not affect the on-going construction of Option 6b;
- (f) the planning condition was unreasonable as the applicant could not comply with the condition and had no control over compliance. It related to court proceedings which had not yet been taken place. It was not the role of the Board to speculate the outcome of the Court;
- (g) for all practical purpose, condition (h) was not required as the development had been approved and was being implemented. It was not a condition which required any action by the applicant to comply and should therefore be deleted; and
- (h) he requested the Board to authorise the Director of Planning and the Deputy Director of Planning to meet with the applicant and his representatives on a without prejudice basis to discuss the further implementation of the development, with the presence of representatives of DoJ if necessary.

16. Mr. Menachem Hasofer made the following main points:

- (a) as clearly stated in paragraph 76 of the minutes of the Board's meeting on 26.9.2008, the objective of imposing conditions by the Board was to protect its position in the JR. Members noted that the JR was more

likely to be prejudiced by an approval of the amended scheme without conditions than if conditions were attached. Members also noted that if the s.16A application was approved without conditions, the applicant could simply proceed with the revised scheme and abandon the original scheme, thus rendering the Board's JR academic. He stated that with the seven conditions (a) to (g) now imposed on the s.16A application, the objective set out in the minutes had been achieved and the JR should serve no purpose. The building would be built with the building plans approved;

- (b) condition (h), as pointed by DoJ, was to spell out the consequence of quashing TPAB's decision (i.e. if the s.16 approval was set aside, the s.16A approval would lapse automatically). However, it should not be for the Board to speculate upon this consequence. The word "in the event" as stated in the condition implied speculation. There were a number of outstanding legal proceedings as set out in paragraph 4 of the Paper. In considering the application, the Board should not be concerned with the legal aspects of these court proceedings but only planning aspects including the court judgment in 15.11.2007, the TPAB's decision on 25.2.2008 and the s.16A approval. The Board should perform its own planning function. It was unfair to use the Board's power under the Town Planning Ordinance to get advantage in litigation;
- (c) if the Board intended to preserve its position pending the outcome of the litigation, it should apply to the Court for an interim order and provide an undertaking as to damages. He strongly objected to the imposition of condition (h) as an alternative way for preserving the Board's position in legal proceedings without having to provide security or undertaking as to damages. This was an abuse of the Board's power under the Ordinance and might constitute an abuse of the court proceedings;
- (d) as pointed out in paragraph 17 of the second legal submission, Buildings Department's (BD) comment on the Paper stated that if there was any

change in the Court's decision, there might be an attempt by BD to withdraw the building plans. There was already uncertainty outside the court proceedings and the Board should not add onto this uncertainty by trying to say what consequence would happen in future;

- (e) the critical question was not whether condition (h) could be justified but whether it was necessary and whether there was any downside in removing condition (h). If it was no more than to spell out expressly the legal consequence of quashing the TPAB's decision as stated in the Paper, it was accordingly unnecessary and should not be imposed. It served no purpose other than to add uncertainty into the legal proceedings concerning the site;
- (f) the applicant did not want to pursue those outstanding legal proceedings if they were not necessary and would like to resolve them by way of a global settlement. There was Government support for mediation and the Secretary for Justice chaired a cross-sector working group on mediation. Chief Executive had also mentioned this in the Policy Address. The High Court rules had also been amended (with effect in April 2009) requiring the court to encourage and facilitate the use of alternative dispute resolution (ADR) in the court matter. Courts in England also emphasised that public bodies should engage in ADR so as to avoid wasting public money on unnecessary litigation. This should also be applicable to resolution of disputes arising under the Town Planning Ordinance;
- (g) the reluctance of Government departments to engage in a without prejudice meeting with the applicant was probably due to the overlapping functions of senior Government officials who were also Member of the Board;
- (h) he asked the Board to consider whether it was appropriate to formally record two things:

- first, the Board's general support for efforts to be made to resolve the various outstanding disputes. Any possible solution would have to be reached on a provisional or conditional basis and be subject to the Board's further consideration and approval;
  
- second, the Board did not consider there to be a conflict in senior Government officials who were Members of the Board participating in such "without prejudice" meeting, as they did not participate as Board Members, but rather in their capacity as a senior Government officials.

17. The Chairman remarked that there was no in-principle objection to finding ways to resolve disputes and avoid any unnecessary litigations, and he also did not rule out "without prejudice" meetings. However, this had no bearing on the issue at this meeting which concerned a review application.

18. A Member asked both the Government departments and the Applicant on whether any effort had been made to negotiate for a global settlement. Mr. Menachem Hasofer replied that a meeting had originally been arranged by the applicant with the PlanD but was later cancelled by PlanD for the reason that the case involved legal matters and should be attended by lawyers. The applicant had contacted DoJ who however replied that they did not receive any instructions from their client to enter into any discussion. This Member then asked whether further attempt had been made for mediation. Mr. Raymond Chan pointed out that the issue of negotiation for a settlement was irrelevant to the consideration of the subject review application. A Member commented that the subject meeting was not a proper forum for discussion on the negotiation arrangement. This Member added that it was not the Board's position to indicate any preference on a global settlement on any legal proceedings at this point. Members agreed.

19. The Chairman asked Mr. Raymond Chan whether there was any downside in deleting condition (h) as questioned by Mr. Menachem Hasofer. Mr. Raymond Chan replied that the rationale for imposing condition (h) was to spell out the legal consequence such that should the approval granted by the TPAB be set aside by the Court, the s.16A



permission would cease to have effect. He drew an analogy between the s.16A permission and the fruit of a poisoned tree. If the poisoned tree (i.e. s.16 permission) was to fall away, the fruit (i.e. the s.16A permission) of the poisoned tree should also disappear. In other words, condition (h) served a useful purpose.

20. A Member asked the applicant to respond to an argument he put forward which was alleged by DoJ as contradictory, i.e. that the subject application was an amendment to the original approved scheme but the applicant considered it to be a totally different development. Mr. Menachem Hasofer said that while he agreed that the s.16 scheme and s.16A scheme were linked, they were physically different schemes. The building plans for the former were rejected while that for the latter were approved. With the approval of the s.16A application and the relevant building plans, the construction of the development had commenced and hence the original s.16 scheme became irrelevant. He added that he would not accept the analogy of the poisoned tree put forth by DoJ. If the s.16 approval was set aside, it would be open to Government departments to request the Court to determine if there were poisoned fruits and the consequence. It was not appropriate for the Board to state the consequence by way of imposing condition (h) and the consequence might not necessarily be what was stated in condition (h). There were all sorts of permutations that one could not and should not speculate on. On the same point, Mr. Raymond Chan reiterated that the applicant failed to understand the rationale behind the imposition of condition (h). The Board's intention was to state clearly to the applicant that if the s.16 permission was set aside, the s.16A permission would lapse.

21. The Chairman asked DoJ whether the Board was acting ultra vires in imposing condition (h). Mr. Raymond Chan replied that it was within the power of the Board, because the Board was dealing with a s.16A application. In response to the Chairman's further question on whether the Board was performing its planning function on this aspect, Mr. Raymond Chan replied that he did not consider that the Board was going astray from the fundamental objective of the Town Planning Ordinance in considering the s.16A application.

22. A Member asked DoJ whether there was any authority and whether there was any precedent case to show that the Board was reasonable and justifiable to impose condition (h). Mr. Raymond Chan commented that the case authorities cited by the

applicant were not directly on the point as the judgments dealt with different situations. What was more appropriate to do was to focus on the legal principles. He stated that the imposition of condition (h) met all the principles, i.e. with a planning purpose, related to the permitted development and reasonable.

23. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairman 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 Chairman thanked the applicant's representatives and the Government representatives for attending the meeting. They all left the meeting at this point.

[Ms. Starry W.K. Lee and Mr. Edmund K.H. Leung left the meeting at this point.]

#### Deliberation Session

24. A Member commented that it was the Government policy to conduct more mediation and the Government should make efforts to negotiate with the applicant to resolve the outstanding litigations. He considered that DoJ should respect the mediation policy and the High Court rules to encourage and facilitate the use of ADR. In this regard, he remained a neutral stance on the review application.

[Dr. Winnie S.M. Tang left the meeting at this point.]

25. A Member considered that if the Board had the power and it was within the ambit of the Ordinance to impose condition (h), he considered it reasonable for the Board to preserve its position. Another Member commented that the Board had all along considered the development not acceptable from the planning point of view. This position was clearly maintained in all the previous applications, the appeal and court cases. If there had not been a TPAB's approval to the s.16 application, there would not be a s.16A approval. As such, he considered that the Board should retain condition (h) so as to preserve its position. This Member also noted that BD had similar comment that any approval of building plans prior to the determination of the Board's appeal was liable to be withdrawn. The Chairman also agreed that the imposition of condition (h) was to

perform better the Board's planning function and there was a need to preserve the position of the Board as a guardian of public interest. He considered that it was a warranted measure to impose the condition.

26. After deliberation, Members generally agreed that imposition of condition (h) was for a planning purpose and was appropriate, reasonable and necessary and Members did not agree to the deletion of this condition. In response to the applicant's request for the Board to authorise Government departments to engage in mediation, Members agreed that it was not necessary for the Board to deliberate on the matter at this point in time and it could be considered pending the outcome of the hearing of the appeal to the CFI judgment in December 2008.

27. After further deliberation, the Board decided to reject the application on review and the reason was:

Condition (h) was to set out clearly the legal consequence that the approved amendment scheme would fall away if the judicial review application lodged by the Board succeeded in setting aside the decision of the TPAB to allow the original planning application. The condition was appropriate, reasonable and necessary.

[Mr. Felix W. Wong left the meeting temporarily at this point.]

[ Mr. B.W. Chan, Mr. Walter K.L. Chan, Dr. Daniel B.M. To and Ms. Margaret Hsia left the meeting at this point.]

[The meeting adjourned for a break of five minutes.]

**Agenda Item 5**

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments in respect of the Draft Ting Kok Outline Zoning Plan No. S/NE-TK/14  
(TPB Paper No. 8204)

[The meeting was conducted in Cantonese.]

28. Professor David Dudgeon, being a member of the Mai Po Marshes Management and Development Committee and a member of Conservation Projects Committee of the World Wide Fund Hong Kong had declared interests on this item. Members noted that Professor David Dudgeon had tendered apology for not attending the meeting.

[Mr. Raymond Y.M. Chan returned to join the meeting at this point.]

**Presentation and Question Session**

29. The Chairman said that while Representers No. R2, R4, R23, R26 and Commenter No. C2 would attend the meeting, other representers and commenters had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the representers and commenters, Members agreed to proceed with the hearing in the absence of other representers and commenters.

30. Members noted that a petition supporting the proposed Lung Mei bathing beach was launched by the Tai Po Community Groups and the relevant press release was tabled at the meeting. Members also noted that a booklet together with some photographs and a fact sheet on the ecological habitat of Lung Mei beach presented by Commenter No. C2 was also tabled at the meeting.

31. The following representatives from PlanD, the Civil Engineering and Development Department (CEDD) and consultants, Drainage Services Department (DSD), Leisure and Cultural Services Department (LCSD) and Agriculture, Fisheries and Conservation Department (AFCD), the representers and commenter and their

representatives were invited to the meeting at this point:

- Mr. W.K. Hui - District Planning Officer/Shau Tin, Tai Po and North (DPO/STN), PlanD
- Ms. Lisa Cheng - Senior Town Planner/Tai Po, PlanD
- Mr. S. K. Lam - Chief Engineer / Port Works, CEDD
- Mr. Ricky C.P. Wong - Senior Engineer / Projects 1, CEDD
- Mr. Steven Shum - Engineer / Projects 1B, CEDD
- Mr. Terence Fong - CEDD Environment Impact Assessment Consultants
- Mr. K. W. Mak - Chief Engineer/ Consultants Management, DSD
- Mr. S. K. Wong - Senior Engineer/Consultants Management, DSD
- Mr. Peter Kan - Chief Executive Officer (Planning), LCSD
- Mr. Alfred Chow - Chief Leisure Manager(New Territories East), LCSD
- Mr. Joseph Sham - Assistant Director (Country and Marine Parks) (Acting), AFCD
- Mr. Alan Chan - Senior Marine Conservation Officer (East), AFCD
- Mr. Simon Chan - Conservation Officer (Scientific Interest), AFCD

**R2**

- Mr. Michael Lee ) Representer
- Dr. Alan Leung )

**R4**

- Mr. Ting Hon Kit - Representer

**R23 & R26**

- Mr. Man Chen Fai - Representer
- Mr. Leung Fuk )

Mr. Chu King Yuen )  
Mr. Chan Siu Kuen )  
Mr. Ho Tai Wai ) Representers' representatives  
Mr. Lo Sam Sing )  
Mr. Chan Hon Ming )  
Mr. Chan Kwun Yau )  
Mr. Lee Yiu Bun )

**C2**

Mr. Yiu Vor - Commenter

32. The Chairman extended a welcome and explained briefly the procedures of the hearing. He then invited representatives from the Government to brief Members on the background to the representations.

33. With the aid of a Powerpoint presentation, Ms. Lisa Cheng of PlanD made the following points as detailed in the Paper :

(a) the background to the proposed amendments as set out in paragraphs 1 and 3 of the Paper. During the exhibition of the draft Ting Kok OZP No. S/NE-TK/14, a total of 4,460 representations and 59 comments were received. One of the representations (No. R70) was subsequently withdrawn. Due to the numerous representations and comments documents, the related submissions had not been attached to the Paper and were deposited at the meeting for Members' inspection. A summary of the representations and comments were in Annexes II and III of the Paper;

(b) subject of representations:

- R1 to R22 (including Conservation Committee of the Hong Kong Wildlife. Net Forum, World Wide Fund (WWF) Hong Kong and individuals) objecting to the proposed "Open Space" ("O") zone

for the Lung Mei bathing beach;

- R23 to R69, R71 to R4460 (including Tai Po District Council Members, Rural Committee, Village Representatives, companies and individuals) supported the proposed amendments;
- (c) the main grounds of the representations and their proposals and the views of commenters were summarized in paragraph 2 of the Paper;
- (d) the supporting representers had not put forward any specific proposals. The opposing representers' proposals were summarized as follows:
- to postpone making a decision until the EIA is completed and approved by the Director of Environmental Protection (DEP);
  - to have the "O" zone along the coastline south of Ting Kok Road be rezoned to "Coastal Protection Area" ("CPA") or "Site of Special Scientific Interest" ("SSSI") as an extension to the Ting Kok SSSI; or to "Conservation Area" ("CA"); and
  - to develop Lung Mei into a coastal conservation park for sustainable conservation, tourism and education purposes.
- (e) PlanD's responses to grounds of representations as detailed in paragraphs 4.5 to 4.13 of the Paper including:

*Justifications for a Bathing Beach*

- the ex-Provisional Regional Council considered having a bathing beach at Tolo Harbour could meet demand for bathing facilities in Tai Po;
- Tai Po District Council in 2004 requested the Legislative Council for early implementation of the project;

- it was one of the projects identified for priority implementation in the 2005 Policy Address;

*Environmental and Health Aspects*

- Environmental Impact Assessment (EIA) had been carried out and accepted by the Advisory Council on Environment (ACE), subject to the submission of further information to substantiate the ecological acceptability of the proposed beach under the provision of the Environmental Impact Assessment Ordinance (EIAO);
- there were no unacceptable impacts on the fish culture zone at Sam Mun Tsai;
- water quality in the region would be suitable for a bathing beach use after completion of the sewerage system;
- relevant Government departments had no adverse comment on the proposal;

*Postpone Making Decision*

- Town Planning Ordinance and the EIAO were two separate legislations. The former was concerned with the broad land use, whilst the latter aimed at assessing and controlling the environmental impact of the proposed beach at the implementation and operation stages. The processing of the zoning amendments could proceed if the relevant zoning changes were broadly acceptable and feasible in environmental terms;
- recommendations of further EIA study and implementation works would be controlled and monitored via the Environmental Permit (EP) under the EIAO;



- OZP had to be submitted to the Chief Executive in Council (CE in C) for approval within a period of nine months, i.e. on or before 25.12.2008;

*Rezoning to “CPA” and “SSSI”*

- AFCD had reservation on the proposed rezoning of “O” zone along the coastline to the south of Ting Kok Road as an extension of Ting Kok SSSI by the representers. The “O” zone along the coastline consists largely of terrestrial backshore vegetation instead of mangroves at intertidal zone as in the Ting Kok SSSI.

- (f) PlanD’s views – PlanD noted the support of the supporting representations and did not support the opposing representations for reasons as detailed in paragraphs 6.1 and 6.2 of the Paper.

34. With the aid of a Powerpoint presentation, Mr. Ricky Wong of CEDD made the following points :

- (a) CEDD had submitted the EIA report on the development of a bathing beach at Lung Mei to the Director of Environmental Protection (DEP) on 5.10.2007. The EIA report concluded that the ecological value of Lung Mei Beach was low. On 12.11.2007, the EIA report was approved by DEP as suitable for public inspection from 23.11.2007 to 22.12.2007. A copy of the Executive Summary of the EIA Study Report for the development of a bathing beach at Lung Po commissioned by CEDD was tabled at the meeting for Members’ information; and
- (b) the EIA Sub-committee discussed the EIA report on 17.12.2007 and recommended further discussion of the report at the ACE. On 14.1.2008, the ACE endorsed the report with the condition that additional information was needed to confirm that the ecological value of the habitat at Lung Mei Beach was low. The consultants had carried

out additional ecological survey and ACE would be consulted by the end of 2008.

35. The Chairman then invited the representers and commenters to elaborate on their further representations and comment.

Representation No.R2 – World Wide Fund (WWF) Hong Kong

36. With the aid of a Powerpoint presentation, Mr. Michael Lee elaborated on R2 and made the following points:

- (a) R2 objected to all the proposed amendments for the reasons that (i) the potential ecological impacts on the natural coastline had yet to be proved acceptable; (ii) the poor water quality at the proposed bathing beach; and (iii) incompatibility with the planning intention of the OZP. R2 proposed that the representation site should be designated as “CPA”;

*Ecological Impact*

- (b) CEDD was yet to provide further information to confirm the ecological status of the habitat of Lung Mei beach as required by ACE. Paragraph 6.1 (a) of the Paper was therefore misleading to state that the EIA report found no unacceptable environmental impacts due to construction and operation of the Lung Mei beach;
- (c) ACE considered that the EIA report had not resolved the following issues relating to proposed man-made bathing beach: (i) poor water quality, (ii) excessive scale of reclamation; (iii) long-term sand loss, and (iv) long-term impact on the coastline;

*Poor Water Quality*

- (d) pollution loads generated from the surrounding land uses and discharged into the sea would result in poor or very poor water quality in the future

bathing beach in almost 40% of the whole period of the bathing season (i.e. 3 months out of 7 months per year). The beach would need to be closed for 30 days due to the very poor water quality. Besides, the existing hydrodynamic modelling undertaken in the EIA report also did not assess the impact of surface run-off to the bathing beach. This would severely impair the function of the site as a bathing beach;

*Not in line with the General Planning Intention of the OZP*

- (e) according to the OZP, the general planning intention of Ting Kok was to conserve its natural environment in view of the high scenic and ecological value and the rural nature of the area. The proposed “O” zone was not in line with this planning intention; and

*Proposed “CPA” Designation*

- (f) the representation site was an ecologically sensitive natural habitat. The area under Amendment Item A1 was a natural intertidal beach covered by backshore vegetation whereas the areas under Amendment Items A2 and B was a natural lower tidal habitat with rare fish species. These species were not mentioned in the EIA. R2 considered that the representation site should be zoned “CPA” of which the planning intention was to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment.

Representation No.R4 – Mr. Ting Hon Kit

37. Mr. Ting Hon Kit elaborated on Representation No. R4 and made the following points:

- (a) he did not support the proposed amendments as the EIA report for the proposed bathing beach was only conditionally endorsed by ACE and not yet accepted by DEP; and

- (b) he considered that there was a need to preserve the existing natural habitat in Lung Mei for the benefit and enjoyment of the future generation. In view of the existing vibrant activities in Tai Mei Tuk, new additional tourist facilities were not necessary for the area.

Representation No. R23 – Tai Po District Councillor, Man Chen Fai’s Office and Representation No. R26 – Tai Po Rural Committee

38. Mr. Man Chen Fai elaborated on Representations No. R23 and R26 and made the following points:

- (a) the Lung Mei beach was once destroyed by Government for construction of the Plover Cove Reservoir to meet freshwater demand in the territory. The beach was then turned from a sandy beach to a rocky waterfront covered by oyster shells which were hazardous to visitors. The current proposal was to restore the beach to its original state;
- (b) there was currently no proper bathing beach at the Eastern New Territories and only one public swimming pool was available in Tai Po. The ex-Provisional Regional Council, Tai Po District Council and various community groups in Tai Po had been urging the Government to restore Lung Mei beach for nearly 20 years. The proposal had gained wide support from public with more than 4,000 supporting letters. The Government should listen to public views;
- (c) the Chief Executive had stated in his Policy Address in 2005 that the restoration of the Lung Mei beach was one of the priority projects. Government study also indicated that the project was technically feasible and the location was of low ecological value. It was unreasonable to listen to the conservation groups instead of professional advice from Government. He doubted why the conservation groups did not raise their objection at an early stage and urged them to discuss with the villagers to resolve the matter e.g. setting up public forum; and

- (d) the proposed bathing beach would only occupy 200 metres of the coastline along Tolo Harbour (about 10km) and would not affect the adjacent mangroves habitat. It would improve the living environment and community facilities of the area while preserving the existing natural habitat. He strongly support the proposed amendments to the OZP as it would benefit not only the Tai Po area but the whole Eastern New Territories.

39. Mr. Leung Fuk made the following point:

- (a) he was an indigenous villager and witnessed the change of the beach from a natural sandy beach to the current rocky waterfront with oyster shells. The original Lung Mei beach was destroyed by the Government for construction of the Plover Cove Reservoir in 1960s.

40. Mr. Chu King Yuen made the following points:

- (a) he was the Chairman of the Principal Associations in New Territories and the Chairman of the Tai Po Primary School Principal Association and fully supported the proposed bathing beach which would facilitate the carrying out of educational activities in the natural coastal area; and
- (b) Tai Po had a coastline of about 10 km which could offer good opportunities for children to come into contact with nature. However, the current waterfront areas were rather inaccessible. Since 1980s, the education sector in Tai Po had urged the Government to undertake enhancement works along the coastal area so that educational activities could take place in the natural environment. As such, he supported the proposed amendments.

41. Mr. Chan Siu Kuen made the following points:

- (a) he represented the Tai Po District Council and was the Chairman of the Environment, Housing and Works Committee and strongly supported the

proposed bathing beach at Lung Mei;

- (b) the proposal had undergone full public consultation. There was widespread support from local residents, various community groups, Village Representatives, Sha Tin, Tai Po and the Northern District Councils representing a population of more than one million. Also, more than 4,000 signatures in support of the project were received. The Government should respect public views;
- (c) the proposal would bring benefits to tourism, education, conservation, living environment and local economy in the Eastern New Territories; and
- (d) the rare wildlife species claimed by conservation groups were in fact commonly found along the Tolo Harbour. Given the long coastline, these wildlife species could easily migrate to other parts of the coast with the completion of proposed bathing beach. The Government and public should not be misled by the conservation groups.

42. Mr. Ho Tai Wai made the following point:

- (a) he clarified that the previous objections raised were on the impact on water quality in the nearby fish culture zones in Sam Mui Tsai and Yim Tin Tsai during the construction phase. After meeting the Government representatives in May 2008 and noting that there would be water quality monitoring programme by the Government, objection letters had all been withdrawn.

43. Mr. Lo Sam Sing made the following point:

- (a) he was an elected District Council member of the Shuen Wan constituency. He represented the residents and fully supported the proposed bathing beach at Lung Mei. He stated that the Government should not delay the project due to objections from conservation groups.

[Miss Maggie M.K. Chan, Mr. Rock C.N. Chen and Miss Annie Tam left the meeting at this point.]

44. Mr. Chan Hon Ming made the following point:

- (a) he was the Chairman of the Ting Kok Rural Committee and the Village Representative of Lung Mei Village. He stated that the Lung Mei beach was originally a sandy beach suitable for swimming. However, the current rocky waterfront was covered by oyster shells and was difficult to access and hazardous for children. He supported the proposal to restore the beach and improve the environment.

45. With the aids of some photographs, Mr. Chan Kwun Yau made the following point:

- (a) he was the Chairman of Tai Po Tsat Yeuk Rural Committee representing indigenous villagers and also the Chairman of Lung Mei Village. He pointed out that the original Lung Mei beach was a sandy beach suitable for swimming but was destroyed because of the construction of Plover Cove Reservoir. In view of more than 4,000 supporting letters, the Government should respect residents' aspiration by restoring the beach. He pointed out that the rare fish species claimed by the conservation groups were only common species which could be found everywhere along the coast.

46. Mr. Lee Yiu Bun made the following points:

- (a) he was a former member of the Tai Po District Council and was the Chairman of Environment, Housing and Works Committee (2000 – 2007). He was now a member of the Marine Park and Country Park Committee and the Vice-Chairman of the Tai Po Recreational Club;
- (b) he reported that the Tai Po District Council had prolonged discussion on

the proposal taking into full consideration both conservation and public need. While he respected environmental conservation, he supported the proposed bathing beach at Lung Mei; and

- (c) he had been organising the annual swimming competition in the area. Despite the hazardous condition of the waterfront area, there was significant increase in the number of participants (more than 1,700 this year) in particular children. While parents were concerned about the safety of children, they preferred to have their children swimming in the sea (rather than in swimming pools) as this would build up their confidence. The proposed bathing beach was essential for improving the existing beach condition and allowing the swimming competition to cater for a larger age groups. The children should have more opportunities to come into contact with nature so that they could appreciate the importance of protecting the environment.

Comment No. C2 – Mr. Yiu Vor

47. With reference to the booklet (published by the Hong Kong Wildlife.net Forum) on the ecological habitat of Lung Mei beach tabled by him at the meeting, Mr. Yiu Vor elaborated on Comment No. C2 and made the following points:

- (a) he did not support the proposed bathing beach which would destroy the existing natural habitat by dredging and sandfilling. For the benefit of future generation, the existing natural habitat of Lung Mei beach should be preserved with the setting up of a marine conservation centre;
- (b) there was a different view on the ecological value of the Lung Mei beach between Government EIA and researches conducted by conservation groups. While the Government EIA reported that about 21 species of inter-tidal fauna were found in Lung Mei beach, researches undertaken by conservation groups indicated that there were more than 100 species in 2007 and about 200 species in 2008. The finding of the EIA was misleading as it did not record all the species and did not comply with



the requirement under the Technical Memorandum Annex 16 of the EIAO. Besides, the Government should not rely on an EIA not yet fully endorsed by ACE;

- (c) he appreciated that the Government should strike a balance among development, local needs and conservation. However, given that there were already large varieties of recreational facilities including public and private barbecue sites, bicycle track, reservoirs, fishing areas, water activities centre and restaurants, he doubted the necessity to build more recreational sites at Tai Po;
- (d) the ecological value and the natural habitat of Lung Mei beach (with different types of wildlife species including Starfish) was highly appreciated by visitors especially family visitors. The natural coastline in Hong Kong had largely been destroyed whereas marine parks in Yan Chau Tong, Tung Ping Chau and Hoi Ha Wan were not so easily accessible by the public;
- (e) the proposed man-made beach would be subject to poor water quality due to low water flow velocity and the pollution loads from surrounding areas. Similar man-made beaches were no longer constructed in other countries. As an undesirable precedent, the patronage of the existing man-made beach in Tuen Mun Gold Coast was very low. The proposed beach did not serve its function but only enhanced the property value of the adjacent development; and
- (f) given that there were already 41 bathing beaches in Hong Kong, he did not consider it justified to provide another one by destroying the precious natural habitat. It would also be a waste of public money.

48. As the presentations from the representers and commenter had been completed, the Chairman invited questions from Members.

49. Members raised the following questions :

### Ecological and Conservation Value

- (a) whether the ecological and conservation value of the existing natural habitat in Lung Mei beach was high and whether the wildlife species found were common species easily found in Hong Kong (e.g. Starfish);
- (b) whether it was the requirement under EIAO to record all the species or just dominant species in an EIA;
- (c) whether the natural habitat of the adjacent coastal area outside the beach area would be affected;
- (d) what was the difference between the natural habitat in the Lung Mei beach and that in the Ting Kok SSSI to the west;

### Water Quality

- (e) would there be any monitoring system to control and ensure that the water quality of the proposed bathing beach would be maintained at an acceptable level and comply with the standard;
- (f) whether there were any similar beaches which were accessible to the public along the Tolo Harbour;
- (g) would the dredging and sandfilling activities carried out during the construction of the proposed bathing beach affect the nearby fish culture zones and would the provision of silt curtain affect the water quality of the beach for swimming purpose;
- (h) would there be any sand loss after the completion of the Lung Mei bathing beach;
- (i) what would be the long-term impact on the existing coastline;

- (j) as the pollution loads from the surrounding uses (such as barbecue sites, village houses) might affect the water quality of the bathing beach, would there be any planning and development control on these uses; and

Environmental Impact

- (k) as alleged by R2, was it misleading to state in the Paper that the environmental impact of the proposed beach was acceptable.

Ecological and Conservation Value

50. On the ecological and conservation value, Mr. Joseph Sham of AFCD replied that the EIA report commissioned by the CEDD earlier had concluded that the existing Lung Mei beach was a typical sandy shore of low ecological value. The report was endorsed by ACE with the condition that additional information be submitted. AFCD was still waiting for the result of the further information from the CEDD and its Consultant. A Member pointed out that ACE had requested additional information from CEDD as there was difference in the information presented by the Government consultant and the conservation group. Hence, it was important for the Board to know the ecological value of Lung Mei beach before a decision could be made on the representations. Mr. Joseph Sham replied that before further submission from CEDD was available, AFCD considered that the conclusion on the ecological value as in the EIA report was still valid. However, AFCD would provide his final comment on the EIA when the further submission by CEDD was available.

51. For Starfishes found in the Lung Mei beach, Mr. Alan Chan of AFCD and Mr. Terence Fong (CEDD EIA Consultants) advised that they were commonly found in typical sandy shores along Tolo Harbour/Channel and even in the North-Eastern New Territories e.g. Lai Chi Wo. The relevant information had been reported previously. On the record of the wildlife species in the EIA report, Mr. Joseph Sham clarified that the purpose of the ecological survey was to establish the ecological baseline information for the evaluation of ecological importance and impact assessment and it was not required under the EIAO to record all the species.

52. Mr. Terence Fong replied that the construction work of the proposed bathing beach would only be limited to 200 metres of the coastline and it would ensure that the adjacent area would not be directly affected. As there were plenty of similar habitats along the coastline in the vicinity, the highly mobile fish species as mentioned by Commenter No. C2 were free to move to other similar habitats anytime. He stated that the Ting Kok SSSI comprised large and continuous patches of mangrove habitats, and was well recognized for its high ecological value and formed an important nursery ground for marine organisms. With the existence of the natural mangrove habitats (of higher structural complexity), Ting Kok SSSI could support larger species diversity than Lung Mei beach.

### Water Quality

#### *Water Quality Standard*

53. On water quality, Mr. Ricky Wong of CEDD replied that apart from the construction of the bathing beach, the project also involved diversion of Lo Tsz River and an existing box culvert away from the beach for better water quality in the proposed beach area. DSD would also fast track the completion of the sewage connection works for those villages within the catchment area north of Lung Mei beach in 2010/2011. EPD would also closely monitor the beach water quality according to the prevailing beach water quality monitoring programme and provide LCSD the monitoring results. In case the water quality deteriorated and became not suitable for swimming, the public would be informed accordingly. According to the EIA, the beach would be suitable for swimming over 86% of the time during the swimming season.

#### *Accessible Beaches*

54. In response to a Member's query on whether there were easily accessible beaches along Tolo Harbour, Mr. Alfred Chow of LCSD replied that there was currently no gazetted beach along Tolo Harbour. For other non-gazetted beaches, Mr. Terence Fong supplemented that there were some easily accessible beaches e.g. Sha Lan, Wu Kai Sha and Lok Wo Sha.

### *Impact on Fish Culture Zones*

55. Regarding the impact on the water quality of the nearby fish culture zones, Mr. Ricky Wong replied that the nearest fish culture zones were located at Sam Mun Tsai and Yim Tin Tsai East, which was situated at about 2.5 km to the south of the proposed beach. To prevent adverse impact on water quality (in terms of suspended particles and oxygen rate), silt curtain would be provided during the dredging and sandfilling works as a precautionary measure to avoid the spreading of suspended particles in the sea. Besides, constant water quality monitoring would also be conducted close to fish culture zones during the dredging and sandfilling stage to avoid adverse potential impacts to fisheries resources and fishing operations. An inter-departmental liaison group was also set up to ensure the information on water quality would regularly be provided to fishing community. After construction of the bathing beach, the silt curtain would be removed and shark prevention nets would be installed by LCSD. These nets would be permeable and would not interfere the water circulation nor affect the water quality.

### *Sand Loss*

56. On the possible sand loss, Mr. Ricky Wong replied that according to the results of the hydrodynamic model conducted under the EIA, the wave generated by wind effect was not high in this inner bay of Tolo Harbour (only about 1m during typhoon). However, in view of the possible sand leakage, two groynes of 100m long would be provided on two sides of the beach. The results of the hydrodynamic model indicated that there would be no sand loss after the completion of the proposed beach and the groynes.

### *Impact on Coastline*

57. A Member pointed out that the long-term impact on the coastline, particularly with the provision of two 100 metres long groynes, was an outstanding issue to be addressed by the CEDD during the previous consideration of the EIA of Lung Mei beach by ACE. The EIA only assessed the sand loss within the beach but not the impact on the coastline outside the beach. He asked whether additional investigation had been undertaken by the CEDD on this aspect. Mr. Ricky Wong replied that the hydrodynamic

model had already assessed the change in hydrodynamic due to the proposed beach project. The results revealed that as the change in tidal current was minimal, the change in erosion and sedimentation rates would be negligible. As a result, there would be no impact on the coastline in the Plover Cove region. He said that the information on this aspect had been submitted to EIA Subcommittee of ACE.

#### *Pollution Loads from Adjacent Development*

58. On planning and development control on adjacent development, Mr. W.K. Hui of PlanD replied that with the completion of the new sewerage system, it would be mandatory for new developments to connect to the public sewer. For temporary uses e.g. barbecue sites in “Agriculture” zones and restaurant uses in village houses, Mr. W.K. Hui replied that a condition requiring new development to connect to public sewer could also be imposed during the consideration of planning application by the Board or the granting of short term tenancy by Lands Department. Mr. S. K. Wong of DSD added that the sewerage projects undertaken by DSD for the four villages nearby would commence by early 2009 and scheduled for completion by end 2010/early 2011.

#### Environmental Impact

59. Mr. W.K. Hui explained that the Paper had stated that the environmental impact was acceptable as the EIA was conditionally endorsed by ACE. He stated that the current proposed amendments were to move the existing “O” zone to the south. If eventually no EP was issued by EPD, the proposed bathing beach could not be constructed. In response to the Chairman’s query, Mr. C. W. Tse clarified that the DEP had not accepted the EIA report as further information from CEDD and their Consultant would still need to be submitted for consideration by ACE.

60. As the representers and commenters and their representatives had finished their presentation and Members had no further questions, the Chairman said that the hearing procedures had been completed and the Board would deliberate on the representations in their absence and would inform them of the Board’s decision in due course. The Chairman thanked them and the Government’s representatives for attending the hearing. They all left the meeting at this point.

### Deliberation Session

61. Mr. C. W. Tse advised that DEP had not yet approved the EIA report and not yet received the required information from CEDD nor their Consultants. As such, it was difficult to envisage whether the EIA report would eventually be accepted by DEP. He pointed out that the Board should consider whether the proposed “O” zone and the bathing beach was appropriate from planning perspective. Whether the EIA would be approved should be dealt with under the EIAO separately and the decision of the Board would not affect the decision of the DEP. If the EIA for the proposed bathing beach were not approved, the “O” zone could still be used for other purposes. The Chairman responded that the Board would still need to consider whether the natural habitat of the site was of high ecological value as the uses permitted under the “O” zoning, other than the proposed beach use, might also have impact on the natural habitat. A Member agreed that while the impact on water quality could be mitigated by the proposed sewerage works, the impact of dredging and sandfilling works on the natural habitat would be irreversible and the Board would need to know clearly whether the natural habitat was of high ecological value before making a decision.

62. A Member pointed out that the visual impact created by two 100m groynes on the two sides of the beach would adversely affect the visual quality of the natural coastline which was a major tourist spot. This Member also doubted if the proposed mitigation measures would only improve water quality in the long-term but not the short-term. Under the current Water Control policy, the Water Quality Objectives for Tolo Harbour was not for water-contacted sports and that there was no gazetted beach along Tolo Harbour. It was unreasonable to use public fund on the project if the site was basically not suitable as a bathing beach in terms of water quality. On this point, Mr. C. W. Tse informed the Board that in the current EIA report, after having implemented the proposed sewage improvement work, the water quality of Lung Mei beach would be acceptable for use as a beach.

63. Members noted that Government departments had confirmed that the natural habitat at Lung Mei beach was in fact common along Tolo Harbour. Another Member however pointed out that R2 had indicated that there were at least three rare wildlife

species in the area.

64. After some discussion, Members generally considered that it was essential to understand clearly the ecological and conservation value of Lung Mei beach before the Board could determine whether or not to uphold the representations. Members noted that ACE had requested further information from CEDD on the EIA report which meant that there was still no definitive and objective conclusion on the ecological value of the Lung Mei beach site.

65. After deliberation, the Board decided to defer the consideration of the representations and comments until the further information on the EIA was submitted and considered by ACE. The Secretary stated that the representers and commenters would be informed of the Board's decision and they would be invited to attend a further hearing after further information on the EIA was considered by ACE.

66. The meeting was adjourned for lunch at 2:30 p.m.



67. The meeting was resumed at 3:25 p.m..

[Mr. David W.M. Chan arrived to join the meeting at this point.]

68. The following Members and the Secretary were present in the afternoon session:

Mr. Raymond Young

Dr. Greg C.Y. Wong

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Tony C.N. Kan

Professor Bernard V.W.F. Lim

Dr. C.N. Ng

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Mr. K.Y. Leung

Mr. C.W. Tse

Mrs. Ava Ng

**Agenda Item 6**

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/TP/395

Proposed Religious Institution (Worship Hall) in “Green Belt” zone, Lot 443A in DD 24, Ma Wo, Tai Po

(TPB Paper No. 8205)

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[The hearing was conducted in Cantonese.]

**Presentation and Question Session**

69. Mr. W.K. Hui, District Planning Officer/Shatin, Tai Po and North of the Planning Department (PlanD), and the following applicant’s representatives were invited to the meeting at this point:

Mr. Samuel Yau

Ms. Cathy Chan

Mr. Ho Hin Wah

Mr. Choi Kin Sing

Mr. Lau Yau Kuen

70. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman then invited Mr. W.K. Hui to brief Members on the background to the application.

71. With the aid of some plans, Mr. W.K. Hui did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for proposed religious institution (worship hall) at the application site which fell within an area zoned “Green Belt” (“GB”) on the Tai Po Outline Zoning Plan (OZP);
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to

reject the application on 28.3.2008 were set out in paragraph 1.2 of the Paper;

- (c) justifications in support of the review application had been submitted by the applicant and were set out in paragraph 3 of the Paper;
- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD considered that the application was unsympathetic to the surrounding landscaping setting. The proposed worship hall with an absolute height of 8.1m was visually intrusive and not compatible with the surrounding areas in terms of scale, height and bulk. The Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) advised that no building plan submission for the newly formed podium deck on the site had been received. The podium deck was an unauthorized building structure and a demolition order had been served under the Buildings Ordinance. The District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) said that objections had been received from Classical Garden I, Classical Garden II, Dynasty View and Grand Dynasty View;
- (e) public comments – during the statutory publication periods, 5 public comments were received from the Owners' Committee (OC) of Classical Garden II; the Sino Estates Management Limited on behalf of the residents and OCs of Classical Garden I, Classical Garden II, Dynasty View and Grand Dynasty View; OC of Grand Dynasty View and the Sino Estates Management Limited on behalf of the residents and OC of Classical Garden I. The grounds of objection mainly included (i) burning of joss sticks and paper offerings would cause air pollution to the surrounding areas and affect health of the nearby residents. The use of bells and drums by prayers would also cause noise nuisance; (ii) the proposed worship hall within "GB" zone was undesirable from conservation and greening point of view; and (iii) the increasing number of religious followers would generate traffic on Ma Wo Road and affect road safety; and

- (f) PlanD's view – PlanD did not support the application for reasons stated in paragraph 8.1 of the Paper. The proposed development was not in line with the planning intention of the “GB” zone and did not comply with the Town Planning Board Guidelines for “Application for Development within “GB” zone under section 16 of the Town Planning Ordinance” in that the scale, intensity and building height of the proposed development were considered not compatible with the surrounding areas. There was insufficient information to demonstrate that the proposed development would not have any adverse visual and landscape impacts on the surrounding areas.

72. The Chairman then invited the applicant's representatives to elaborate on the application.

73. With the aid of a Powerpoint presentation and a letter tabled at the meeting, Messrs. Samuel Yau and Ho Hin Wah made the following main points:

- (a) the proposed development for a worship hall was a place for spiritual studies and meditation sitting and no commercial activities would be involved. As all activities would be carried out indoor, there would not be any noise nuisance. There would be no burning of joss sticks and paper offerings, without causing any air pollution;
- (b) the existing Tin Tak Shing Kau Chung Woo Ching Sai Association (the Association) compound, including the application site, had been established in Ma Wo for more than 70 years. The Association was a pioneer in developing Ma Wo. In designating the area as “GB” zone in 1980s, the Association had not been consulted by the Administration;
- (c) the development scale of the proposed worship hall was insignificant when compared to other surrounding large housing estates. While development of these housing estates was allowed as of right without the applicant's consent, it was unfair that consideration of the application was subject to

the views of the residents of the surrounding housing estates;

- (d) the height of the worship hall had been scaled down from 11.35m to 8.1m above podium level (at an average mean level of 53.65mPD) to be coherent with the adjacent environment. The revised building height of 8.1m was equivalent to that of the New Territories Exempted House (NTEH) as currently permitted in the rural area;
- (e) in response to CTP/UD&L's comments on the scale and landscape aspects, the proposed building height of the worship hall had been reduced to 8.1m. Such a scale should not be considered excessive having regard to the surroundings of the application site. Besides, to preserve the existing calm and natural environment, trees would be planted and detailed landscape design would be drawn up in the implementation stage to ensure that the future development would blend in with the surrounding areas;
- (f) as to building matters, detailed plans on the proposed development would be submitted in the form of general buildings plans under the Buildings Ordinance (Cap. 123). The existing platform would be demolished and the worship hall would be constructed on a site to be formed at a level of 53.65mPD. Registered general building contractors (RGBC) would be appointed to carry out the construction works. A road of 4.5m wide serving the site and emergency vehicular access would be provided;
- (g) with respect to the comments raised by DO/TP and the public comments received during the statutory public inspection periods concerning the environmental impacts of the application, the Director of Environmental Protection had advised that the proposed development would unlikely cause major environmental problems. Besides, other concerned departments including Agriculture, Fisheries and Conservation Department, Transport Department, Electrical and Mechanical Services Department, Drainage Services Department, Highways Department, Civil Engineering and Development Department, Water Supplies Department and Fire Services Department had no comments or raised no objection to the application;

- (h) with reference to the photomontage and master plan prepared for the application, the proposed worship hall would not be visually intrusive as it would be surrounded by high-rise residential developments in the vicinity and trees planted around the application site; and
- (i) should approval be given by the Board, the proposed approval conditions in relation to landscaping proposal, fire service installations and drainage facilities would be complied with as required. The applicant would also follow the various advisory clauses as suggested in the Paper.

74. Some Members asked the following the questions:

- (a) with reference to paragraph 5.2.2(a) and site photo at Plan R-3 of the Paper, whether the existing platform formed at a level of 53.65mPD within the application site was an unauthorized building structure and subject to BD's demolition order;
- (b) whether ash urns were currently provided within the application site. If not, whether there was any plan to provide ash urns;
- (c) what was the number of religious followers visiting the application site on festival days; and
- (d) comparing the aerial photos of 2003 and 2007 as shown on Plan R-5 of the Paper, it was found that many trees had been felled and new structures had been built. Whether erection of these new structures was unauthorized.

75. Mr. Samuel Yau had the following responses:

- (a) to meet the requirements of the Buildings Ordinance (Cap. 123), the existing platform would be demolished and the site would be formed to an average mean level of 53.65mPD for the development of the worship hall;

- (b) no ash urns were currently provided within the application site and there was also no plan to provide any ash urn in future;
- (c) the proposed development was a worship hall for spiritual studies and meditation sitting. On Chinese festival days, most of the religious followers would normally go to the headquarters of the Association instead of the application site which was only a branch of the Association; and
- (d) the difference of the two photos at Plan R-5 of the Paper was due to new painting on the roof of some existing structures within the Association compound. The existing structures within the Association compound were largely covered by building licenses.

76. In response to a Member's enquiry on why the Association compound was not zoned as "Government, Institution or Community" on the OZP, Mr. W.K. Hui responded that while there were a few existing structures within the Association compound when the subject OZP was prepared, the planning intention was to designate the Ma Wo area as "GB" to reflect the overall hillside and landscape character of the area. Mr. Samuel Yau said that given the long history of the subject site, it was unreasonable not to approve the proposed small-scale development in this "GB" zone.

77. Mr. W.K. Hui advised that some ash urns could be found in the north-western part of the Association compound but there were no ash urns within the application site. On a Member's enquiry on whether ash urns were unauthorized building work and subject to enforcement by concerned departments, Mr. Hui responded that within the "GB" zone, there was no provision to allow planning application for ash urns. Whether the ash urns could be considered as an existing use under the OZP would be up to the applicant to provide necessary proofs. Mr. Samuel Yau added that the application was to seek planning approval for a worship hall at the application site and the issue on ash urns was not related to the application site. The Chairman agreed that the issue of ash urns should not be a concern in consideration of the current application.

78. The Chairman asked the applicant's representatives for their reasons to demolish the existing platform first and then form the site again for the proposed worship hall. Mr.

Samuel Yau responded that due to destruction caused by typhoon a few years ago, a number of trees within the application site had been torn down. The existing platform was then built for stabilizing the application site for some geotechnical reasons and providing space for some religious activities of the Association. To comply with the requirements of the Buildings Ordinance (Cap. 123), the existing platform would be demolished. However, to provide a foundation for the proposed worship hall, the application site would still need to be formed to an average mean level of 53.65mPD prior to development.

79. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairman 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 Chairman thanked the applicant's representatives and PlanD's representative for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

80. Members had the following views on the application:

- (a) according to BD's advice, the existing platform was an unauthorized building structure. Though the applicant had indicated that the existing platform would be demolished, the proposed formation of the application site to an average mean level of 53.65mPD for the development of the worship hall within "GB" zone was unjustified;
- (b) with reference to Plan R-5 of the Paper, it was noted that apart from the formation of the existing platform, new structures had been built within the Association compound in the past few years, undermining the landscape character of the "GB" zone;
- (c) in view of the scale of the proposed development and the site formation works involved, the proposed development could not be considered as small scale within the "GB" zone and comparable to a NTEH. There would also be an adverse impact on the landscape character of the surroundings; and



- (d) given the scale of the proposed development, the applicant should pursue the proposed development by way of a s.12A instead of a s.16 application.

81. The Chairman summed up Members' views that the proposed development involved large-scale site formation work and the proposed development within the "GB" zone was considered excessive in view of its scale, intensity and building height. The proposed development was also incompatible with the surrounding areas. Members agreed and considered that there was no reasonable ground to approve the application.

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

- (a) the proposed development was not in line with the planning intention of the "Green Belt" ("GB") zoning for the area which was to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was insufficient information in the submission to justify a departure from this planning intention;
- (b) the application did not comply with the Town Planning Board Guidelines for "Application for Development within "GB" zone under section 16 of the Town Planning Ordinance" in that the scale, intensity and building height of the proposed development were considered not compatible with the surrounding areas; and
- (c) there was insufficient information in the submission to demonstrate that the proposed development would not have any adverse visual and landscape impacts on the surrounding areas.

[Mr. Felix W. Fong left the meeting temporarily and Ms. Anna S.Y. Kwong left the meeting at this point.]

**Agenda Item 7**

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/H14/56

Proposed Radar, Telecommunications Electronic Microwave Repeater, Television and/or Radio Transmitter Installation (New Equipment and Electrical & Mechanical (E&M) Building for Digital Terrestrial Television Broadcasting (DTTB)) Services in “Green Belt” zone, Adjacent to existing Mount Nicholson TV Transposer Station  
(TPB Paper No. 8207)

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[The hearing was conducted in Cantonese.]

**Presentation and Question Session**

83. The following Members had declared interests on this item:

|                      |   |
|----------------------|---|
| Professor N.K. Leung | having a family member working in the Television Broadcast Ltd, the applicant of the subject case |
|----------------------|---|

|                |   |
|----------------|---|
| Miss Annie Tam | Lands Department having a survey point on the subject site affected by the proposed development |
|----------------|---|

84. Members noted that Professor Leung and Miss Tam had tendered apologies for not attending the afternoon session of the meeting.

85. The Chairman said that in the Paper submitted to the Board, previous concerns raised by the Metro Planning Committee (MPC) had been well responded and Planning Department (PlanD) had recommended no objection to the review application. He suggested that only a brief presentation by the District Planning Officer/Hong Kong (DPO/HK) was necessary and presentation by the applicant’s representatives would not be required. Members agreed.

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

Ms. Brenda Au                      DPO/HK, PlanD

Mr. Ma Po Ho                      ] Office of the Telecommunications Authority (OFTA)

Mr. Ching Kai Sang, Joe ]

Ms. Betty Ho                      ] applicant's representatives

Mr. Bruce Kruger                ]

Mr. Mark P.O. Lee               ]

Mr. Kelvin K.F. Leung         ]

87. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman said that given the previous concerns raised by MPC had been well addressed as detailed in the Paper and PlanD had recommended no objection to the review application, only a short briefing by DPO/HK was required and presentation by the applicant's representatives was not required. The applicant's representatives agreed. The Chairman then invited Ms. Brenda Au to brief Members on the background to the application.

88. With the aid of a Powerpoint presentation, Ms. Brenda Au did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for installation of a proposed equipment and electrical & mechanical (E&M) building for Digital Terrestrial Television Broadcasting (DTTB) services on a site which fell within an area zoned "Green Belt" ("GB") on the The Peak Area Outline Zoning Plan;
- (b) the reasons for MPC to reject the application on 20.6.2008 were set out in paragraph 1.2 of the Paper;
- (c) justifications in support of the review application had been submitted by the

applicant and were set out in paragraph 3 of the Paper;

- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Director of Agriculture, Fisheries and Conservation advised that the existing tree in the vicinity would not be affected. The Chief Architect/Advisory & Statutory Compliance, Architectural Services Department commented that the scale of the proposed building, its built form and height were compatible with the adjacent transmitter facilities. The Chief Town Planner/Urban Design and Landscape, PlanD (CTP/UD&L) had no objection to the application from landscape planning and visual impact point of view. The Director of Health (D of Health) advised that from the health perspective, any radio transmitting installation was required to meet the “Code of Practice for the Protection of Workers and Members of Public Against Non-Ionizing Radiation Hazard from Radio Transmitting Equipment” issued by the OFTA;
- (e) public comments – during the statutory publication period, 1 public comment from a Wan Chai District Councillor was received recommending a study on the health effect; and
- (f) PlanD’s view – PlanD had no objection to the application for reasons stated in paragraphs 7 and 8 of the Paper. The proposed development had the support of OFTA. To address MPC’s previous concerns on whether the subject site was the most suitable location in the area, the applicant had explained that it was the requirement of OFTA that the new DTTB transposer station should be co-located with the existing analogue station so as to allow the public to receive both the DTTB and analogue services without the need to install additional antennae, and to reduce the possibility of interference. According to OFTA, the subject application site at Mount Nicholson was one of the fill-in stations to expand the coverage of the DTT broadcasting and was absolutely necessary for it to be used for providing DTT service to the Happy Valley, Causeway Bay and Wan Chai areas. The application site was a suitable location in the area for the proposed

development. Regarding MPC's concerns on whether the design of the proposed development would be compatible with the surrounding area and visually acceptable from urban design point of view, the application site was located between the existing Mount Nicholson TV Transposer Station and the HK Electric Microwave Station on a hilltop away from the developed areas of Causeway Bay and Wong Nai Chung. Two antennae would be mounted on the northern side wall of the building, but not on top of the building. The applicant had proposed additional greenery and peripheral planting along the fence to minimize visual impact. The proposed development generally complied with the Town Planning Board Guidelines No. 10 in that there was no other alternative site suitable for the purpose and the proposed equipment building was small in scale and the site was at present not covered by dense vegetation. In response to MPC's request for OFTA's advice on the general site requirements for DTT station and whether there would be more applications for such installations, OFTA had advised that locations of future stations were not yet finalized and the actual size and height of the future stations would depend on actual requirements. On MPC's request for PlanD's advice on visually sensitive hilltop/ridgelines on both sides of Victoria Harbour for reference of the trade in submission of similar planning applications, OFTA had advised that future stations would be built in the vicinity of existing analogue television stations and only the existing stations at Piper's Hill, Beacon Hill, Chiu Keng Wan Shan, Sai Wan Shan and Mount Nicholson were located at the hilltops on both sides of Victoria Harbour. This arrangement was in line with the Hong Kong Planning Standards and Guidelines (HKPSG) regarding the provision of radio and broadcasting communications in that virgin hilltop sites should be avoided as far as possible and sharing use of existing hilltop sites would be encouraged. Regarding the public comment recommending a study on the health effect, D of Health had advised that any installation of radio transmitting installation was required to meet the relevant code of practice.

89. The Chairman asked whether the applicant's representatives had anything to add to the presentation by DPO/HK. The applicant's representatives replied in the negative.

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

#### Deliberation Session

91. Members noted that the concerns raised by MPC had been addressed and agreed to PlanD's views on the review as set out in paragraphs 7 and 8 of the Paper.

92. After further deliberation, the Board decided to approve the application on review on the terms as submitted to the Town Planning Board. The permission should be valid until 17.10.2012, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- (a) the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the provision of water supplies for fire fighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (c) re-establishment of the existing Geodetic Survey Control Station (GSCS) No. 25 and the associated reference marks at a new position to the satisfaction of the Director of Lands or of the Town Planning Board.

93. The Board also agreed to advise the applicant of the following:

- (a) any building works to be carried out should in all respects comply with the provisions of the Buildings Ordinance;

- (b) emergency vehicular access arrangement should comply with Part VI of the Code of Practice for Means of Access for Firefighting and Rescue which was administered by the Buildings Department;
- (c) the works of the proposed development should comply with the “Conditions for Working within Water Gathering Ground”;
- (d) to note the comments of District Lands Officer/Hong Kong East, Lands Department on the re-establishment of the GSCS stated in paragraph 5.3.1(b) of the Paper; and
- (e) to note the comments of Director of Health on the requirement to comply with the “Code of Practice for the Protection of Workers and Members of Public Against Non-Ionizing Radiation Hazard from Radio Transmitting Equipment” issued by the Office of the Telecommunications Authority as stated in paragraph 5.2.5 of the Paper.

### **Agenda Item 8**

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL/158

Proposed Shop and Services and Eating Place in “Residential (Group B)” zone, Parts of G/F and 1/F of a Planned Residential Building at Lot 4537RP in DD 116, Tai Kei Leng, Yuen Long

(TPB Paper No. 8209)

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[The hearing was conducted in Cantonese.]

### **Presentation and Question Session**

94. The following Members declared interests on this item:

Mr. Alfred Donald Yap

] having current business dealings with

Mr. Raymond Y.M. Chan ] Henderson Land Development Co., of which  
] the applicant was its subsidiary company

[Messrs. Alfred Donald Yap and Raymond Y.M. Chan and Mrs. Ava Ng left the meeting at this point.]

95. The following representatives from Government departments and the applicant were invited to the meeting at this point:

Mr. Wilson So District Planning Officer/Tuen Mun & Yuen  
Long, Planning Department (DPO/TMYL,  
PlanD)

Mr. B.S. Lee Senior Engineer/North West, Transport  
Department (SE/NW, TD)

Mr. Kim Chan ] applicant's representatives

Mr. Kim Chin ]

Miss Kerry Lee ]

Mr. Denis Ma ]

Mr. Tang Ho Chung ]

96. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman then invited Mr. Wilson So to brief Members on the background to the application.

97. With the aid of some plans, Mr. Wilson So did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for using parts of G/F and 1/F of a planned residential building at Tai Kei Leng, Yuen Long (the application premises) for the proposed shop and services and eating place in an area zoned "Residential (Group B)" ("R(B)") on the Yuen Long Outline Zoning Plan (OZP). The application was approved by the Rural and New Town



Planning Committee (RNTPC) on 7.3.2008 subject to approval condition (a), amongst others, that “the design and provision of vehicular access point and parking and loading/unloading facilities to the satisfaction of the Commissioner for Transport or of the Board”. The applicant applied for a review of RNTPC’s decision on imposing approval condition (a);

- (b) justifications in support of the review application submitted by the applicant were detailed in paragraph 3 of the Paper;
- (c) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD) commented that the proposal of no internal transport facilities was considered unacceptable. Adequate parking and loading/unloading (L/U) facilities should be provided within the application site in accordance with the Hong Kong Planning Standards and Guidelines (HKPSG). There was no strong justification to waive the parking and L/U requirements. Otherwise, it would set an undesirable precedent. Appropriate traffic improvement measure should be proposed to address the vehicular access arrangement. The Director of Environmental Protection (DEP) commented that with regard to the applicant’s proposed removal of part of existing noise barrier to allow for provision of vehicular access to the application site, such noise barrier was to protect the noise sensitive receivers (NSRs) at the adjacent “R(B)” site from exceedance of the HKPSG traffic noise criterion of 70 dB(A). The proposed removal of noise barrier was undesirable from environmental planning point of view;
- (d) public comments – during the statutory publication periods, a total of 4 public comments had been received from a Yuen Long District Council (YLDC) Member, the management agency of Sereno Verde, Village Representative (VR) of Tai Kei Leng and a member of public. The YLDC Member objected to the application as the proposed development would require land formation damaging the greenery of the area. The management agency of Sereno Verde forwarded results of their residents’

survey on the application previously submitted during s.16 application stage. Of the 53 returned questionnaires, over half of the questionnaires objected to the application because the proposed shop and services and eating place uses would generate noise and odour nuisances, release harmful gas, cause traffic jam and worsen public order and the sanitary condition of the surrounding areas. The VR of Tai Kei Leng objected to the application as the proposed shop and services and eating place would affect the villagers' tranquillity and impose adverse environmental and hygienic impacts on the area. The member of public commented that widening of the existing footpath for the provision of the proposed vehicular access would pose risk and create unnecessary traffic problems. Another vehicular access in the vicinity should be provided. There were already barbecue spot and recycling business in the vicinity and the proposed shop and services and eating place uses should not be operated at the site owing to environmental reason; and

[Mr. Felix W. Fong returned to join the meeting at this point.]

- (e) PlanD's view – PlanD did not support the application on review of approval condition (a) for reasons stated in paragraphs 7 and 8 of the Paper. The application with a GFA of 446m<sup>2</sup> for retail shop/eating place uses was approved by RNTPC on 7.3.2008 mainly on the considerations that the concerned "R(B)" zone was a planned residential neighbourhood without such facilities and that the proposed use would offer a convenient shopping and eating outlet in the locality to meet the needs of the local residents. To address AC for T/NT's concern, an approval condition (a) on the design and provision of vehicular access point and adequate parking and L/U facilities was attached to the planning permission. Whilst acknowledging the constraints of the application site, AC for T/NT considered that adequate parking and L/U facilities for the application premises should be provided in accordance with the HKPSG and the proposal of no internal transport facilities was unacceptable. He did not support the review application and considered that there was no strong justification to waive the parking and L/U requirements. Deletion of approval condition (a) could not meet TD's

requirements.

98. The Chairman then invited the applicant's representatives to elaborate on the application.

99. With the aid of a Powerpoint presentation, Messrs. Kim Chan and Kim Chin made the following main points:

- (a) the application for using parts of G/F and 1/F of a planned residential building was approved by RNTPC on 7.3.2008 subject to approval condition (a), amongst others, that "the design and provision of vehicular access point and parking and loading/unloading facilities to the satisfaction of the Commissioner for Transport or of the Board". Subsequent to the approval of RNTPC, the applicant had held several meetings with TD to explore feasible ways to comply with this approval condition. However, it was found that compliance with such a condition was not technically feasible;
- (b) the proposed shop and services and eating place uses (with 446m<sup>2</sup> GFA) at the application premises would mainly meet the existing and future demand of the local neighbourhood. In accordance with Table 11 in Chapter 8 of the HKPSG, nil provision of parking facilities was generally allowed for small road-side retail shops which mainly served local residents. Besides, the existing car park to the north of the application site could cater to the L/U needs. On this premise, it was considered unnecessary to impose the requirement to provide parking and L/U facilities within the application site of only 485m<sup>2</sup>;
- (c) the provision of car parking spaces was not in line with the Government's sustainable policy of reducing unnecessary energy consumption by discouraging private transport. Local residents should be encouraged to visit the application site by walking or cycling;
- (d) owing to the configuration and size of the application site, it was difficult to

provide on-site parking and L/U facilities as required by TD;

- (e) the chance to provide an access road to the application site was slim because TD objected to the proposed run-in along Shap Pat Heung Road and EPD did not support the removal of noise barrier abutting the application site. The proposed access road would also have to pass through private lots held by different owners. Therefore, even parking and L/U facilities could be provided within the application site, it would be impossible to provide a proper access road to the application site;
- (f) a number of private residential developments along Shap Pat Heung Road could be found in the vicinity of the application site. Should all these private developments be required to provide on-site parking and L/U facilities in accordance with the HKPSG, different run-ins to these individual residential developments would be created, causing an adverse impact on the traffic circulation of Shap Pat Heung Road;
- (g) the current access (of 3.5m wide) to the application site was via the existing path located to its east, leading to Shap Pat Heung Road. This path accessible only to pedestrians and bicycles also served the adjoining residential developments and village houses. Provision of a new road to the application site to comply with condition (a) would call for widening of the existing path and modification of the existing bus lay-by at Shap Pat Heung Road. A long portion of the noise barrier along Shap Pat Heung Road would need to be removed. However, this proposal was not accepted by TD and EPD; and
- (h) as the provision of a new access road to Shap Pat Heung Road was fraught with problems as commented by concerned departments, consideration should be given to an alternative proposal in which a new general lay-by should be provided at Shap Pat Heung Road to the north of the application site. The existing bus lay-by could be shifted westwards to make way for this new lay-by. This proposal would have the merit of providing the required L/U facilities not only to serve the proposed development but also

the local residents. There were similar cases in Tin Shui Wai and Central where on-street lay-bys were provided to serve local developments which could not provide on-site L/U facilities due to site constraints.

100. As requested by the Chairman, Mr. B.S. Lee made the following comments on the review application:

- (a) there was a need to provide L/UL facilities to serve the proposed shop and services and eating place with a GFA of 446m<sup>2</sup>. The applicant had acknowledged the need to provide L/U facilities for the proposed development though such facilities were proposed to be provided on-street along Shap Pat Heung Road;
- (b) though there were some developments in the urban areas where on-site L/U facilities could not be provided due to site constraints, permanent L/U facilities would normally be provided in their vicinity;
- (c) taking account of the remote location of the application site and the planned residential development atop the proposed shop and services and eating place, there was no justification for the applicant not to provide L/U facilities to serve the development; and
- (d) as the proposed new lay-by at Shap Pat Heung Road could not be reserved exclusively for the application site, this lay-by would possibly be occupied by other users, denying its use by the future operators of the application premises. Subsequently, their L/U activities would be forced to be undertaken on-street along Shap Pat Heung Road. This situation would be undesirable as the traffic circulation of Shap Pat Heung Road would be adversely affected.

101. The Chairman asked whether the proposed access road from Shap Pat Heung Road to the application site was feasible in the light of DEP's concerns about the removal of noise barrier. Mr. B.S. Lee said that the applicant should further examine the feasibility to provide a new access road to the application site taking account of DEP's concerns. Mr.

C.W. Tse said that removal of the noise barrier without some compensatory measures to protect the noise sensitive receivers at the adjacent “R(B)” site was unacceptable.

102. Mr. Wilson So said that after the Paper was issued, a meeting had been held amongst TD, DPO and the applicant on 13.10.2008 to examine the traffic issues. During the discussion, it had been considered that there was a large-scale residential development planned to the south-east of the application site and there might be a possibility to provide some L/U facilities within this development to serve the application site. The applicant was one of the owners of this large-scale residential development. Mr. B.S. Lee said that TD had no longer insisted on the provision of a new access road to the application site and would be ready to accept one off-site permanent L/U bay reserved for the application site. This permanent L/U bay should be provided in a neighboring development. In the interim period, undertaking of L/U activities in the nearby car parks would be agreeable to TD as a temporary arrangement.

103. Mr. Kim Chan pointed out the proposal to provide a L/U bay in the neighbouring large-scale residential development had been studied carefully but was found not feasible for the following reasons:

- (a) the applicant was only one of the owners of the large-scale residential development and it was difficult for the applicant to undertake to provide permanent L/U facilities in this project for serving the application site. This would not be agreeable to other owners of the development;
- (b) there would be potential legal challenges to the Government should the future buyers of the large-scale residential development find that they were obliged to pay for the management and maintenance costs of some L/U facilities serving a separate development, which did not have any relationship to their own development; and
- (c) the large-scale residential development was not zoned “Comprehensive Development Area” and it was unreasonable for the Board to impose such an onerous requirement on it.

104. In response to the Chairman's enquiry, Mr. B.S. Lee advised that the applicant's proposal to provide a lay-by at Shap Pat Heung Road was unacceptable. He said that to comply with TD's requirement for providing permanent L/U facilities, the applicant had been given the flexibility to provide such facilities in other neighbouring developments, not necessarily limited to the large-scale residential development as mentioned earlier. From TD's viewpoint, provision of L/U facilities would be easier than the provision of a new access road.

[Mr. David W.M. Chan left the meeting temporarily at this point.]

105. In response to TD's views, Mr. Kim Chan pointed out that the current discussion should not mix up the application site with other separate developments. The proposed provision of a general lay-by was not a new thinking but had been implemented in many other parts of Hong Kong. Moreover, it could be implemented easily to serve the application site and local residents without relying on some other developments. In case that the new lay-by was occupied by other users, the existing car parks in the vicinity of the application site still provided a fallback to cater to the L/U needs of the application site.

106. Some Members had the following questions:

- (a) whether a new access road to the application site from Shap Pat Heung Road would affect the existing bus lay-by there;
- (b) what was the expected frequency of the usage of the proposed lay-by by the applicant and would there be any clash with other users of the area;
- (c) whether the required provision of L/U facilities was in accordance with the requirements for retail uses in the HKPSG; and
- (d) whether TD had any guidelines on the requirements of L/U facilities for some particular trades if the proposed retail floor space was below the requirements in the HKPSG.

107. Mr. B.S. Lee made the following responses:

- (a) the existing bus lay-by would be affected if a new access road was to be provided to the application site from Shap Pat Heung Road. How to shift this lay-by to accommodate the new access road needed to be examined by the applicant. The preliminary assessment was that shifting the lay-by westwards seemed more feasible;
- (b) according to the HKPSG, one L/U bay for goods vehicles would be required for every 800m<sup>2</sup> to 1,200m<sup>2</sup> retail GFA; and
- (c) taking account of the L/U needs of the application (including shop and services and eating place), one L/U bay was still considered necessary though the proposed development only involved a retail GFA of 446m<sup>2</sup>. TD had no internal guidelines on the required provision of L/U facilities if the retail floor area was below 800m<sup>2</sup>. Every case would be considered individually by TD.

108. Mr. Kim Chin said that as to the frequency of using the proposed lay-by, the L/U traffic generated would likely be about one vehicle trip per day if convenience stores were to be provided within the application premises. Comparatively speaking, there would be a greater demand for using the proposed lay-by by the local residents.

[Mr. David W.M. Chan returned to join the meeting at this point.]

109. The Chairman asked why the car park on the opposite side of Shap Pat Hueng Road could only be accepted as a temporary measure for catering to the L/U needs of the application site. Mr. B.S. Lee replied that permanent L/U facilities for the exclusive use of the proposed development needed to be provided in view of its L/U needs. Noting the difficulties to identify such permanent facilities, TD would be ready to accept some temporary arrangements to provide L/U facilities in other sites, including the opposite car park.

110. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairman 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 Chairman thanked the applicant's representatives and representatives from Government departments for attending the meeting. They all left the meeting at this point.

### Deliberation Session

111. Some Members had the following views:

- (a) given the small-scale of the proposed development (with a retail GFA of 446m<sup>2</sup>) and constraints of the application site (with an area of 485m<sup>2</sup>), TD should be more flexible in considering whether the L/U facilities were required for the application premises;
- (b) TD's requirement for one permanent L/U bay was considered rigid and subjective as the proposed development with a retail GFA of 446m<sup>2</sup> was below the standard as stipulated in HKPSG (i.e. one L/U bay for every 800m<sup>2</sup> to 1,200m<sup>2</sup> retail GFA);
- (c) approval of the application would not set an undesirable precedent as nil provision of L/U facilities for the application premises did not contradict the standard requirement in the HKPSG;
- (d) it was unreasonable to require the applicant to provide some L/U facilities in another development project which was not related to the application site. This proposal would likely be fraught with implementation difficulties; and
- (e) the car park on the other side of Shap Pat Heung Road opposite to the application site could provide the required space for L/U activities serving the proposed development.

112. A Member raised whether it was appropriate to overrule TD's views in approving the application on review as there might be traffic problems like illegal on-street L/U bay at Shap Pat Heung Road affecting the current 3.5m wide access to the area. In response to this Member's views, some other Members had the following responses:

- (a) deletion of approval condition (a) did not necessarily mean that the Board agreed to allow the applicant to use Shap Pat Heung Road for illegal L/U activities. The Government would still be obliged to take enforcement action against any illegal traffic matters;
- (b) the existing car park opposite to the application site provided a convenient location to allow L/U activities in connection with the proposed development; and
- (c) the current nil provision of L/U facilities for the application premises (with a retail GFA of 446m<sup>2</sup>) did not contravene the HKPSG requirements for retail uses. There were no clear guidelines from TD on the requirements for L/U facilities for retail uses below the minimum standard in the HKPSG.

113. The Chairman summed up that there were no convincing reasons or justifications to support TD's required provision of L/U facilities for the application premises. Given the small-scale of the proposed development and its patronage mainly by local residents, the traffic and L/U requirements generated by the application would not generate an unacceptable traffic impact to the area. Members agreed.

114. After further deliberation, the Board decided to approve the application on review on the terms as submitted to the Town Planning Board. The permission should be valid until 7.3.2012, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- (a) the provision of emergency vehicular access, water supply for fire-fighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board; and
- (b) the submission of drainage plans under the drainage referral from Buildings Department to the satisfaction of the Director of Drainage Services or of the

Town Planning Board.

115. The Board also agreed to advise the applicant to:

- (a) note District Lands Officer/Yuen Long's comments that should the Board approve the application, the applicant was required to apply to his office for a land exchange for implementing the proposed development. However, there was no guarantee that the land exchange application would eventually be approved. Site area and boundary would be verified during processing of the land exchange application;
- (b) note Director of Fire Services's comments that detailed fire safety requirements would be formulated upon receipt of formal submission of general building plans. Furthermore, the Emergency Vehicular Access in the site should comply with the standards as stipulated in Part VI of the Code of Practice for Means of Access for Firefighting and Rescue under the Building (Planning) Regulations 41D;
- (c) note Chief Building Surveyor/New Territories West, Buildings Department's comments that the 'planned residential building' including the proposed shop, service and restaurant on G/F and 1/F should be submitted for approval. Detailed checking would be carried out at building plan submission stage;
- (d) note Director of Food and Environmental Hygiene's comments in paragraph 8.1.6 of Annex A of the Paper that in all circumstances, the applicant was required to comply with all requirements under the legislations administrated by Food and Environmental Hygiene Department and other relevant Government Departments before consideration of the issue of food licence; and
- (e) note Head of the Geotechnical Engineering Office, Civil Engineering and Development Department's comments in paragraph 8.1.9 of Annex A of the Paper that the site fell within Scheduled Area No. 2 and might be underlain

by cavernous marble. For any development or redevelopment of the site, extensive geotechnical investigation would be required. Such investigations might reveal the need for a high level of involvement of an experienced geotechnical engineer both in the design and in the supervision of geotechnical aspects of the works required to be carried out on the site. Any private development proposals were required to be submitted to the Building Authority for approval.

### **Agenda Item 9**

[Open Meeting]

Request for Deferral for Review of Application No. A/YL-TYST/378

Temporary War Game Centre for a Period of 3 Years in “Green Belt” zone, Lots 604 to 609, 612 to 622, 696 (Part) and 697 (Part) in D.D. 119, Pak Sha Tsuen, Yuen Long

(TPB Paper No. 8210 and Supplementary Paper)

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[The meeting was conducted in Cantonese.]

116. The Secretary said that subsequent to the issuance of the TPB Paper, the applicant’s agent submitted a request for deferment of consideration of the review application for 2 months so as to allow time for the applicant to prepare supplementary information to respond to the technical comments of Drainage Services Department, Agriculture, Fisheries and Conservation Department and the Landscape Unit of Planning Department on the application. The request for deferment met the criteria set out in the Town Planning Board Guidelines No. 33 in that the applicant needed more time to resolve major technical issues with relevant Government departments, the deferment period was not indefinite, and the deferment would unlikely affect the interest of other relevant parties.

117. After deliberation, the Board decided to agree to the request for further deferment and that the application would be submitted to the Board for consideration within 3 months upon receipt of further submission from the applicant.

118. The Board also decided to advise the applicant that the Board had allowed 2 months for preparation of submission of further information and no further deferment would

be granted unless under very special circumstances.

**Agenda Item 10**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Further Representations to the Draft Wong Nai Chung Outline Zoning Plan No. S/H7/14  
(TPB Paper No. 8211)

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[The meeting was conducted in Cantonese.]

119. The Secretary declared an interest on this item as Further Representation No. 1 (F1) was submitted by the estate management of her residence. Members considered that her interest was indirect and remote as she would not participate in the decision making and therefore agreed that she could stay in the meeting to report the Paper for Members' consideration.

120. The Secretary presented the Paper and said that on 8.8.2008, the Board considered the 50 representations and the 382 comments in respect of the draft Wong Nai Chung Outline Zoning Plan (OZP) No. S/H7/14 gazetted on 18.1.2008. Upon consideration of the representations and comments, the Board decided to propose amendments to the draft Wong Nai Chung OZP No. S/H7/14 (the Plan) to meet Representations No. R37, R43 and R44, and partially meet Representations No. R4 to R32, R42, R45 and R47. The proposed amendments were exhibited for public inspection under section 6C(2) of the Town Planning Ordinance (the Ordinance) on 29.8.2008. During the three-week exhibition period, a total of 6 further representations were received. F1, submitted by Beverley Hill (Estate Management) Limited, was against the amended maximum building heights (BHs) for the Hong Kong Jockey Club Clubhouse and Central Store site, Man Lam Christian Church (MLCC) site and residential sites, which were under the proposed Amendment Items D to H shown on the Plan and Amendment Item (a) to the Notes of the Plan (which was related to Amendment Item G). F2 to F4, submitted by members of the public and the Licose International Limited, were against the amended BH restriction for the MLCC site under Amendment Item E and asked for further relaxing the BH restriction from 5 storeys to 100mPD. F5 and F6, submitted by members of the public, were related to the amended maximum BHs for the residential sites

under Amendment Items F to H. F5 was against the relaxation of BH restrictions for the concerned sites. F6 supported the BH restrictions and proposed to extend the BH restrictions of 130mPD or 115mPD under Amendment Items G and H to part of the Hong Kong Sanatorium & Hospital (HKSH) site.

121. The Secretary went on to say that as the HKSH site was not covered by the said proposed amendments, legal advice had been sought. According to legal advice, the further representation allowed in section 6D of the Ordinance had to mean representation relating to any proposed amendment item affecting the respective sites described in the Schedule of Proposed Amendments, but not other sites (i.e. the HKSH site) located within the area of the Plan. Moreover, under section 6F(3), further representer and original representer on proposed amendment affecting a particular site were entitled to attend the meeting for hearing of the further representation by the Board. If a further representation on a proposed amendment affecting the particular site of representation could be made to extend to other sites, the original representers of those other sites would have no right to attend the meeting as section 6F contains no provision for such right. That did not accord with the legislative intent of the procedure prescribed in section 6F of the Ordinance of affording opportunity to the original representers to be heard in the meeting when a further representer opposed to a proposed amendment. Based on these considerations, the Department of Justice advised that the part of F6 relating to the HKSH site should not be regarded as valid while its remaining part expressing support for the proposed amendments under Amendment Items F to H should be considered as valid.

122. After deliberation, the Board agreed that all further representations (F1 to F6) should be heard collectively by the Board itself and the part of F6 regarding the extension of the BH restrictions under Amendment Items G and H to the HKSH site should not be regarded as valid.

### **Agenda Item 11**

[Open Meeting]

Submission of Draft Ho Man Tin Outline Zoning Plan No. S/K7/19A to the Chief Executive in Council for Approval under section 8 of the Town Planning Ordinance  
(TPB Paper No. 8208)

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[The meeting was conducted in Cantonese.]

123. The Secretary said that the following Members had declared interests on this item:

Mr. Alfred Donald Yap ] being a joint owner of a property within the  
] area covered by the draft Ho Man Tin Outline Zoning  
] Plan (OZP)

Mr. Raymond Y.M. Chan ] having a property within the area covered by the OZP

124. Members noted that the above Members had left the meeting.

125. The Secretary briefly introduced the Paper.

126. After deliberation, the Board agreed that:

- (a) the draft Ho Man Tin OZP No. S/K7/19A and its Notes at Annexes I and II respectively of the Paper were suitable for submission under section 8 of the Town Planning Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) the updated Explanatory Statement (ES) for the draft Ho Man Tin OZP No. S/K7/19A at Annex III of the Paper should be endorsed 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) the updated ES was suitable for submission to the CE in C together with the draft OZP.

## **Agenda Item 12**

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

127. There being no other business, the meeting was closed at 5.40p.m..