

**Minutes of 930th Meeting of the
Town Planning Board held on 20.2.2009**

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. Leslie H.C. Chen

Professor N.K. Leung

Professor Bernard V.W.F. Lim

Dr. C.N. Ng

Dr. Daniel B.M. To

Mr. Alfred Donald Yap

Mr. B.W. Chan

Mr. Walter K.L. Chan

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Dr. James C.W. Lau

Mr. K.Y. Leung

Mr. Rock C.N. Chen

Dr. Winnie S.M. Tang

Assistant Director (2), Home Affairs Department
Mr. Andrew Tsang

Deputy Director of Environmental Protection
Mr. Benny Wong

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. David W.M. Chan

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Professor David Dudgeon

Mr. Stanley Y.F. Wong

Ms. Sylvia S.F. Yau

Ms. Maggie M.K. Chan

Professor Paul K.S. Lam

Ms. Starry W.K. Lee

Professor Edwin H.W. Chan

Dr. Ellen Y.Y. Lau

Mr. Maurice W.M. Lee

Mr. Timothy K.W. Ma

Principal Assistant Secretary (Transport),
Transport and Housing Bureau

Mr. Tony Lam

In Attendance

Assistant Director of Planning/Board

Mr. Lau Sing

Chief Town Planner/Town Planning Board

Mr. W.S. Lau

Senior Town Planner/Town Planning Board

Mr. Ivan Chung

1. The Chairman extended a welcome to Members.

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 929th Meeting held on 6.2.2009

[The meeting was conducted in Cantonese.]

2. The minutes of the 929th meeting held on 6.2.2009 were confirmed without amendments.

Agenda Item 2

[Open meeting]

Matters Arising

Judicial Review Application lodged by the Trustees of the Union Church in Hong Kong in respect of the Draft Mid-levels West Outline Zoning Plan No. S/H11/14

[The meeting was conducted in Cantonese.]

3. The Secretary reported that on 13.2.2009, the Court of First Instance granted leave to the Trustees of the Union Church in Hong Kong (the Applicant) to apply for judicial review (JR) in respect of the Board's decision on 31.10.2008 (the Decision) not to propose amendments to the draft Mid-levels West Outline Zoning Plan (OZP) No. S/H11/14 to meet its comments and related representations on the OZP. A copy of the Notice of Application (Form 86A) had been despatched to Members before the meeting. The Applicant was one of the commenters in support of three representations opposing the imposition of building height restrictions in the subject OZP. The Applicant's comment was focused on its own site (the Site) zoned "Government, Institution or Community" ("G/IC") and subject to a 3-storey building height restriction.

[Dr. James C.W. Lau, Dr. C.N. Ng, Dr. Daniel B.M. To, and Messrs. Y.K. Cheng and Andrew Tsang arrived to join the meeting at this point.]

4. The Secretary went on to highlight the major grounds of the JR application as follows:

- (a) the draft OZP and the Decision were ultra vires the Board's powers under the Town Planning Ordinance because they utilized 'spot' building height restrictions;
- (b) the Board took into account irrelevant considerations, in particular that it was a function of "G/IC" zone to serve as breathing space and air paths, the need to prevent out-of-context developments to meet the public aspiration for a better environment, and that it was inappropriate to single out an individual site for separate control;
- (c) the Board failed to take into account relevant considerations, in particular that:
 - the redevelopment proposal for the Site, which was the subject of a planning permission granted in June 1997, should be reflected in the building height restriction for it;
 - the imposition of the 3-storey restriction for the Site would materially and adversely affect the redevelopment plan upon the lapse of the planning permission;
 - there was a need for the Applicant to expand its facilities for community services;
 - the height of the approved scheme under the planning permission was consistent with the height limits imposed on the non "G/IC" sites in the vicinity;
 - the draft OZP represented a particularly acute interference with the Applicant's private property right; and

- (d) the Decision was Wednesbury unreasonable in that there was no basis for concluding that the proposed redevelopment of the Site would not be adversely affected by the 3-storey restriction and not reflecting the approved scheme in the building height restriction for the Site.

5. The Secretary said that the Secretariat would examine the Notice of Application for JR in consultation with the Department of Justice and bring up the subject matter for the Board's discussion, if necessary, in due course. Members noted the JR application and agreed that the Secretary would represent the Board on all matters relating to the JR in the usual manner.

Agenda Item 3

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/SK-HC/165

Proposed House (New Territories Exempted House – Small House) in “Agriculture” zone, Lot 509 S.A ss.1 in D.D. 244, Ho Chung, Sai Kung

(TPB Paper No. 8297)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

6. The following representatives from the Planning Department (PlanD), the applicant and the applicant's representatives were invited to the meeting at this point:

Mr. Alfred Lau	District Planning Officer/Sai Kung & Islands (DPO/SKIs), PlanD
Ms. Ann Wong	Senior Town Planner/Sai Kung (STP/SK), PlanD
Mr. Lau Wun On	Applicant
Ms. Betty Ho] Applicant's representatives

Mr. K.K. Wong]
Mr. K.L. Cheung]

7. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman then invited Ms. Ann Wong, STP/SK, to brief Members on the background to the application.

8. With the aid of a Powerpoint presentation and a video, Ms. Ann Wong, STP/SK, did so as detailed in the Paper and covered the following main points:

- (a) the applicant applied for the development of New Territories Exempted House (Small House) at the application site which was zoned “Agriculture” (“AGR”) on the Ho Chung Outline Zoning Plan (OZP);
- (b) the reasons for the Rural and New Town Planning Committee (RNTPC) to reject the application on 24.10.2008 were set out in paragraph 1.2 of the Paper;
- (c) the justifications in the support of the review application were summed up in paragraph 3 of the Paper;

[Miss Annie Tam, Dr. Winnie S.M. Tang and Mr. Nelson W.Y. Chan arrived to join the meeting at this point.]

- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. Chief Engineer/Development(2), Water Supplies Department (WSD) objected to the application as it would likely increase the pollution risks to the water quality within the water gathering ground (WGG). Chief Engineer/Mainland South, Drainage Services Department advised that the application site was within an area where neither stormwater nor sewerage connections were available in the vicinity. Site observations indicated that an existing stream was now being covered by materials dumped by an unknown party. District Lands Officer/Sai Kung, Lands Department (LandsD) advised that the applicant was an

indigenous villager (“IV”) of Ho Chung Village and the site fell entirely within the village ‘environs’ (‘VE’) of Ho Chung Village. The outstanding Small House applications and 10-year Small House demand for Ho Chung Village were 138 and 300 respectively. Site inspection revealed that the concerned streamcourse was covered by some dumped materials. District Survey Office/Sai Kung, LandsD stated that as revealed by a site visit, portion of the streamcourse could still be identified on site. Director of Electrical and Mechanical Services (DEMS) objected to the application unless the applicant requested the CLP Power Hong Kong Limited (CLPP) to divert the 11kV high voltage overhead lines away from the vicinity of the application site or have them replaced by underground cables. The diversion or replacement works had to be completed before the approval was given. Director of Environmental Protection objected to the application as the application site was located within the WGG where no public sewer was available. Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application from agricultural point of view as the application site had high potential for agricultural rehabilitation;

- (e) public comments – during the statutory public inspection period, 5 public comments were received. These comments were submitted by a Sai Kung District Councillor and 4 members of the general public. Three of them objected to the review application because of the need to preserve “AGR” zone and crime, traffic, building control as well as environmental problems. Two commenters expressed their concerns regarding possible cumulative impacts on Ho Chung Lowland Pumping Station and emergency vehicular access for villagers; and

- (f) PlanD’s view – PlanD did not support the application for reasons stated in paragraph 8.1 of the Paper in that the proposed development was located within the WGG and close to a streamcourse. According to a recent site visit carried out by PlanD, an existing streamcourse about 1.5m away from the application site was found partly covered by some dumped materials. The existence of the streamcourse was confirmed by other concerned

departments. However, in the current submission, there was insufficient information to demonstrate that the proposed sewage disposal system would not pollute the WGG and the streamcourse. There was also insufficient information to demonstrate that alternative site(s) were available for diversion or replacement of the 11kV high voltage overhead lines prior to granting planning approval. No feasible solution had been provided to address the concerns on electrical safety and electricity supply issues.

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

10. With the aid of a plan, Mr. Lau Wun On and Ms. Betty Ho made the following main points:

- (a) the applicant was an IV of Ho Chung Village and the proposed development was to meet his genuine housing need;
- (b) regarding electrical safety and electricity supply reliability problems, the applicant had written to request CLPP to divert the 11kV high voltage overhead lines away from the application site. CLPP had replied that the concerned overhead lines could be removed and diverted subject to the permission from the Government and agreement of the owners of concerned private property. If the Board's approval was given, the applicant would still have to seek LandsD's approval and consent for building before actual construction commenced. This process would likely take another three years. Given such a time frame, there should be sufficient time for CLPP to divert the concerned overhead lines. The applicant would also be willing to accept an approval condition to ensure the approved development not to commence prior to the diversion of the overhead lines;
- (c) the boundary of the WGG had not been made known to the public. The applicant was completely unaware of the WGG when he bought the application site with a view to erecting a Small House as his own residence. As such, it would not be reasonable and fair to reject the application on the

grounds of falling within the boundary of the WGG;

[Mr. Leslie H.C. Chen arrived to join the meeting at this point.]

- (d) the Board should not be so rigid and reject the application purely because the application site fell within the WGG. The Board should take the boundary of the WGG as a reference to consider the application with flexibility. The application site was located on the periphery of the WGG. A septic tank system would be designed and constructed in accordance with the “Guidance Notes on Discharges from Village Houses” published by the Environmental Protection Department. This would ensure that the sewage generated from the proposed development would not adversely affect the water quality of the WGG; and
- (e) despite DAFC’s view that the application site had high potential for agricultural rehabilitation, it was considered that should the site be rehabilitated for agricultural use, more pollution to the environment and the WGG would be resulted due to the use of chemical pesticide in connection with the agricultural activities.

11. In response to the Chairman’s enquiry, Ms. Ann Wong, STP/SK, replied that the video showing the application site and the nearby streamcourse was taken about one week before the meeting.

12. A Member considered that there seemed to be conflicting views between the Government departments and the applicant’s consultant on the existence of the streamcourse close to the application site. This Member asked the applicant if he agreed that there was a streamcourse nearby. In response, Ms. Betty Ho and Mr. K.K. Wong, the applicant’s representatives, said that the streamcourse had been interrupted by land formation activities in the vicinity for the development of some 30 Small Houses. The streamcourse as identified by PlanD could only be considered as a pool of water. Owing to the said land formation activities, flooding had been caused to the locality during heavy rainfall. The applicant had once complained to the relevant Rural Committee, District Lands Office and other departments about the flooding. However, no reply had been given by these departments.

[Ms. Anna S.Y. Kwong arrived to join the meeting at this point.]

13. The same Member asked whether PlanD would agree with the applicant's comments/observation. In reply, Mr. Alfred Lau, DPO/SKIs, and Ms. Ann Wong, STP/SK, said that the application site and the nearby streamcourse were within the WSD's lower indirect WGG. Water from the upstream would be collected at Ho Chung Lowland Pumping Station through the nearby streamcourses and water channels, and then pumped to the High Island Reservoir as and when required. This streamcourse near the application site was still in existence, and served a useful purpose.

14. Other Members had the following questions:

- (a) when the WGG was drawn up by WSD and whether it was made known to the public;
- (b) whether planning approval had been given to other Small House developments within the WGG; and
- (c) whether the applicant would agree to identify suitable sites for diverting the overhead lines in response to DEMS's concerns.

15. In response to Members' questions (a) and (b) above, Ms. Ann Wong, STP/SK, made the following main points:

- (a) there was no such information in hand on when the WGG was designated. However, it was PlanD's practice to seek WSD's comments from water supply perspective on each and every planning application. The current information on the WGG was based on WSD's advice; and
- (b) no previous approval had been given by the Board for Small House development within areas zoned "AGR" and falling within the WGG on the Ho Chung OZP.

16. In response to Members' question (c) above, Ms. Betty Ho, the applicant's representative, said that the applicant had not been consulted previously on the installation of the overhead lines though they fell on land owned by the applicant. Notwithstanding that, the applicant would be willing to facilitate CLPP's diversion of the overhead lines should approval of the proposed development be given by the Board. Also, as to the designation of the WGG, Ms. Ho reiterated that the public was not aware of the boundary of the WGG and such information was not shown on the OZP. Despite WSD's objection to development within the WGG, it was noted that a track had also been formed just along the said streamcourse leading to Ho Chung Lowland Pumping Station.

17. Ms. Betty Ho, the applicant's representative, said that the applicant felt aggrieved as he was not aware that the site fell within the WGG when he purchased it. The designation of the WGG was not made known to the public. However, development of Small Houses within the nearby "Village Type Development" ("V") zone, was always permitted though some of them were located within the WGG. The Board's rejection of the application not only would cause a loss to the applicant but was unfair to the applicant. The application therefore deserved the Board's sympathetic consideration.

18. The Chairman sought clarification from PlanD as to whether all applications falling within the WGG would be strictly prohibited by WSD. Ms. Ann Wong, STP/SK, responded that according to her understanding, the prime concern of WSD in assessing any development within the WGG was related to its possible pollution risk to the water quality. In WSD's assessments, various pertinent factors including site location, topography, proximity to streamcourse, and provision of public sewer and proper sewerage facilities to treat discharge from the development would be taken into account. Members noted that planning application for Small House development in "V" zone was not required but LandsD would consult WSD in their processing of Small House application if the site fell within the WGG.

19. As the applicant and 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, the applicant's representatives and PlanD's

representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

20. A Member was sympathetic to the applicant who was not aware that his application site fell within the WGG, the boundary of which had not been made known to the public. However, this Member considered that in the interest of the public, the Board was obliged to ensure the water quality of the WGG would not be adversely affected. Therefore, this Member expressed neither support nor disapproval of the application. As to this Member's view that the applicant was not aware of the WGG upon purchase of the site, the Chairman pointed out that ignorance was not a valid ground of consideration by the Board. Besides, the application site was an agricultural lot falling within "AGR" zone. Development of Small House on the site was not permitted as of right but was subject to planning and other related approval procedures.

21. A Member said that in view of the DEMS's concerns that the diversion or replacement works by CLPP had to be completed before approval was granted to the applicant, the applicant's acceptance of the imposition of an approval condition to divert the overhead lines was inadequate as there was no practical solution offered by the applicant to address the diversion matter.

22. The Chairman summed up that the applicant had not provided sufficient information to demonstrate that the water quality of the WGG and the nearby streamcourse would not be adversely affected, and had not provided feasible solution to address the concerns on electrical safety and electricity supply issues. As such, Members considered that there were no strong grounds for the Board to approve the application upon review.

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

- (a) the proposed development was located within the water gathering ground and was close to a streamcourse. There was insufficient information in the submission to demonstrate that the proposed sewage disposal system would not pollute the water gathering ground and the streamcourse; and

- (b) 11kV high voltage overhead lines were located within the application site. There was insufficient information to demonstrate that alternative site(s) were available for diversion or replacement of the overhead power lines prior to granting planning approval. No feasible solution had been provided to address the concerns on electrical safety and electricity supply issues.

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/H18/53

House (Private Garden) in "Green Belt " zone, Government Land Adjoining 8 Big Wave Bay Road, Shek O

(TPB Paper No. 8298)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

24. The following Members declared interests on this item:

Mr. Alfred Donald Yap	being a personal friend of the applicant
Mr. Rock C.N. Chen] having served with the applicant's
Ms. Anna S.Y. Kwong] consultant, Mr. Daniel Heung, in public
] bodies

[Mr. Alfred Donald Yap left the meeting at this point.]

25. Members considered that the interests of Mr. Rock C.N. Chen and Ms. Anna S.Y. Kwong were remote and indirect, and agreed that they should be allowed to stay at the meeting.

26. The following representatives from the Planning Department (PlanD), the

applicant and the applicant's representatives were invited to the meeting at this point:

Ms. Brenda Au	District Planning Officer/Hong Kong (DPO/HK), PlanD
Mr. David Lam	Senior Town Planner/Hong Kong, PlanD
Mr. Tong Yan Kai	- Applicant
Mr. Ted Chan] Applicant's representatives
Mr. Henry Chan]
Dr. Justin Lawrence Kwan]

27. The Chairman extended a welcome and explained briefly the procedures of the review hearing. The Chairman then invited Ms. Brenda Au, DPO/HK, to brief Members on the background to the application.

28. With the aid of a Powerpoint presentation, Ms. Brenda Au, DPO/HK, did so as detailed in the Paper and covered the following main points:

- (a) the applicant applied for "House (Private Garden)" at the application site which fell within an area zoned "Green Belt" ("GB") on the Tai Tam and Shek O Outline Zoning Plan (OZP). The garden was for private use and was attached to an existing house at the adjoining RBL 289;
- (b) the reasons for the Metro Planning Committee (MPC) to reject the application on 4.1.2008 were set out in paragraph 1.2 of the Paper;
- (c) the justifications in the support of the review application were summed up 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, PlanD had reservation on the application from the landscape

impact point of view. There was a general presumption against development in “GB” zone. Although the applicant had submitted a new landscape proposal to provide more planting at the site, there was no strong justification on the landscape merits that could be resulted from the proposed development which was for private use. Also, it was undesirable to encourage disturbance to green belts on Government land. The Head of the Geotechnical Engineering Office, Civil Engineering and Development Department had no in-principle objection but requested the applicant to submit a revised Geotechnical Planning Review Report. The Chief Engineer/Hong Kong & Islands, Drainage Services Department had no in-principle objection subject to the submission of a satisfactory drainage proposal;

- (e) public comments – during the statutory public inspection period, no public comment was received; and

[Professor Bernard V.W.F. Lim arrived to join the meeting and Mr. Andrew Tsang left the meeting temporarily at this point.]

- (f) PlanD’s view – PlanD did not support the application for reasons stated in paragraph 8.1 of the Paper. The proposed private garden use was not in line with the planning intention of “GB” zone and there was no strong justification to warrant a departure from the planning intention; and the approval of the application would set an undesirable precedent for similar developments in “GB” zone. There was a general presumption against development in “GB” zone. The cumulative effect of approving such applications would result in the encroachment on “GB” zone by developments and a general degradation of the natural environment. As to the 10 similar cases in the vicinity where the Government had approved land grant for private garden use, nine cases were approved prior to the publication of the first OZP on 8.4.1988 and one case was under the obligation of an indenture made in 1934 between the Government and the Shek O Development Company Limited.

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

30. Messrs. Ted Chan, Henry Chan and Tong Yan Kai, and Dr. Justin Lawrence Kwan made the following main points:

- (a) the applicant bought the existing house adjoining the application site in 1988 just a few days after the publication of the first OZP for the area. The plant nursery area within the private garden at the application site was in existence before the publication of the first OZP and could be regarded as an "existing use" allowed under the OZP;
- (b) the private garden would not cause significant impact to the hillside stability. Since the occupation of the application site by the applicant, no extensive cutting had been carried out on the uphill terrain. The construction activities within the site had not jeopardised the stability of the uphill terrain. Although there had been some human activities at the application site, there was no adverse effect on its surrounding areas;
- (c) the existing private garden had been formed by the applicant mainly for site improvements in order to make the application site safe and stable after a rain storm and landslide years ago. The applicant, as a respectable figure in the community, only undertook the site formation works at the application site out of ignorance of the requirements of the Town Planning Ordinance (TPO) and did not have the slightest intention of breaching the TPO. To make the site safer, site drainage, geotechnical and landscape improvement works at the application site would be carried out at the applicant's own costs;
- (d) given that the application site was only accessible from the applicant's house, it was reasonable for the Board to approve the application so as to enable the applicant to take up the subsequent management of the application site. The Government could be spared of such a responsibility. This would achieve a win-win situation to the applicant and the

Government;

[Mr. Andrew Tsang returned to join the meeting at this point.]

- (e) there were already a number of houses in the locality which had obtained the Government's permission to develop a private garden on Government land adjoining the respective private lots for private recreational uses. Comparatively speaking, the applicant's private lot was smaller and did not have enough open space. On one occasion, two guests fell into the swimming pool in front of the applicant's house because of lack of space. There was a need for more space for the applicant's social activities. Approval of the application would not set a precedent as other houses in the locality did not have the problem of lack of open spaces. It was noted that the Board had also previously approved similar applications in "GB" zone;
- (f) should the application be approved by the Board, the applicant was willing to comply with the approval conditions to undertake the required geotechnical and drainage assessments to the satisfaction of concerned departments. However, if the Board did not approve the application, an opportunity for site improvement at the costs of the applicant would be lost;
- (g) the Board should give consideration to the application on compassionate grounds as the applicant was already in his mid-seventies and only wished to use the application site as a private garden. Besides, the applicant was willing to comply with any conditions to carry out necessary improvements of the site to the satisfaction of the concerned departments. Due account should be given to the fact that the applicant bought his own house adjoining the application site in 1988 just a few days after the publication of the first OZP for the area. There were already a number of houses in the locality which had obtained the Government's permission to develop a private garden on Government land adjoining the respective private lots prior to the publication of the first OZP; and
- (h) the private garden was in line with the Town Planning Board Guidelines for

application for developments in “GB” zone, and the character and nature of “GB” zone. The literal meaning of “GB” implied a natural state of land covered by vegetation. For the current application, the applicant would be ready to keep the application site for garden use to be planted with greenery, being in line with the planning intention of “GB” zone. As to the presumption against development in “GB” zone, the Board could impose stringent conditions to ensure no development at the application site except for green planting. Given that, approval of the application would not constitute a departure from the planning intention of “GB” zone.

31. Members had the following questions:

- (a) whether the application site was within the area subject to an agreement between the Government and the Shek O Development Company Limited;
- (b) should approval be given by the Board, whether the applicant was willing to open his private garden to some non-governmental organisations (NGOs) for the elderly, say once a month;
- (c) whether the private garden use for passive recreational use could be considered to be in compliance with the planning intention of “GB” zone; and
- (d) what was the difference between the current application and the 10 similar cases in the area for which the Government had granted permission to develop private garden on Government land adjoining the respective private lots.

32. In response to Members’ questions (a) and (b) above, Mr. Ted Chan and Dr. Justin Lawrence Kwan had the following responses:

- (a) the application site was within the area subject to an agreement between the Government and the Shek O Development Limited; and

- (b) being a respectable figure in the community, the applicant always used his house for organising social activities for different sectors of the community. Opening up the private garden for the visit of some NGOs was agreeable to the applicant.

33. In response to Members' questions (c) and (d) above, Ms. Brenda Au had the following responses:

- (a) one of the relevant assessment criteria in the TPB Guidelines for application for developments in "GB" zone was that passive recreational uses compatible with the character of surrounding areas might be given sympathetic consideration. The proposed private garden might be considered as one of the passive recreational uses. and

[Mr. Leslie H.C. Chen left the meeting temporarily at this point.]

- (b) there were 10 similar cases of private garden use on Government land in the locality as shown on Annex H of the Paper. Of all these cases, nine were approved by the Government before the publication of the first OZP for the area on 8.4.1988. The remaining one of Garden Lot 154 granted in 2003 involved an indenture made in 1934 between the Government and Shek O Development Company Limited, under which the Company could exercise an option or a right to purchase the subject lot.

34. As the applicant and 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, the applicant's representatives and PlanD's representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

35. A Member said that the current application for private garden use should be

treated as an extension of a private residential development to “GB” zone because the private garden on the application site was only for the enjoyment of the residents living in the applicant’s house. The application could not be taken as a passive recreational use for the purpose of the TPB guidelines for application for developments in “GB” zone. Private garden use did not comply with the planning intention of “GB” zone in the guidelines. This Member concurred with PlanD’s assessment in the Paper that approval of the application would set an undesirable precedent for similar developments in “GB” zone. Members noted the Secretary’s clarification that private garden should not be regarded as passive recreational use. It was attached to a house. The applicant was seeking a planning permission for “House (Private Garden)” use in “GB” zone in accordance with the Notes of the OZP. Should the site be developed as an open space for public use, no planning permission would be required.

[Mr. Leslie H.C. Chen returned to join the meeting at this point.]

36. Two Members considered that as a matter of principle, the application should not be supported, particularly as the applicant had illegally occupied the application site without Government’s approval. However, with regard to the special circumstances of the application, the Board could consider approving the application as an exception to the general rule based on compassionate grounds. Their views were summed up below:

- (a) there were already 10 precedent cases in which the Government had given approval to develop private garden on Government land adjoining the respective private lots. Nine of these 10 cases were approved by the Government before the publication of the first OZP on 8.4.1988. The application was only differentiated from these nine cases because the applicant bought his house just a few days after the said publication date;
- (b) the application site was already an existing garden. Provision of green planting was in line with the greening nature of “GB” zone. Flexibility should thus be allowed in this respect; and
- (c) given the lack of public access to the application site, it was unlikely the application site could be used by the public. It might be sensible to allow

the applicant to take up the future management of the application site. Also, it was difficult to reinstate the application to its original state, and reinstatement work might cause more damage to the environment.

37. Three other Members considered that the application should not be supported on the following grounds:

- (a) according to the Notes of the OZP, open space within “GB” zone was always permitted without planning permission. However, the subject application was only intended for a private garden serving the applicant’s private house. It was not in compliance with the TPB guidelines for application for developments in “GB” zone;
- (b) noting that the applicant’s house was very large with sizeable outdoor space, the argument that there was insufficient space within the applicant’s house to provide recreational space was not sound and could not be accepted as compassionate grounds;
- (c) since the rejection of the previous planning application by the Board in 1993, the applicant, in the absence of any Government’s approval, had continued to carry out site formation works at the application site and converted it to private garden use for more than 10 years before submitting the current application. The Board should not be seen to be condoning the unauthorized works by granting the planning approval;
- (d) the application was different from the nine similar cases approved by the Government before the publication of the first OZP in 1988 in that these cases were in existence well before the publication date. For the application site, development of the majority part of the private garden had not come into being before 8.4.1988 but were only formed by the applicant over years since the acquisition of his house; and
- (e) approval of the application would set an undesirable precedent in that others might follow suit by illegally occupying Government land or erecting illegal

structures in the first place before seeking planning approval. This would open the floodgate for other similar applications.

38. A Member said that approval of the application might relieve the Government of the responsibility of taking up the management of the application site which was inaccessible to the public. Miss Annie Tam said that should the application be rejected by the Board, LandsD would require the applicant to reinstate the application site to its original state. However, based on the experience of some past cases, the Government might have to accept that a total reinstatement to the original state of the land was not possible.

39. The Chairman noted Miss Annie Tam's views and pointed out that the difficulties involved in future reinstatement of the application site was not a relevant planning consideration in the deliberation of the application. As to whether the application could be approved on compassionate grounds, the Chairman said that hardship would constitute a valid compassionate ground, according to the Board's practice. However, for the current application which mainly involved a private garden for the enjoyment of the applicant and improvement of his own living environment, no hardship was involved and it might not be appropriate for the Board to approve it on compassionate grounds. The Chairman said that approval of application would have a precedent effect and owners of other private lots would follow suit by converting land within "GB" zone to private garden use as a fait accompli before seeking the Board's approval. He also added that the current application was an extension of a private residential development to "GB" zone and the proposed private garden was considered not in compliance with the TPB guidelines for application for developments in "GB" zone. Members generally considered that the application could not be supported.

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

- (a) there was a general presumption against development in the "Green Belt" ("GB") zone. The proposed private garden use was not in line with the planning intention of "GB" zone and there was no strong justification to warrant a departure from the planning intention; and

- (b) the approval of the application would set an undesirable precedent for similar developments in “GB” zone. The cumulative effect of approving such applications would result in the encroachment on the “GB” zone by developments and a general degradation of the natural environment.

Agenda Item 5

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft Shouson Hill & Repulse Bay Outline Zoning Plan No. S/H17/10 (TPB Paper No. 8300)

[The meeting was conducted in Cantonese.]

41. The Secretary reported that the following Members had declared interests on this item:

Mr. Felix W. Fong - Owing properties at Hong Kong Parkview and Repulse Bay

Mr. Maurice W.M. Lee - Owing a flat at Tai Tam

42. Members noted that Mr. Maurice W.M. Lee had tendered apology for not being able to attend the meeting. As the subject item was procedural in nature, Members agreed that the interests of Mr. Felix W. Fong were remote and indirect, and he should be allowed to stay at the meeting.

43. The Secretary briefly introduced the Paper and informed Members that a total of 1,022 representations and 684 comments had been received in respect of the draft Shouson Hill and Repulse Bay Outline Zoning Plan (OZP) No. S/H17/10 (the Plan) exhibited on 26.9.2008. Since the amendments relating to the rezoning of the sites of Seaview Building and the adjoining public car park to “Comprehensive Development Area” (Amendment Items A1 and A2) had attracted wide public concerns, it was recommended that the representations and comments should be considered by the full Board. She went on to report that all the 1,022 representations (including 950 in two types of standard letters) opposed Amendment

Items A1 and A2. Amongst them, 18 representations also covered Amendment Item A3; and 21 representations also cover Amendment Items B and/or C. For those representations on Amendment Items B and C, all expressed no comment or support except only one opposing Item C. As to the 684 comments received, they all supported the representations opposing Amendment Items A1 and A2, and 7 of them also supported Amendment Items B and C. In view of the similar nature of the representations and comments, it was suggested to consider the representations and the related comments collectively at a meeting, tentatively scheduled for 20.3.2009.

44. After deliberation, the Board agreed that representations and comments should be considered in the manner as proposed in paragraphs 2.1 and 2.2 of the Paper.

Agenda Item 6

[Open Meeting]

Submission of the Draft Ma Wan Outline Zoning Plan No. S/I-MWI/13A to the Chief Executive in Council for Approval under section 8 of the Town Planning Ordinance
(TPB Paper No. 8301)

[The meeting was conducted in Cantonese.]

45. The Secretary reported that the following Members had declared interests on this item:

Dr. Greg C.Y. Wong] having current business dealings with Sun Hung Kai
Mr. Alfred Donald Yap] Properties Limited.
Mr. Y.K. Cheng]
Mr. Felix W. Fong]
Mr. Raymond Y.M. Chan]

46. Members noted that Mr. Alfred Donald Yap had left the meeting. As the subject item was procedural in nature, Members agreed that the interests of Dr. Greg C.Y. Wong, Mr. Y.K. Cheng, Mr. Felix W. Fong and Mr. Raymond Y.M. Chan were remote and indirect, and they should be allowed to stay at the meeting.

47. The Secretary briefly introduced the Paper.
48. After deliberation, the Board agreed that:
- (a) the draft Ma Wan Outline Zoning Plan (OZP) No. S/I-MWI/13A and its Notes at Annexes A and B 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 Ma Wan OZP No. S/I-MWI/13A at Annex C 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 7

[Open Meeting]

Submission of the Draft Tung Chung Town Centre Outline Zoning Plan No. S/I-TCTC/15A to the Chief Executive in Council for Approval under section 8 of the Town Planning Ordinance

(TPB Paper No. 8302)

[The meeting was conducted in Cantonese.]

49. The Secretary briefly introduced the Paper.
50. After deliberation, the Board agreed that:
- (a) the draft Tung Chung Town Centre Outline Zoning Plan (OZP) No. S/I-TCTC/15A 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 Tung Chung Town Centre OZP No. S/I-TCTC/15A 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 8

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

51. There being no other business, the meeting was closed at 11.00a.m..