

**Minutes of 990<sup>th</sup> Meeting of the  
Town Planning Board held on 26.8.2011**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Mr. K.Y. Leung

Mr. Walter K.L. Chan

Mr. B.W. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Dr. James C.W. Lau

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Timothy K.W. Ma

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms. Julia M.K. Lau

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Professor S.C. Wong

Ms. Pansy L.P. Yau

Dr. W.K. Yau

Principal Assistant Secretary (Transport)

Transport and Housing Bureau

Mr. Fletch Chan

Deputy Director of Environmental Protection

Mr. Benny Wong

Assistant Director (2), Home Affairs Department

Mr. Andrew Tsang

Director of Lands

Miss Annie Tam

Director of Planning

Mr. Jimmy Leung

Deputy Director of Planning/District

Miss Ophelia Wong

Secretary

**Absent with Apologies**

Mr. Maurice W.M. Lee

Dr. Winnie S.M. Tang

Dr. C.P. Lau

Mr. Stephen M.W. Yip

**In Attendance**

Assistant Director of Planning/Board  
Miss H.Y. Chu

Chief Town Planner/Town Planning Board  
Ms. Christine K.C. Tse (a.m.)

Senior Town Planner/Town Planning Board  
Ms. Johanna W.Y. Cheng (p.m.)

Town Planner/Town Planning Board  
Ms. Karina W.M. Mok (a.m.)

**Agenda Item 1**

[Open Meeting]

Confirmation of Minutes of the 989<sup>th</sup> Meeting held on 12.8.2011

[The meeting was conducted in Cantonese.]

1. The minutes of the 989<sup>th</sup> Meeting held on 12.8.2011 were confirmed without amendments.

**Agenda Item 2**

[Closed Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

2. This item was recorded under confidential cover.

**Sha Tin, Tai Po and North District**

**Agenda Item 3**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TKL/362

Proposed House (New Territories Exempted House – Small House)

in “Green Belt” zone, Lot 26 S.B (Part) in D.D. 46, Tai Tong Wu, Fanling

(TPB Paper No. 8894)

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[The meeting was conducted in Cantonese.]

Presentation and Question Session

3. The following representative of the Planning Department (PlanD), the applicant and his representatives were invited to the meeting at this point:

Mr. W.K. Hui	- District Planning Officer/Shu Tin, Tai Po and North (DPO/STN)
Mr. Tang Chu Wah	- Applicant
Mr. Tang Shi Ching	] Applicant's representatives
Mr. K.K. Sit	] ]

4. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/STN to brief Members on the review application.

5. With the aid of a plan, Mr. W.K. Hui presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission to build a house (New Territories Exempted House (NTEH) – Small House) at a site zoned “Green Belt” (“GB”) on the approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14;
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 20.5.2011 for the reasons that the proposed development was not in line with the planning intention of the “GB” zone; the proposed development was not in line with the Town Planning Board Guidelines for ‘Application for Development within “GB” Zone’ (TPB PG-No. 10) and the Interim Criteria for Assessing Planning Applications for NTEH/Small House Development in the New Territories (the Interim Criteria) in that it would cause adverse landscape impacts on the surrounding areas as the mature trees in close proximity to the application site were likely to be affected; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone and the cumulative impacts of approving such applications would affect the intactness of the “GB” zone;
- (c) the application site was the subject of two previous planning applications (No. A/NE-TKL/320 and A/NE-TKL/341) for the same use submitted by the same applicant. They were rejected by the RNTPC

on 7.8.2009 and 10.9.2010 respectively for the reasons as detailed in paragraphs 4.6 and 4.7 of the Paper. There was no similar application in the vicinity of the application site within the same “GB” zone. The existing/approved village houses as shown on Plan R-2 of the Paper were located in “Agriculture” (“AGR”) and “Village Type Development” (“V”) zones rather than “GB” zone. As such, approval of the application would set an undesirable precedent for similar applications within the “GB” zone;

[Mr. Y.K. Cheng returned to join the meeting at this point.]

- (d) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper. The applicant claimed that the proposed development would not require removal and/or significant pruning of trees and the construction works would not affect the existing large mature trees. The Board had approved a number of applications for Column 2 uses within the “GB” and “AGR” zones. The proposed development fell within the village ‘environs’ (‘VE’) of Tai Tong Wu Village, which was designated before the publication of the OZP. While there was no programme to implement the planning intention of the “GB” zone and the proposed development was in line with the Small House Policy, the Board should give sympathetic and favourable consideration for villagers to build Small Houses on their own land;
- (e) the departmental comments were highlighted in paragraph 5 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) advised that the application site was well vegetated in 2008. However, as observed in the site visit on 6.7.2009, extensive vegetation clearance and paving with asphalt had occurred at the site. According to the observation in the latest site visit on 13.4.2011, the affected area had extended to the northern boundary of the site. Since the application site was located in a woodland forming an integral part of the green belt, the Chief Town Planner/Urban Design and Landscape (CTP/UD&L),

PlanD maintained her previous views of objecting to the application from the landscape planning point of view as the proposed Small House was incompatible with the surrounding woodland environment and approval of the application might attract similar applications in the “GB” zone, leading to proliferation of Small Houses and thus undermining the intactness of the “GB” zone. According to her site visit on 14.4.2011, some existing trees within the site had been felled when compared with the last site visit in 2009. Although the applicant claimed in the review application that the proposed development would not require removal and/or significant pruning of trees and the construction works would not affect mature trees, CTP/UD&L, PlanD advised that a mature tree with a spread of about 9m was located adjoining the southern boundary of the site. The trunk, canopy and root system of the tree would likely be affected by the construction works of the proposed development;

- (f) two public comments were received during the first three weeks of the statutory publication period of the review application. One commenter, who was a member of the public, supported the application without stating any reason. The other comment from Designing Hong Kong Limited opposed the application mainly on the grounds that the zoning intention and character of the area were incompatible with urban sprawl and there was a lack of plan for a sustainable village layout of infrastructure and development to ensure the health and well being of the residents as well as a quality urban design;
- (g) as detailed in paragraph 5.2.10 of the Paper, the District Officer/North advised that the concerned North District Council member, the Chairman of Sha Tau Kok District Rural Committee and one Village Representative supported the review application and expressed the views that that the Board should respect the right of land owner and the applicant was an indigenous villager of the village;
- (h) since the receipt of public comments reporting the removal of vegetation

and asphaltting of the application site, the Chief Town Planner/Central Enforcement and Prosecution (CTP/CEP), PlanD had started investigation on and would continue to monitor the matter; and

- (i) PlanD's view - PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper which were summarised as follows:
  - (i) the application site and the footprint of the proposed Small House fell entirely within the "GB" zone. The proposed development was not in line with the planning intention of the "GB" zone which was primarily for defining 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;
  - (ii) DAFC had advised that extensive vegetation clearance and paving with asphalt had occurred at the application site. CTP/UD&L, PlanD also objected to the application from the landscape planning viewpoint; and
  - (iii) although sympathetic consideration might be given to the application in that about 99.7% of the footprint of the proposed Small House was located within the 'VE' of Tai Tong Wu Village and there was a general shortage of land in meeting the demand for Small House in the "V" zone of the same village according to the latest estimate by PlanD, the proposed development did not meet the Interim Criteria in that the proposed development would affect the existing mature trees in the adjoining area. The proposed development also did not comply with the assessment criteria under TPB PG-No. 10 in that there was a general presumption against development within the "GB" zone and the proposed development would further affect



the existing natural landscape, causing adverse landscape impacts on the surrounding areas.

6. The Chairman then invited the applicant and his representatives to elaborate on the review application. Mr. K.K. Sit made the following main points:

- (a) the last sentence in paragraph 7.1 of the Paper which stated that there was a general presumption against development within the “GB” zone was not applicable to the subject application. The general presumption against development was merely to explain why so few uses were put under Columns 1 and 2 of the “GB” zone. As Small House was regarded as a Column 2 use, it was a use worth considering within the “GB” zone. This sentence should not be used as a reason to reject the application;
- (b) as stated in paragraph 7.2 of the Paper, about 99.7% of the footprint of the proposed Small House fell within the ‘VE’ of Tai Tong Wu Village. The Small House Policy was introduced by the Government in December 1972 and the boundaries of ‘VE’ for recognized villages were drawn up in around 1972/73 before the preparation of the rural OZPs after 1990. The Government should have allowed Small House development within ‘VE’ and hence the “V” zone boundary on the OZP should follow the ‘VE’. Zoning land within ‘VE’, including the application site, as “GB” instead of “V” on the OZP was in breach of Article 40 of the Basic Law, which stipulated that the lawful traditional rights and interests of the indigenous inhabitants of the New Territories should be protected by the Hong Kong Special Administrative Region. The Lands Department (LandsD) had not protected the lawful traditional rights of indigenous inhabitants by failing to point out the inconsistency between the boundary of ‘VE’ and the boundary of the “V” zone at the stage of preparation of the OZP. Similarly, PlanD and the Board had not protected the lawful traditional rights of indigenous inhabitants as part of the ‘VE’ had been designated as “GB” zone on the OZP. If the Board rejected the application, it might contravene Article 40 of the

Basic Law;

- (c) noting DAFC's comment that extensive vegetation clearance and paving with asphalt had occurred within the application site, Members should be aware that building a Small House within the 'VE' was a lawful traditional right of indigenous villagers. The vegetation clearance and paving works were only the preparation work for the construction of Small House by the applicant who was the owner of the application site. The applicant had to take some actions on his land to avoid adverse possession claim by other people. PlanD had no right to punish the applicant for the work done on the application site by not supporting the application. If the actions taken on the application site were considered unlawful, CTP/CEP should have taken enforcement action against the applicant. The Board had no power to punish the applicant for the actions taken on the site by rejecting the application;

[Mr. Rock C.N. Chen arrived to join the meeting at this point.]

- (d) the applicant noted CTP/UD&L's comment that the proposed Small House would affect the adjacent trees. As shown in the site photo on Plan R-4 of the Paper, two trees were located outside the application site. It was unfair to deny the applicant of his right to build a Small House at the application site because of its obstruction over the growth of the trees outside his site. In other similar occasions, the landowner might apply to the Court to order the owner of the adjacent site to prune the trees so as not to affect the building right of his neighbours. The landscape concern raised in paragraphs 7.3 to 7.5 of the Paper was thus considered unreasonable;
- (e) PlanD indicated that there was no similar application for proposed Small House development within the same "GB" zone in the vicinity of the application site. However, as shown in Plan R-2 of the Paper, Application No. A/NE-TKL/323 for proposed Small House had been approved by the RNTPC and part of the application site fell within the

same “GB” zone. The planning circumstances of Application No. A/NE-TKL/323 and the subject application were the same;

- (f) by referring to Plan R-2 of the Paper, Members should note that the “GB” zoning boundary was not appropriately drawn. It took no account of the ‘VE’ boundary. The “GB” zoning boundary should be moved by about 80m to follow the foothill line so as to include woodlands on the hillside, and exclude the agricultural and building lots on the foothill area. If the Government had plans to implement the planning intention of the “GB” zone, the agricultural and building lots should be resumed for such purpose. Otherwise, the “GB” zoning should exclude the foothill area; and
  
- (g) if the Board decided to approve the application, only one condition should be imposed, requiring the applicant to apply to the LandsD for the proposed Small House within one year from the date of the planning approval. In processing Small House applications by LandsD, it would issue certificates of exemption and monitor such aspects as drainage and landscape in relation to the proposed Small House in accordance with the Buildings Ordinance (Cap. 121). There was no need to impose the three conditions as suggested by PlanD in paragraph 8.2 of the Paper. Approval conditions (a) and (c), which were related to the provision of drainage facilities and fire safety measures were not required by relevant departments including the Drainage Services Department (DSD), the Fire Services Department (FSD) and the Water Supplies Department (WSD). On the drainage aspect, the Chief Engineer/Mainland North (CE/MN), DSD only advised the applicant to note that any development, including the proposed Small House, in the area might be subject to flooding risk and this had already been included in advisory clause (a) as stated in paragraph 8.2(a) of the Paper. It was the responsibility of DSD, not the applicant, to resolve the flooding problem in the area. Similarly, the Director of Fire Services (D of FS) and the Director of Water Supplies (DWS) only requested the applicant to note their comments as stated in advisory clauses (b) and (c) respectively. For

approval condition (b) which was related to the submission and implementation of landscape proposals, CTP/UD&L might require the applicant to undertake a baseline survey involving the use of ultra-sound method to examine the current conditions of the root system of trees. Failure to comply with the condition by a specified date might result in revocation of the planning permission. By revoking the planning permission, the Board was acting unlawfully as there was no provision in the Town Planning Ordinance for the Board to delegate its authority to CTP/UD&L.

7. By referring to paragraphs 5.2.4(b) and 5.2.8(a) of the Paper, a Member said that DSD and D of FS's request to impose relevant conditions relating to the drainage and fire safety aspects were very clear. This Member asked why the applicant's representative claimed that such conditions were not required. Mr. K.K. Sit said that CE/MN, DSD had clearly stated its stance of having no in-principle objection to the application in paragraph 5.2.4(a) of the Paper and hence Members should consider whether the request for a condition on drainage proposal was reasonable. Mr. Sit said that if Small Houses would cause flooding problem, the Government should not have introduced the Small House Policy several decades ago. Mr. Sit continued to say that as there was past record of suspected unauthorised land filling of the river nearby, CE/MN, DSD only intended to alert the applicant that the proposed Small House might be subject to flooding risk. The flooding risk was not caused by the proposed Small House and hence it should be addressed by the Government rather than the applicant. The same argument applied to the fire safety measures as requested by D of FS.

8. The same Member asked what considerations had been taken into account in processing similar cases which fell within the 'VE' and "GB" zone. With the aid of Plans R-2 and R-3b of the Paper, Mr. W.K. Hui said that the area covered by the "GB" zoning was generally well-wooded, including the concerned foothill area as raised by the applicant's representative at the meeting. For applications which fell within the "GB" zone, the proposed development had to meet the assessment criteria as specified in TPB PG-No. 10. As stated in paragraphs 4.4(a) and (b) of the Paper, there was a general presumption against development within the "GB" zone and an application for new development within the "GB" zone would only be considered in exceptional circumstances

and must be justified with very strong planning grounds. Notwithstanding, applications for NTEH/Small House development within the “GB” zone might be approved by the Board if they complied with the assessment criteria in TPB PG-No. 10 and the Interim Criteria as stated in Appendix II of Annex A of the Paper e.g. the proposed NTEH/Small House should not cause adverse landscape impact and be compatible with the character of the surrounding areas.

9. A Member asked PlanD to comment on the applicant’s claim that the Board would contravene Article 40 of the Basic Law if the application was rejected. Mr. W.K. Hui said that similar concern had been raised in some previous meetings of the Board and it was understood that since the right to build Small House had been subject to the Town Planning Ordinance before the Basic Law came into force, Small House development was subject to statutory planning control and the Board would not contravene Article 40 of the Basic Law.

[Mr. Clarence W.C. Leung left the meeting temporarily at this point.]

10. A Member asked if the previous applications (No. A/NE-TKL/320 and A/NE-TKL/341) were the same as the subject application. Referring to Appendix III of Annex A of the Paper, Mr. W.K. Hui said that the two previous applications were submitted by the same applicant for the same use i.e. proposed Small House at the same application site. They were rejected by the RNTPC in 2009 and 2010 respectively for similar reasons, including that the proposed development was not in line with the “GB” zone and would have adverse landscape impacts. Since the rejection of the previous applications, there was no significant change in the planning circumstances and hence PlanD recommended to reject the current application.

11. In response to a Member’s question, Mr. W.K. Hui said that the annotation of “vacant” to the southeast of the application site on Plan R-2 of the Paper referred to the existing use of that piece of land which was currently vacant. This was based on a recent land use survey conducted by PlanD. Mr. Hui added that as shown on the same Plan, planning permissions for proposed Small Houses in the vicinity had been granted by the RNTPC in 2009 and 2010 under Applications No. A/NE-TKL/323 to 326 and 333. Except Application No. A/NE-TKL/323 which fell partly within the “GB” zone, these

applications fell within the “AGR” zone.

[Mr. Clarence W.C. Leung returned to join the meeting at this point.]

12. Regarding DPO/STN’s response to the Basic Law issue, Mr. K.K. Sit said that as 1997 was used as the reference year, if the Board decided at this meeting to reject the application, the contention that the Board had contravened Article 40 of the Basic Law would become valid.

13. Mr. Tang Shi Ching said that he was the Village Representative of the subject village. The foothill area of the subject “GB” zone comprised chicken sheds and was overgrown with weeds. Recently, the landowners received letters from LandsD requesting them to clear the overgrown weeds. However, the Government did not provide resources to the villagers for maintaining the area. While agreeing to protecting the green environment within the “GB” zone, the “GB” area should be maintained by the Government rather than the landowners.

14. By referring to Plans R-3a and R-3b of the Paper, a Member said that the aerial photo taken on 14.11.2008 had shown that the application site was well wooded at that time, while the aerial photo taken on 3.8.2010 had shown that part of the site was cleared and paved. The entire site was formed and paved as shown on the site photo in Plan R-4 of the Paper. This Member asked if the applicant had cleared the vegetation and paved the application site in the last few years. Mr. K.K. Sit said that the applicant had formed the site and cut the grasses there and such actions were lawful and reasonable as they were preparation work for the construction of a Small House on the site. He reiterated that the applicant had to take such actions to avoid adverse possession of his land by other people.

15. A Member asked the applicant and his representatives if they had any new justifications to convince the Board that the application should be supported. Mr. K.K. Sit replied in the negative and said that according to the Interim Criteria, sympathetic consideration might be given if not less than 50% of the proposed NTEH/Small House footprint fell within the ‘VE’ of a recognized village and there was a general shortage of land in meeting the Small House demand in the “V” zone of the village. While there were also other considerations such as landscape and environmental aspects as stipulated

in the Interim Criteria, the subject application should be considered based on its own circumstances. There was no reason to assume that the proposed Small House was for making profit or would adversely affect the environment.

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

#### Deliberation Session

17. A Member said that two previous applications in respect of the application site had been rejected by the RNTPC in 2009 and 2010. The applicant and his representatives had not provided any new justifications for the Board to deviate from the previous decisions of the RNTPC. The approval conditions as suggested by PlanD in paragraph 8.2 of the Paper were at the request of the relevant government departments. As such, this Member did not agree with the applicant's representative that the three approval conditions should be deleted if the Board approved the application. Notwithstanding, noting that about 99.7% of the footprint of the proposed Small House fell within the 'VE' boundary, this Member asked how the "GB" zoning boundary was drawn up.

18. The Secretary said that the "GB" zoning boundary was drawn up having regard to various considerations, including the existing site conditions, topography, vegetation cover, etc. In drawing up the "V" zoning boundary, various considerations including the 'VE' boundary, the geographical features and the vegetation coverage would be taken into account. The application site was well vegetated before 2008 and as shown in the two previous applications, the vegetation at the application site had been cleared and the site was paved in 2009. Members should also note that the applicant's representative had acknowledged at this meeting that such actions were undertaken by the applicant to prepare for the construction of the proposed Small House at the site.

19. The Secretary continued to say that generally speaking, an application for

NTEH/Small House development within the ‘VE’ might be approved if there was a shortage of land in the “V” zone of the village to meet the Small House demand and the proposed NTEH/Small House would not create adverse landscape impact. While there was a shortage of land in the “V” zone, there was still land within the adjacent “AGR” zone which might be used for Small House development. In fact, the RNTPC had previously approved a number of applications for proposed Small House in the adjacent “AGR” zone as shown in Plan R-2 of the Paper.

20. A Member said that any act of “destroy first, build later” should not be tolerated. As the applicant’s representative had acknowledged that the application site was cleared and formed by the applicant and there was no indication that the applicant would re-instate the site, this Member said that the application should not be supported.

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

21. A Member shared the same view that the application should not be supported. Regarding the Basic Law issue, this Member said that a development right was not absolute and had to be subject to control by the relevant legislations/regulations. The Secretary said that in considering applications in the rural areas, it was not uncommon that the applicants would claim for protection under Article 40 of the Basic Law regarding the lawful traditional rights/interests of the indigenous inhabitants of the New Territories. The Department of Justice had previously advised that while Small House grants were covered by Article 40 of the Basic Law, they were subject to statutory planning control as provided for in the Town Planning Ordinance.

22. While agreeing with other Members’ views that the application should not be supported, a Member asked whether CTP/CEP, PlanD had investigated the case and would undertake enforcement action against the clearance of vegetation and paving at the application site. The Secretary said that as indicated in paragraph 7.3 of the Paper, CTP/CEP, PlanD was collecting evidence at this stage before determining whether enforcement action should be taken.

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



23. A Member noted that about 99.7% of the footprint of the proposed Small House fell within the 'VE' and the application site was located at the fringe of the "GB" zone. However, it was not appropriate for the Board to examine the boundary of the "GB" zoning at this meeting, as the OZP zoning had gone through a due process of plan making and public consultation. In this regard, this Member agreed that the application should be rejected.

24. The Chairman summarised Members' views that the application should not be supported as the proposed Small House was not in line with the planning intention of the "GB" zone and would cause adverse landscape impacts on the surrounding areas. Besides, approval of the application would set an undesirable precedent for other similar applications within the "GB" zone. Members also considered that any Small House development should comply with the relevant government legislation/regulations and the applicant had the responsibility to undertake measures to address the potential impacts caused by the proposed Small House development.

25. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the proposed development was not in line with the planning intention of the "Green Belt" ("GB") zone which was primarily for defining 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 and there was a general presumption against development within this zone;
- (b) the proposed development was not in line with the Town Planning Board Guidelines for 'Application for Development within "Green Belt" Zone under Section 16 of the Town Planning Ordinance' and the Interim Criteria for Assessing Planning Applications for New Territories Exempted House/Small House Development in the New Territories in that it would cause adverse landscape impacts on the surrounding areas as the mature trees in close proximity to the application site were likely to be affected; and

- (c) the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative impacts of approving such application would affect the intactness of the “GB” zone and cause adverse landscape impacts on the surrounding areas.

[Dr. James C.W. Lau, Mr. Felix W. Fong, Professor P.P. Ho and Professor Paul K.S. Lam left the meeting temporarily.]

[Miss Anita W.T. Ma arrived to join the meeting at this point.]

[Mr. Andrew Tsang and Mr. Fletch Chan left the meeting at this point.]

#### **Agenda Item 4**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-HT/707

Proposed Pond Filling for Agricultural Use in “Agriculture” zone,  
Lot 399 RP (Part) in D.D. 128, Deep Bay Road, Ha Tsuen, Yuen Long  
(TPB Paper No. 8895)

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[The meeting was conducted in Cantonese.]

#### **Presentation and Question Session**

26. The following representatives from the Planning Department (PlanD) and the applicant were invited to the meeting:

Ms. Amy Cheung	-	District Planning Officer/Tuen Mun & Yuen Long (DPO/TMYL)
Mr. Tam Kin Tak	]	
Mr. Tang Ki Sum	]	Applicant’s representatives
Mr. Tang Kam Chai	]	

27. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

[Dr. James C.W. Lau, Mr. Felix W. Fong and Mr. Benny Wong returned to join the meeting at this point.]

28. With the aid of a Powerpoint presentation, Ms. Amy Cheung presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for pond filling to a level of +4.0mPD (depth of about 1.1m) for agricultural use (growing vegetables) at a site zoned “Agriculture” (“AGR”) on the approved Ha Tsuen Outline Zoning Plan (OZP) No. S/YL-HT/10. The application site was located on the southern side of Deep Bay Road and had an area of about 1,709m<sup>2</sup>;
- (b) photos showing the existing conditions of the application site and the surrounding areas were shown to Members. The application site covered part of Lot 399 RP in D.D. 128 and adjoining this lot was a piece of government land (GL) as highlighted in grey colour in Plan R-2 of the Paper. While the periphery of the application site was relatively dry, there was water in the central and western portions of the site as well as the adjoining GL. During PlanD’s site visit on 12.4.2011, a *Common Moorhen*, which was a wetland-dependent species, was spotted swimming in the pond. To the south and east of the application site were mainly unused land and fallow agricultural land. Some larger ponds were located to the north of the site across Deep Bay Road in the “Coastal Protection Area” zone;
- (c) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 14.1.2011 for the reasons that the applicant failed to demonstrate that the proposed pond filling would not cause adverse drainage and ecological impacts on the surrounding areas, and approval of the application would set an undesirable precedent and

encourage similar applications leading to the degradation of habitats in the Deep Bay area;

[Professor P.P. Ho returned to join the meeting at this point.]

- (d) the justifications put forth by the applicant in support of the review application were highlighted in paragraph 3 of the Paper and summarised below:
  - (i) the proposed pond filling was in line with the planning intention of the “AGR” zone as ‘Agricultural Use’ was always permitted under the zone. The site was small and the proposed pond filling would not cause flooding risk or significant environmental and landscape impacts. If the application was approved, a drainage proposal would be submitted and a proper drainage system would be provided and maintained for the proposed development;
  - (ii) as the proposed filling works was limited to the pond area only, the adjoining GL would not be affected;
  - (iii) portion of the subject pond had been filled with construction wastes without the agreement/consent of the applicant. The pond was not suitable for fish farming as the water was stagnant and contaminated by the construction wastes and the adjacent plastic recycling yard;
  - (iv) during the applicant’s site visits on 16.3.2011 and 20.4.2011, no bird was seen at the pond. The *Common Moorhen* and *Zitting Cisticola* observed by the Director of Agriculture, Fisheries and Conservation (DAFC) were resident birds which did not entirely rely on the subject pond in their daily lives. Therefore, partial filling of the pond would not significantly affect the birds;
  - (v) it was not appropriate to preserve the stagnant pond for fish farming as it was a good breeding site for mosquitoes. The applicant disagreed with the Director of Food, Environment and Health

(DFEH)'s views that addition of mosquito-eating fish into the pond could control mosquito breeding because this would cause potential ecological impact and such fishes would be eaten by waterbirds;

(vi) it was unfair to the applicant as the commenters who objected to the previous application (No. A/YL-HT/644) on the grounds of wetland loss had not undertaken any formal ecological survey; and

(vii) there was no major adverse departmental comment that would result in the Board not giving sympathetic consideration to the application;

(e) the departmental comments were highlighted in paragraph 5 of the Paper. DAFC advised that the subject pond consisted of open waters and was extensively covered with emergent/floating plants. Wetland habitat, mainly reed marsh, was also found to the southeast of the application site. Considering the current state of the site and its surrounding area, the subject pond and its adjacent wetland provided suitable roosting/feeding habitats for some waterbirds and wetland-dependent species (both resident and migratory). The proposed pond filling would inevitably result in a loss of wetland habitat and wetland function in the remaining portion of the pond. As such, he maintained his previous view of not supporting the application from the nature conservation viewpoint. DAFC considered that even though the pond was currently inactive, there was potential for redevelopment of the pond for aquaculture and hence maintained his previous view that the existing fish pond should be preserved for fish farming. The District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) required the applicant to demonstrate and ensure that the proposed filling works would be undertaken without affecting the adjoining GL. Other departments had no in-principle objection to or adverse comments on the application;

(f) during the first three weeks of the statutory publication periods of the review application and the further information, three public comments

raising objection to the application were received. Designing Hong Kong Limited considered that the proposed pond filling was incompatible with the planning intention of the “AGR” zone and the character of the area. Approval of the application would result in irreversible ecological loss to the area. The applicant should submit an ecological impact assessment to demonstrate that the integrity of the wetland ecosystem would be maintained. The Hong Kong Bird Watching Society expressed the views that the site was ecologically linked to the internationally important Deep Bay wetlands. The proposed pond filling would lead to a loss in wetland area/function and biodiversity at the site and in Deep Bay. A Yuen Long District Council member opined that fishponds were becoming scarce in Yuen Long and the subject pond should be retained as a nature conservation area; and

[Professor Paul K.S. Lam returned to join the meeting at this point.]

- (g) PlanD’s view - PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were summarised below:
  - (i) although agricultural use in the “AGR” zone was always permitted, pond filling within the zone required planning permission from the Board primarily to ensure that it would not cause adverse drainage and ecological impacts on the adjacent areas. DAFC did not support the application from the ecological viewpoint. Besides, the Chief Engineer/Mainland North, Drainage Services Department noted the absence of drainage proposal in the applicant’s submission and required a proper drainage system for the proposed pond filling;
  - (ii) although the applicant claimed that the subject pond was not suitable for fish farming, DAFC advised that there was potential for redevelopment of the pond for aquaculture;

- (iii) while the subject pond comprised both private land and GL, the applicant proposed to fill up the site which covered only part of the pond. Despite DLO/YL's comments, the applicant had only confirmed that the adjoining GL would not be affected without detailing as to how this could be achieved;
- (iv) regarding the applicant's claim that the stagnant pond was a breeding site for mosquitoes and addition of mosquito-eating fish into the pond would cause potential ecological impact, DAFC advised that mosquito-eating fish was a common species in local freshwater ecosystems and hence the addition of such fish into the pond would unlikely cause significant adverse ecological impact;
- (v) whilst the Chief Town Planner/Urban Design and Landscape, PlanD had no objection to the application from the landscape planning viewpoint, she advised that the site was of high landscape value and the negative impacts on the existing landscape character of the site due to the proposed pond filling could only be tolerated if it was indeed used for arable farming purpose; and
- (vi) although a similar application (No. A/YL-HT/157) for pond filling for planting of fruit trees was approved by the RNTPC in 2000, the site was currently being used for storage which was a suspected unauthorised development. Since then, a similar application (No. A/YL-HT/506) for land filling for agricultural use was rejected by the RNTPC in 2007. On 16.4.2010, the Board also rejected on review the previous application (No. A/YL-HT/644) covering a larger area including the application site for proposed pond filling for agricultural use. There was no material change in the planning circumstances to merit a departure of the previous decisions of the RNTPC on the similar/previous applications.

29. The Chairman then invited the applicant and his representatives to elaborate on the review application. Mr. Tam Kin Tak made the following main points:

- (a) if the application was approved by the Board, the applicant would employ a surveyor to set out the boundary of the portion of the subject pond that would be filled up to avoid encroaching onto the GL;
- (b) DAFC had only observed a *Common Moorhen* at the application site during his site visit in December 2010, but no birds were found in April and July 2011. The rare presence of birds demonstrated that the ecological value of the application site was not high. According to the Hong Kong Bird Watching Society's information, *Common Moorhen* was a kind of resident bird which could be found throughout the year in Hong Kong. In this regard, it was unfair to the applicant if the application was rejected because of the presence of *Common Moorhen* at the application site;
- (c) DAFC advised that the subject pond had the potential for redevelopment for aquaculture use. However, this would involve delineating the boundary of the application site, building the bunds, as well as filling and pumping water into the site. Reflection materials such as compact discs would also have to be hung up near the site to scare the birds away from eating the fish in the pond. Moreover, the application site was not suitable for fish farming as the water had been contaminated by unauthorised dumping of construction wastes in the adjacent area;
- (d) in response to DAFC's comments, the applicant now proposed to use the application site for wet agricultural practices (e.g. growing of water spinach) after pond filling. This could provide a habitat for birds while allowing the applicant to grow vegetables at the site; and
- (e) the applicant had contacted the three commenters who had raised objection to the review application before the meeting. After being informed of the applicant's proposal in details, the three commenters indicated that they supported the application, but they were unable to attend the review hearing or provide written record to confirm their



support. The commenters said that if the applicant submitted a fresh application in future, they would not raise objection.

30. Mr. Tang Ki Sum made the following main points:

- (a) Mr. Tang was the husband of the applicant. Three days ago, he had contacted the Yuen Long District Council member, Mr. Wong Wai Ying, who was one of the commenters raising objection to the subject application. While Mr. Wong indicated that he generally objected to filling of fish ponds, he asked if the applicant could farm on the adjacent land rather than the application site. In this regard, Mr. Tang explained to Mr. Wong that the subject pond had been abandoned for many years as he could not earn a living from fish farming. The adjacent area had been contaminated and was not suitable for agricultural use. Mr. Tang also assured Mr. Wong that the application site would be used for agricultural purpose upon filling and not open storage as the road serving the site could not allow lorries to pass through. Although Mr. Wong was unable to attend the review hearing, he had indicated that if a fresh application was made in future, he would not object to the application.

31. Mr. Tang Kam Chai made the following main points:

- (a) the fact that DAFC only observed a *Common Moorhen* at the pond in one occasion had demonstrated that the birds only habitually looked for food at the subject pond. As no food could be found at the pond, the birds flew away to other places for food; and
- (b) Designing Hong Kong Limited, one of the commenters on the review application, was contacted before the meeting and indicated that it generally supported agricultural use at the site. If the applicant applied again, it would support the application.

32. Noting that the applicant had revised the proposal and proposed at the meeting to use the application site for wet agricultural practices upon filling, a Member asked

whether the pond would still need to be filled or whether the extent of filling could be reduced. This Member was also concerned if the wet agricultural practices at the application site could still provide a suitable habitat for birds.

33. Mr. Tam Kin Tak said that pond filling was required regardless of whether the site would be used for dry or wet agricultural practices. However, under the revised proposal, the level of pond filling could be reduced from the original depth of about 1.1m to about 0.5-0.8m. Mr. Tang Kam Chai added that with such level, the applicant could grow water spinach in summer and water cress in autumn. Besides, micro-organisms or snails living in the vegetable field would provide a source of food for birds.

34. A Member noted that only the cross-section of the original pond filling proposal of about 1.1m in depth as shown in Drawing A-1 of Annex A of the Paper was included in the submission and the revised proposal mentioned by the applicant's representatives at the meeting was not provided. This Member asked the applicant's representatives if a fresh application would be submitted for the revised proposal. Mr. Tam Kin Tak said that the applicant hoped that the Board would consider the revised proposal at this meeting rather than requesting the applicant to submit a fresh application as the nature of the proposal was the same. Members' concerns could be addressed through the imposition of approval conditions.

35. In response to the same Member's question, Ms. Amy Cheung said that although the level of filling was reduced, the nature of use being applied for was still pond filling for agricultural use. As such, the revised proposal could be considered under the current application.

36. Mr. Tang Ki Sum said that he was a farmer and as fish farming was no longer suitable at the application site because of the polluted water, he applied to fill the site for agricultural use. He said that the types of vegetables he chose to grow would depend on the season and he would not be bound by whether it was dry or wet agricultural practices. Instead, it was important to ensure that the depth of water at the site would not drown his crops. He also pointed out that he had previously reported to the police about an occasion of illegal dumping of construction wastes in the adjacent area.

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

37. Noting the different views of Mr. Tam and Mr. Tang on the types of agricultural practice to be undertaken on the application site, the Chairman asked whether the applicant would only use the application site for wet agricultural practices as proposed earlier at the meeting. Mr. Tam Kin Tak clarified that the applicant agreed to confine the use of the application site for wet agricultural practices only, but not restricting the types of vegetables to be grown. Mr. Tam also added that the subject pond and the adjacent areas were served by a road and there was unauthorised dumping near the application site. This was, however, not done nor permitted by the applicant.

38. A Member asked at what time the *Common Moorhen* was found at the application site and whether any birds were found in the surrounding areas. Ms. Amy Cheung said that *Common Moorhen* was found during the office hours on 12.4.2011. Birds were also found in the adjacent ponds, although no photos had been taken. Mr. Tam Kin Tak said that according to the Paper, no bird was found during the site visits undertaken by PlanD on 8.4.2011 and 21.7.2011.

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

39. A Member said that the applicant should provide detailed information about the revised proposal e.g. the revised extent of pond filling. This Member also asked if the applicant also owned the adjoining land and if affirmative, the reasons for not using the adjoining land for growing vegetables. Mr. Tam Kin Tak said that under the revised proposal, the extent of filling at the application site would be at a depth of about 0.6m, leaving about 0.5m depth of water for wet agricultural practices. The applicant was the sole owner of Lots 399 RP and 401 in D.D. 128. The adjacent Lot 401 in D.D. 128 was also a fish pond, but was currently covered with weeds. Mr. Tang Ki Sum said that Lots 399 RP and 401 in D.D. 128 were previously fish ponds which had been abandoned for over 20 years. They would dry up after the rainy season. Mr. Tang Kam Chai added that birds were found feeding at the ponds to the north of the application site across Deep Bay Road rather than the subject pond which had already been abandoned.

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

40. A Member asked how the applicant would separate the GL portion of the subject pond from the proposed land filling. In response, Mr. Tam Kin Tak said that the applicant would adopt a simple method by building bunds with soil/sand to separate the GL portion from the application site. Mr. Tang Kam Chai added that 2-3m wide bunds would be provided at the periphery of the application site. Water kept inside the GL portion of the pond could be used for cultivation at the application site.

[Mr. Clarence W.C. Leung left the meeting temporarily at this point.]

41. A Member asked if the applicant had made any reference to the Long Valley experience in carrying out dry and wet agricultural practices. Mr. Tang Kam Chai said that there were many different ways to undertake wet agricultural practices. The experience at Long Valley might not be applicable to the application site which had its own site characteristics.

42. In response to a Member's question, Mr. Tang Ki Sum said that the pond was dug by the applicant in the 1960s and it had been abandoned for about 20 years.

43. The same Member was concerned how the applicant could carry out his farming activity when there was a variation in site levels as a result of the proposed filling of only a portion of Lot 399 in D.D. 128. Mr. Tang Kam Chai said that upon the proposed pond filling, the application site would be filled with water for growing vegetables. In response to the same Member's questions, Mr. Tang Ki Sum explained that Lots 399 RP and 401 in D.D. 128 were both ponds with bunds around their periphery. The two lots were separated by a narrow strip of GL. Mr. Tam Kin Tak said part of the ponds had dried up and was covered with weeds. If the subject application was approved, the applicant would consider how the remaining area of the ponds outside the application site could be used.

[Mr. Clarence W.C. Leung returned to join the meeting at this point.]

44. In response to the same Member's question, Ms. Amy Cheung showed the location of Lot 401 in D.D. 128 to Members with the aid of Drawing A-1 in Annex A of

the Paper. This Member asked if the applicant intended to rehabilitate both Lots 399 RP and 401 in D.D. 128 for agricultural use. Mr. Tam Kin Tak said that the applicant had previously submitted a planning application for pond filling for agricultural use covering the two lots and the strip of GL in between but was rejected. The current application had therefore been amended to cover only part of Lot 399 RP. If the Board approved the subject application, the applicant would consider the use of Lot 401.

45. A Member asked about the source of filling materials for the application site. Mr. Tang Kam Chai said that a kind of yellow soil (黃花沙) which was suitable for cultivation would be used for pond filling at the application site and this kind of soil could be found in Choi Yuen Village.

46. A Member asked for information about the illegal dumping near the application site. In response, Mr. Tang Kam Chai said that PlanD had informed the concerned landowner in writing about the illegal dumping of construction wastes at the periphery of the pond near Lot 401 in D.D. 128. The landowner had not given consent to such act and had removed the construction wastes several days later.

47. Noting that the applicant's claim that the commenters would not object to the application after knowing the details of the application, a Member asked if the applicant would consider submitting a fresh application. Mr. Tam Kin Tak said that the applicant did not know who the commenters were until she received the TPB Paper a week ago. Subsequently, the applicant contacted the commenters who indicated that they did not object to the applicant's proposal but they did not have time to attend the review hearing or provide written record. The applicant would consider submitting a fresh application if the Board decided to reject the application.

48. Mr. Tang Kam Chai concluded and said that the applicant had genuine intention to rehabilitate the application site for agricultural use. There was no intention to form the site for other purpose such as container vehicle park.

49. As the applicant's representatives had no further comment to make and Members had no further question, the Chairman informed them that the hearing procedures for the review application had been completed. The Board would further deliberate on

the review application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked DPO/TMYL and the applicant's representatives for attending the meeting. They all left the meeting at this point.

### Deliberation Session

50. The Vice-chairman said that according to his knowledge, the filling of the application site to a depth of about 1.1m as originally proposed, or about 0.6m with the applicant's revised proposal, would not make much difference for wet agricultural practices. It was also difficult to ensure that the actual depth of filling was at 0.6m. The Vice-chairman also pointed out that the fish pond had been abandoned for some 20 years and fish farming was no longer a profitable business, and he supported the rehabilitation of the site for agricultural use.

51. The Chairman said that DAFC's view on the applicant's revised proposal to reduce the amount of filling at the application site for wet agricultural practices was not available. Members might wish to consider if the application should be rejected, after which the applicant could submit a fresh application with the revised proposal. The relevant government departments would then have the opportunity to comment on the revised proposal.

52. A Member said that the proposed pond filling was for agricultural use which was in line with the Government's intention to encourage agricultural rehabilitation. Notwithstanding, this Member considered that the application could not be supported at this stage given the lack of information on the revised proposal. Also, the new position of the commenters as claimed by the applicant's representatives was not clear. Another Member also supported agricultural rehabilitation in general, but agreed that there should be clearer information about the revised proposal before the application could be approved.

53. A Member said that it was common in the rural areas for different types of agricultural activities to take place in an area alternatively over time, i.e. fish farming and growing of vegetables and vice versa. Moreover, conservation and agricultural activities were not necessarily in conflict with each other as demonstrated by the success of the Long Valley experience. However, this Member agreed that there was insufficient information

about the revised proposal and hence the current application could not be supported.

54. Another Member gave support to the application and opined that the applicant was a farmer and there was no reason to speculate that the proposed pond filling was not for agricultural use, especially that the application site was not large.

55. A Member said that it was difficult to earn a living from fish farming in Hong Kong. If the application site was converted to unauthorised use upon filling, the Planning Authority could take enforcement action.

56. A Member did not understand why DAFC did not support the application given its position in other applications to encourage agricultural rehabilitation under “AGR” zone. In addition, although there was a lack of information about the revised pond filling proposal, this Member asked if it would be more appropriate to defer the application so as to allow time for gathering the necessary information.

57. A Member said that DAFC was not objecting to agricultural rehabilitation in general, but was concerned about the change of ecological habitat after pond filling which might be undesirable for *Common Moorhen* or other birds found at the application site.

58. The Chairman said that there were three courses of actions that Members could consider :

- (a) to support the application;
- (b) to reject the application due to the lack of information on the revised proposal and the applicant could submit a fresh application for the revised proposal; or
- (c) to defer the application and requested the applicant to submit further information on the revised proposal.

59. The Secretary added that the revised proposal had not been circulated to the relevant government departments for comments. DAFC could not provide comment from

the ecological viewpoint without detailed information on the revised proposal. The Secretary continued to point out that planning permission for pond filling at the application site was required to ensure that it would not result in adverse ecological and drainage impacts on the adjacent areas. The drainage issue had not been addressed by the applicant's representatives at this meeting

60. In response to a Member's question, the Secretary said that if the application was rejected by the Board, the applicant had to submit a fresh application which would be considered by the Board within the two-month statutory time limit. If the application was deferred by the Board, the application would be submitted to the Board for consideration after the submission of the further information by the applicant.

61. A Member asked if the applied use was still the same under the revised proposal for wet agricultural practices at the application site. The Secretary clarified that according to the Notes for the subject "AGR" zone, pond filling required planning permission from the Board. However, agricultural use, be it dry or wet agricultural practices, was always permitted within the "AGR" zone.

62. The Chairman summarised Members' views that whilst agricultural rehabilitation of the site was supported, consideration of the application should be deferred pending the submission of further information from the applicant on the revised pond filling proposal and how to address Members' concerns as expressed at the meeting .

63. After further deliberation, the Board decided to defer a decision on the application pending the submission of further information from the applicant on the revised pond filling proposal and how to address Members' concerns as expressed at the meeting.



**Agenda Item 5**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-SK/163

Temporary Open Storage of Vehicles (Buses, Minibuses, Private Cars and Goods Vans) that are Pending Repairing or Having Been Repaired for a Period of 3 Years in “Agriculture” Zone, Lots 1324 (Part) and 1328 (Part) in D.D. 114, Kam Sheung Road, Yuen Long (TPB Paper No. 8896)

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[The meeting was conducted in Cantonese.]

**Presentation and Question Session**

64. The following representatives from the Planning Department (PlanD) and the applicant were invited to the meeting:

Ms. Amy Cheung - District Planning Officer/Tuen Mun & Yuen Long (DPO/TMYL)

Mr. Lim Hung Tat - Applicant’s representative

65. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/TMYL to brief Members on the review application.

66. With the aid of a Powerpoint presentation, Ms. Amy Cheung presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for temporary open storage of vehicles (buses, minibuses, private cars and goods vans) that were pending repairing or having been repaired for a period of three years at the application site zoned “Agriculture” (“AGR”) on the approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9. The application site comprised the northern and southern portions. The application site provided space for accommodating vehicles that were pending repairing or having been repaired in the vehicle repair workshop to the immediate north of the application site. The vehicle repair workshop was run by

the applicant and was an 'existing use' tolerated under the Town Planning Ordinance (the Ordinance). Photos showing the existing conditions of the application site and the surrounding areas were shown to Members;

- (b) according to the applicant's proposal, there were two structures within the application site, with a total floor area of about 290m<sup>2</sup> and a height of about 2.2-4m (one storey) for office and storeroom uses. The open area of the site would provide 30 storage spaces for buses, ten storage spaces for minibuses and ten storage spaces for private cars/goods vans;
- (c) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 15.4.2011 for the reasons that the development was not in line with the planning intention of the "AGR" zone and there was no strong planning justification for a departure from the planning intention, even on a temporary basis. Besides, the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site, no relevant technical assessments had been provided to demonstrate that the development would not generate adverse environmental and landscape impacts on the surrounding areas, and there were adverse departmental comments on and local objections to the application. The development was also not compatible with the residential uses located to its immediate east and southwest and in the vicinity and with the rural character of the area. Approval of the application, even on a temporary basis, would set an undesirable precedent;
- (d) the justifications put forth by the applicant in support of the review application were highlighted in paragraph 3 of the Paper and summarised below:
  - (i) the application site had been paved with concrete and left idle for some years, with weeds growing wildly on them. As such, the application site might not be regarded as fallow arable land with

good potential for agricultural rehabilitation;

- (ii) as there were already a considerable number of open storage yards along the section of Kam Sheung Road near the application site, the current application would not set a precedent;
  - (iii) the applicant did not intend to commence the applied use at the application site without valid planning permission. He only needed some time to prepare for the application;
  - (iv) most of the access track leading to the site was owned by the applicant and hence the development would not cause any problem in the use of public road;
  - (v) before the applicant used the application site, the site had already been paved and erected with structures. The applicant also had not felled any trees on the site;
  - (vi) as the utilization rate of the southern portion of the site was lower than that of the northern portion, there would not be much visual impact. If required, the applicant was willing to improve the landscape of the southern portion; and
  - (vii) as regards the public comments received at the s.16 stage raising concerns on traffic impact, noise and dust nuisances, blight on the environment and setting of undesirable precedent, there were no valid justifications to substantiate the opposing views;
- (e) the departmental comments were highlighted in paragraph 5 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application from the agricultural viewpoint as the site had good accessibility and sufficient irrigation resources, and hence had high potential for agricultural rehabilitation e.g. nursery or greenhouse cultivation. The Chief Town Planner/Urban Design and Landscape

(CTP/UD&L), PlanD objected to the application from the landscape planning viewpoint as the activities associated with the open storage use had already adversely affected the rural character of the area, and approval of the application would further encourage similar uses to encroach onto the predominantly rural area and further deteriorate the landscape quality. Besides, the open storage development was considered not compatible with the existing rural village landscape character in the vicinity. The Director of Environmental Protection (DEP) did not support the application as there were sensitive receivers of residential uses to the immediate east and southwest and in the vicinity of the site. Environmental nuisance was thus expected. The District Lands Officer, Yuen Long, Lands Department provided background information on the previous uses of the application site, indicating that the site was chicken sheds and pigsty in the past but it was subsequently changed to unauthorised open storage use. Other departments generally had no adverse comments on the application;

- (f) during the first three weeks of the statutory publication period of the review application, two public comments were received. The first comment from a group of villagers of Pat Heung Sheung Tsuen objected to the application mainly on the grounds that the development would overload the local traffic capacity, affect road safety and adversely affect the ecological environment of the area; the streams and underground water would be polluted by the industrial grease and waste from the site; and the exhaust fumes from the stored vehicles would pollute the air and affect the health of the villagers. The second comment from a Yuen Long District Council member pointed out that someone had blamed him for providing comments on the application at the s.16 stage, resulting in the rejection of the application. He indicated that he had no comment on this case and wished the Board to make its own ruling; and
- (g) PlanD's view - PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were

summarised below:

- (i) the development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC did not support the application from the agricultural point of view as stated in paragraph 66(e) above. No strong planning justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis;
- (ii) while the application site fell within the Category 3 areas, the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site and no relevant technical assessments/proposals had been submitted by the applicant to demonstrate that the applied use would not generate adverse environmental and landscape impacts on the surrounding areas. Moreover, DEP and CTP/UD&L, PlanD did not support the application as stated in paragraph 66(e) above; and
- (iii) the open storage yards along Kam Sheung Road near the application site were mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority or ‘existing uses’ tolerated under the Ordinance. No planning approval for temporary open storage use had been granted in the same “AGR” zone. Approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications to proliferate into the “AGR” zone, causing degradation to the surrounding rural environment.

67. The Chairman then invited the applicant’s representative to elaborate on the review application. With the aid of a Powerpoint presentation, Mr. Lim Hung Tat made

the following main points:

- (a) as the vehicle repair workshop at Lot 1322 in D.D. 114 had to accommodate the repair activities and storage of vehicles that were pending repairing or had been repaired, it was very congested with insufficient space for its operation;
- (b) upon discussion with the land owners of Lots 1324 and 1328 in D.D. 114, the applicant signed the tenancy agreement with the landowners of these two lots on 15.6.2010 and started the site formation works at the application site thereafter. The applicant had only removed weeds at the site and no trees were felled. A total of 20 vehicle trips of 24-tonne trucks was required to dispose of the cleared weeds;
- (c) prior to the site formation works, the applicant had already started preparing for the submission of a planning application to the Town Planning Board (the Board) for the applied use at the application site. However, the submission could not be made earlier as the applicant had no experience on the application procedures and arrangements;
- (d) five opposing comments were received for the s.16 application and s.17 review application. Regarding the commenter's concerns about water pollution by industrial grease/waste and noise nuisances caused by metal-hitting and movement of goods, it should be noted that the applied use was for open storage of vehicles, instead of vehicle repair workshop. As such, these grounds of objection were considered unjustified. Moreover, the application was not for public vehicle park and hence would not cause traffic impact on Kam Sheung Road as raised by a commenter. The application site would only store 60 vehicles, instead of over 100 vehicles as claimed by a commenter. The Board should not be misled by these comments;
- (e) regarding the commenter's concern about the dust problem arising from the applied use, this could be addressed through proper management of

the site. The applicant also agreed to address the commenter's concern on the landscape impact through tree planting and proper management of the trees;

- (f) there was a public comment stating that the applied use was not in line with the planning intention of the "AGR" zone. Noting that there were construction works of the Guangzhou-Shenzhen-Hong Kong Express Rail Link within the same "AGR" zone, it was unfair if the subject application was rejected based on that reason. Moreover, the applied use was only on a temporary basis and would not cause permanent environmental impacts;
- (g) regarding the public concern that the subject site was a "destroy first, build later" case, aerial photos taken on 13.12.1988, 7.2.1995, 10.8.2000 and 7.5.2005 were shown to Members to illustrate the actual situation. According to the aerial photo taken on 13.12.1988, there were already some structures in the northern and southern portions of the application site. According to the aerial photo taken on 7.2.1995, the two structures found in the current application had already existed in the northern portion of the site and some other structures on site were not found at present. As shown in the aerial photos taken on 10.8.2000 and 7.5.2005, the two structures were still found in the northern portion of the site. As shown in the aerial photo taken on 7.5.2005, another structure found in the southern portion of the site had been demolished. The aerial photo of 7.5.2005 also showed that there was vegetation at part of the application site. These were, however, weeds and they were subsequently cleared by the applicant. The above demonstrated that the application site had already been paved with concrete/asphalt and erected with structures before it was used by the applicant. The number of structures under the current application was also less than that shown in the aerial photos. The applicant did not "destroy" the site; and
- (h) if the application was approved by the Board, the applicant undertook to comply with the following matters:

- (i) the application site would only be used for open storage of vehicles and ancillary office and storage uses. It would not be used for other purposes such as vehicle repair workshop or public vehicle park;
- (ii) there would be proper provision and management of facilities e.g. fence wall and fire safety installations at the application site in accordance with the requirements of the relevant government departments; and
- (iii) the applicant would maximise the number of tree planting at the application site so as to minimise the landscape impact on the neighbouring residents.

68. Mr. Lim Hung Tat continued to say that the applicant had and would try its best efforts to minimise the environmental impacts caused by the applied use. It was hoped that the Board could consider approving the application with or without conditions. The relocation of the applied use to other sites would involve technical difficulties as vehicles and storage containers had to be moved, and vehicles that were pending repairs or had been repaired might have to be parked illegally along the nearby roads. This would contravene the Road Traffic Ordinance and cause adverse traffic impact on the nearby roads, especially Kam Sheung Road.

69. A Member said that the recent aerial photos taken on 3.5.2010 and 1.8.2011 in Plan A-3 and Plan R-3 of the Paper respectively had clearly showed that a large portion of the application site was still covered with vegetation in 2010 but the site was formed and the vegetation was cleared in 2011. Mr. Lim Hung Tat said that the applicant only started site formation work in the latter half of 2010 and only weeds were removed and no trees were felled.

70. A Member asked about the number of vehicles repaired at the adjacent workshop each day before the application site was used by the applicant and how the vehicles were kept. Mr. Lim Hung Tat said that the number of vehicles repaired at the



adjacent vehicle repair workshop each day varied greatly from a maximum of 20 vehicles to less than ten vehicles. Vehicles would be kept at the vehicle repair workshop if there was still space. A total of 15 buses could be stored at the workshop. If the workshop was full, those vehicles, if they could still be driven safely on roads, would be parked at the nearby areas. The nearest location was near a restaurant along Kam Sheung Road. Subject to the drivers' own decisions, the vehicles might also be parked at the meter spaces near Tai Lam Tunnel Toll Plaza or other places.

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

#### Deliberation Session

72. The Chairman said that the application was rejected by the RNTPC for being not in line with the planning intention of the "AGR" zone and not complying with the Town Planning Board Guidelines No. 13E. The applicant had not provided new planning justifications to demonstrate that the concerns were satisfactorily addressed. In this regard, Members agreed that the application could not be supported.

73. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 8.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the development was not in line with the planning intention of the "Agriculture" zone which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis;

- (b) the application did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval had been granted for the applied use on the site, no relevant technical assessments had been included in the submission to demonstrate that the development would not generate adverse environmental and landscape impacts on the surrounding areas, and there were adverse departmental comments on and local objections to the application. The development was also not compatible with the residential uses located to its immediate east and southwest and in the vicinity and with the rural character of the area; and
- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications into the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

### **Agenda Item 6**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/DPA/YL-NSW/12-2

Further Extension of Time for Commencement of the Proposed Golf Course and Residential Development under Application No. A/DPA/YL-NSW/12 for 3 Years until 18.12.2013, Lots 1520 RP, 1534 and 1604 in D.D. 123 and Adjoining Government Land, Nam Sang Wai, Yuen Long (TPB Paper No. 8897)

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[The meeting was conducted in Cantonese.]

74. As one of the applicants was a subsidiary of Henderson Land Development Company Ltd. (HLD), the following Members had declared their interests in this item:

Mr. Raymond Y.M. ]  
Chan

- |                         |  |
|-------------------------|--|
| Dr. C.P. Lau            | ] having current business dealings with HDL  |
| Dr. James C.W. Lau      | ]  |
| Mr. Clarence W.C. Leung | - being a director of a non-government organisation (NGO) that recently received a donation from a family member of the Chairman of HLD                  |
| Mr. Roger K.H. Luk      | - being a member of the Council of the Chinese University of Hong Kong (CUHK) which also received a donation from a family member of the Chairman of HLD |

75. Members noted that Dr. C.P. Lau had tendered an apology for being unable to attend the meeting. As the interests of Mr. Raymond Y.M. Chan and Dr. James C.W. Lau were direct and substantial, Members agreed that they should withdraw from the meeting. Besides, Members noted that the concerned NGO and CUHK had received many donations from various parties and hence considered that the interests of Mr. Clarence W.C. Leung and Mr. Roger K.H. Luk were not substantial and they could be allowed to stay at the meeting.

[Mr. Raymond Y.M. Chan and Dr. James C.W. Lau left the meeting temporarily at this point.]

76. The Secretary said that the applicants' legal representative (Lo & Lo Solicitors and Notaries Public) had submitted a letter dated 25.8.2011 to the Town Planning Board (the Board) requesting for adjournment of the review hearing. The letter was tabled at the meeting for Members' information. The Board would consider whether to accede to the applicants' request for adjournment before proceeding to consider the review application.

#### Presentation and Question Session

77. The following representatives from government departments and the applicants were invited to the meeting:

- |                |   |
|----------------|---|
| Ms. Amy Cheung | - District Planning Officer/Tuen Mun & Yuen Long, Planning Department (DPO/TMYL, PlanD) |
| Ms. Kennie Liu | - Town Planner/Tuen Mun & Yuen Long (TP/TMYL), PlanD                                    |

Dr. Winnie P.W. Kwok	-	Senior Wetland and Fauna Conservation Officer, Agricultural, Fisheries and Conservation Department (AFCD)
Mr. K.S. Cheung	-	Wetland and Fauna Conservation Officer, AFCD
Dr. Andrew Chan	]	
Ms. Alison Ip	]	Applicants' representatives
Mr. Paulus Lau	]	
Mr. Roy Ip	]	

78. The Chairman extended a welcome and invited the applicants' representatives to present the reasons for the adjournment request.

79. Dr. Andrew Chan said that the Appeal Board Panel (Town Planning) (TPAB) wrote to the applicants' legal representative on 22.7.2011 acknowledging receipt of the Notice of Appeal lodged by the applicants on 28.6.2011 and indicated that they would be notified of the arrangements for hearing of the appeal. While the outcome of the appeal was unknown at this stage, it would have a material impact on the right and interest of the subject review. In the event that the appeal was allowed by the TPAB, there would be an anomaly if the planning permission of the application had expired. In this regard, it would be more appropriate to adjourn the review hearing to a date to be fixed after the publication of the determination of the appeal by the TPAB.

80. A Member asked what the appeal lodged by the applicants was about. Dr. Andrew Chan said that the applicants had made submissions to discharge the approval conditions attached to Application No. A/DPA/YL-NSW/12, but the submissions were rejected by the Director of Planning (D of Plan) for consideration in the context of fulfilment of the approval conditions of the planning permission granted under Application No. A/DPA/YL-NSW/12. Subsequently, the applicants lodged an appeal to the TPAB on 28.6.2011 and were informed on 22.7.2011 that they would be notified of the arrangements for hearing of the appeal.

81. In response to the same Member's question, the Secretary said that the appeal was against the Board's decision not to review its decision on 17.12.2010 under s.17 of the Town Planning Ordinance (the Ordinance) on fulfilment of approval conditions, while the

review hearing at this meeting was in respect of a s.16A application for extension of time (EOT) for commencement of the development.

82. A Member asked how the appeal was related to the subject review. Dr. Andrew Chan said that if the EOT application was rejected by the Board on review at this meeting, the planning permission granted under Application No. A/DPA/YL-NSW/12 would lapse. Under such circumstances, the applicants would have no time to commence the development even if the TPAB allowed the appeal in respect of the fulfilment of approval conditions.

83. A Member asked whether it was the applicants' concern that if the EOT application was rejected by the Board at this meeting, the Board's decision would be made on the basis that the approval conditions in relation to the application had not been discharged and hence this basis would be wrong if the TPAB eventually allowed the appeal. Dr. Andrew Chan clarified that the review hearing at this meeting was about the EOT for commencement of the development, not the fulfilment of approval conditions. He reiterated that if the Board decided not to extend the time for commencement of the development at this meeting, the planning permission would lapse and the applicants would have no time to commence the development even if the TPAB allowed the appeal in respect of the fulfilment of approval conditions.

84. The Secretary said that the applicants had submitted a modified Master Layout Plan (MLP) and the associated technical assessments for fulfilling some of the approval conditions. However, the Board on 17.12.2010 decided that the modified MLP constituted major changes to the original scheme approved by the TPAB in 1994 and thus, could not be considered in the context of fulfilment of approval conditions. Noting that the applicants had lodged an appeal against the Board's decision not to review its decision on 17.12.2010 and from the applicants' agent that the applicants would not have time to commence the development if the Board decided to reject the EOT, even if the TPAB allowed the appeal, she asked if the applicants had submitted a set of building plans for the development based on the modified MLP. Dr. Andrew Chan said that the applicants had submitted a set of building plans to the Building Authority for part of the development.

85. A Member asked if the applicants' main concern was that even if the TPAB

allowed the appeal, the applicants would have no time to commence the development, if the subject EOT application was rejected by the Board. Dr. Andrew Chan replied in the affirmative and said that it would normally take one to three years to commence the development once the revised scheme was accepted.

86. The Secretary said that an approved development would be considered as having commenced once the building plans for the development had been approved. It was not necessary to actually commence construction of the approved development.

87. A Member asked whether the planning permission granted had already lapsed. Dr. Andrew Chan replied in the affirmative and said that the applicants had applied for review of the EOT application under s.17 of the Ordinance.

[Mr. Clarence W.C. Leung left the meeting temporarily at this point.]

88. As Members had no further question to raise, the Chairman said that the Board would deliberate on the applicants' request for adjournment of the review hearing in the absence of the representatives of government departments and the applicants. They all left the meeting at this point.

#### Deliberation Session

89. A Member said that the applicants were essentially concerned that the appeal's decision, even if allowed, would become futile if the Board did not agree to extend the time for commencement of the development at this meeting. This Member raised concern that the applicants had not commenced the development in the past 14 years since the planning permission was granted.

[Miss Annie Tam arrived to join and Mr. Clarence W.C. Leung returned to join the meeting at this point.]

90. The Chairman said that in considering the applicants' adjournment request, Members might wish to consider if the TPAB's decision on the appeal would have a bearing on the Board's decision on the EOT application.

91. The same Member asked if the Board decided to reject the EOT application at this meeting, whether the applicant could come back and review the Board's decision on the EOT application in the event that the appeal on fulfilment of approval conditions was allowed by the TPAB.

92. The Secretary said that there were 27 approval conditions attached to the approved application No. A/DPA/YL-NSW/12 and only three of them were fulfilled while another three were partially fulfilled. If the TPAB allowed the appeal and agreed that the modified MLP could be considered in the context of fulfilment of condition (c) of the planning permission granted, the applicants would still need time to comply with the other conditions which had not yet been fulfilled and to submit building plans. The Secretary continued to say that according to DPO/TMYL, a set of building plans covering the proposed residential development and the golf course, but excluding the proposed nature reserve at Lut Chau had been submitted to the Building Authority and was rejected. Even if the appeal was allowed, the building plans which covered only part the approved development might or might not be approved by the Building Authority.

93. The Vice-chairman said that the review application and the appeal were two separate matters. He could not see the relationship between the two matters, especially how the TPAB's decision would affect the Board's decision on the EOT application. As such, he considered that the applicants' adjournment request should not be acceded to.

94. A Member, however, considered that the Board's decision on the review application would have over-riding implications because the planning permission granted would lapse if the EOT application was rejected. Under such circumstances, the appeal in respect of the fulfilment of approval conditions would be rendered negatory even if it was allowed by the TPAB. On the other hand, if the Board agreed to adjourn the review hearing, it had not forfeited its right to consider the EOT application. The s.17 review could then be heard by the Board at a later date pending the determination of the appeal by the TPAB. This Member therefore had no objection to the adjournment request.

95. The Secretary said that if the Board proceeded to consider the EOT application at this meeting and decided to reject the application, the applicants could still lodge an

appeal to the TPAB in respect of the Board's decision today. In other words, the Board's decision on the EOT application would not be final.

96. Noting that the applicants had already submitted a set of building plans for part of the development, a Member asked if this would constitute a commencement of development in case the appeal on fulfilment of approval conditions was allowed by the TPAB. The Secretary said that this would involve two legal issues, namely, whether the Building Authority could take the set of building plans covering only part of the development as being in line with the approved development and approve it, and whether the approval of building plans for part of the development would constitute a commencement of the entire development. In response to another Member's question, the Secretary said that the approval, not submission, of building plans would constitute a commencement of development.

97. A Member said that if the review application was adjourned to a date pending the determination of the applicants' appeal by the TPAB, there could be a delay of over one year, during which other issues might arise. The applicants could then argue that these issues would have bearings on the review application and requested for further adjournment. As such, this Member shared the Vice-Chairman's views that the Board should proceed to consider the EOT application at this meeting. If the TPAB allowed the appeal and the applicants considered that the Board had not taken all relevant considerations, including the fulfilment of approval conditions, into account in considering the review application at this meeting, the applicants could lodge an appeal or judicial review application against the Board's decision. The Secretary said that the applicants' appeal might not be heard by the TPAB very soon given that there were more than 20 cases waiting to be heard by the TPAB. Moreover, an applicant who was aggrieved by the decision of the Board on a review under s.17 of the Ordinance had to lodge an appeal within 60 days after being notified of the Board's decision. As such, if the EOT application was rejected by the Board at this meeting, it was unlikely that the applicants could still lodge an appeal against the Board's decision on the EOT application after the TPAB's decision was available.

98. The Secretary continued to say that the applicants' adjournment request was only received yesterday. Members might wish to consider deferring a decision on the



applicants' adjournment request so as to allow time to seek legal advice on the applicants' request.

99. A Member considered it prudent to obtain legal advice on whether the grounds put forth by the applicants were reasonable before making a decision on the adjournment request. Another Member shared the Vice-chairman's views that the review application and the appeal involved two separate matters. The review application was about an EOT for commencement of the approved development while the appeal was in relation to the fulfillment of the approval conditions which needed to be done before the expiry of the planning permission. This Member said that the applicant should not assume that the Board would reject the EOT application on review at this meeting. Even if the review application was rejected, the applicants could still lodge an appeal to the TPAB. Notwithstanding, this Member considered it prudent to obtain legal advice before making a decision on the applicants' adjournment request. Another Member shared similar views with this Member and said that the applicants should not be allowed to delay the consideration of the application.

100. The Chairman summarised Members' views that it would be prudent to obtain legal advice on whether the grounds put forth by the applicants for the adjournment request were reasonable. Members agreed to defer a decision on the adjournment request pending the availability of the legal advice. The Chairman emphasised that the deferment at this meeting was not to accede to the applicants' adjournment request but to allow time to seek legal advice.

101. After further deliberation, the Board agreed to defer making a decision on the applicants' adjournment request and the review application pending the availability of legal advice. The applicants would be notified of the hearing date for the review application when the legal advice was available.

#### Notification

102. The Chairman invited the representatives of government departments and the applicants back to the meeting at this point and informed them of the Board's decision accordingly. The Chairman also thanked the representatives of government

departments and the applicants for attending the meeting. They all left the meeting at this point.

[Mr. Raymond Y.M. Chan and Dr. James C.W. Lau returned to join the meeting at this point.]

**Agenda Item 7**

[Closed Meeting]

103. This item was recorded under confidential cover.

104. The meeting was adjourned for lunch break at 12:25 p.m..

105. The meeting was resumed at 2:40 pm.

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

Mr. Thomas Chow Chairman

Mr. Stanley Y.F. Wong Vice-chairman

Mr. K.Y. Leung

Ms. Anna S.Y. Kwong

Professor Edwin H.W. Chan

Mr. Timothy K.W. Ma

Professor Eddie C.M. Hui

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Ms. Pansy L.P. Yau

Mr. Benny Wong

Miss Annie K.L. Tam

Mr. Jimmy Leung

**Agenda Items 9 to 13**

[Open Meeting (Presentation and Question Session only)]

Further Consideration of Representations and Comments to the Draft Sha Tau Kok Development Permission Area (DPA) Plan No. DPA/NE–STK/1, Draft Lin Ma Hang DPA Plan No. DPA/NE–LMH/1, Draft Ta Kwu Ling North DPA Plan No. DPA/NE–TKLN/1, Draft Man Kam To DPA Plan No. DPA/NE–MKT/1, and Draft Ma Tso Lung and Hoo Hok Wai DPA Plan No. DPA/NE–MTL/1

(TPB Paper No. 8900)

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[The hearing was conducted in Cantonese.]

107. Members noted that Heung Yee Kuk New Territories (HYKNT) had submitted comments in respect of the five DPA Plans and the following Members had declared interests on these items:

Mr Stephen M.W. Yip	-	Being an ex-officio Executive Councillor of HYKNT
Dr. W.K. Yau	]	Being a co-opted Councillor of HYKNT
Dr. C.P. Lau	]	

108. Members noted that Mr. Stephen Yip and Dr. C.P. Yau had tendered apologies for not being able to attend the meeting while Dr. W.K. Yau had left the meeting.

109. The Chairman said that on 25.2.2011, the Board considered all the representations and comments in respect of the Sha Tau Kok (STK), Lin Ma Hang (LMH), Ta Kwu Ling North (TKLN), Man Kam To (MKT) and Ma Tso Lung and Hoo Hok Wai (MTL & HHW) Development Permission Area (DPA) Plans. The Board decided to defer consideration of the representations pending further review by the Planning Department (PlanD) on the land use proposals, in particular on the “Village Type Development” (“V”) zones on the five DPA Plans. The hearing today was for further consideration of the representations and comments for the five DPA Plans.

110. Members noted that some replacement pages of the Paper and the following letters were tabled at the meeting:

- (a) two letters from HYKNT dated 22.8.2011 and 25.8.2011 requesting for deferral of the hearing for one month (C3 (STK), C8 (LMH), C1 (TKLN), C1 (MKT), C1 (MTL & HHW));
- (b) the letter from Sha Tau Kok District Rural Committee (STKDRC) dated 23.8.2011 in respect of the deferral request of HYKNT (R4(STK));
- (c) the letter from the Sheung Shui District Rural Committee (SSDRC) dated 23.8.2011 enclosing 18 signatures from Indigenous Inhabitant Representatives (IIR) / Village Representatives (VRs) and villagers requesting for deferral of the hearing for one month (the Chairman of the SSDRC, Mr. Hau Chi Keung, attended the meeting as a representative of HYKNT);
- (d) three letters from Lin Ma Hang Village Office (LMHVO) dated 24.8.2011 and 26.8.2011 requesting for deferral of the hearing and providing comments on the proposed amendments to the LMH DPA Plan (R2(LMH));
- (e) the Secretary's letters dated 24.8.2011 in reply to HYKNT, STKDRC, SSDRC and LMHVO indicating that the deferral requests would be considered by the Board at the scheduled meeting;
- (f) the letter from World Wide Fund Hong Kong dated 26.8.2011 indicating strong objection to the proposed amendment to the Notes of the "Conservation Area" ("CA") zone in the Lin Ma Hang DPA Plan (R14 (STK), R7(LMH), R3 (TKLN), R6 (MKT) and R8 (MTL & HHW)); and
- (g) the letter from Kadoorie Farm & Botanic Garden Corporation dated 25.8.2011 expressing concern on the proposed amendment to the Notes of the "CA" zone in the Lin Ma Hang DPA Plan (R13 (STK), R4 (LMH),

R5 (MTL&HHW)).

Deliberation Session

111. The Chairman said that HYKNT, STKDRC, SSDRC and LMHVO had written to the Board and requested for deferral of the hearing by one month. Their main grounds were that the Chinese version of the TPB paper (the Paper) was only received on 22.8.2011, and that they needed more time to study the Paper and to consult villagers on their views about the proposed amendments to the DPA Plans. The Chairman said that during the week, PlanD had already briefed the Rural Committees on the proposed amendments to the DPA Plans as detailed in the Paper. The Chairman suggested the Board to consider the deferral request first and decide whether to accede to the request or to proceed with the hearing of the representations and comments. To consider the deferral request, the representers, commenters and their representatives should be invited to the meeting to explain their reasons for the deferral request for the Board's consideration.

112. The Vice-chairman said that it might be appropriate for Members to have a discussion on the Board's stance first before inviting the representers, commenters and their representatives to the meeting. The Chairman explained that since not all the representers and commenters had asked for a deferral, it was necessary to ascertain whether any of the representers and commenters would oppose the deferral request. The Secretary suggested that Members could have an initial deliberation about the deferral request and the decision would need to be subject to no opposition from other representers, commenters and their representatives who attended the meeting.

113. Members generally agreed that the deferral request was acceptable based on the grounds provided in the letters of HYKNT, STKDRC, SSDRC and LMHVO i.e. that the Chinese version of the TPB paper (the Paper) was only received on 22.8.2011, and that they needed more time to study the Paper and to consult villagers on their views about the proposed amendments to the DPA Plans. Regarding the period of deferral, the Chairman pointed out that the Board had to submit the draft DPA Plans to the Chief Executive in Council (CE in C) for approval within a statutory time limit of nine months and an extension of six months had already been sought and granted by the Chief Executive for the subject DPA Plans. Hence, deferral of the hearing by one month might be too tight for meeting the statutory deadline for

submitting the subject DPA Plans to CE in C. However, Members could consider whether the hearing might be deferred for two weeks instead of one month. After deliberation, Members agreed that a deferral of two weeks would be acceptable subject to no objection from the representers, commenters and their representatives attending the meeting.

#### Presentation and Question Session

114. As sufficient notice had been given to the representers and commenters to invite them to attend the meeting, Members agreed to proceed with the hearing in the absence of the other representers and commenters who had indicated that they would not attend or had made no reply to the invitation.

115. The following government representatives, representers, commenters and their representatives were invited to the meeting at this point:

- Mr. W.K. Hui - District Planning Officer/Shatin, Tai Po and North (DPO/STN), PlanD
- Mr. Ip Po Kwong - Senior Town Planner/Frontier Closed Area, PlanD
- Mr. Patrick Lai - Senior Nature Conservation Officer/North, Agriculture, Fisheries and Conservation Department (AFCD)

#### Various DPA Plans

C3 (STK), C8 (LMH), C1 (TKLN), C1 (MKT) and C1 (MTL&HHW)

#### Heung Yee Kuk New Territories

- Chan Ka Mun, Carmen ] Commenter's Representative (all five DPA Plans)
- Chan Hon Kwan, Henry ]
- Lee Ho ]
- Chan Shui Man ]
- Lee Koon Hung - Commenter's Representative (LMH, STK)
- Man Sun Choi - Commenter's Representative (TKLN)
- Hau Chi Keung ) Commenter's Representative (MKT, MTL&HHW)
- Fung Wai Fat )

Fung Chau Chuen )

**Lin Ma Hang DPA**

**R2 (Yip Wah Ching, IIR of LMH village and Chairman of LMHVO)**

Yip Wah Ching	-	Representer
Tsang Yuk On	]	Representer's representative
Ip Cheung Fung	]	
Ip Yuk On	]	
Ip Tung Fook	]	
Ip Tin Sai	]	
Ip Sun Kui	]	
Ip Mee Fook	]	
Ip Yat Choi	]	
Lau Kwok Keung	]	
Yip Wai Ping	]	
Yip Wai Sun	]	
Yip Yuk Yam	]	
Chung Chi Wing	]	
葉維里	]	
陳瑞仁	]	
葉景榮	]	
宋國明	]	
曾偉倫	]	
何碧英	]	
葉勇傑	]	
葉官寶	]	
李美好	]	
葉華媚	]	
陳貴明	]	
樊昌榮	]	
葉海華	]	



**Man Kam To DPA**

R1 (Yik Wai Tung, IIR of Fung Wong Wu Village)

Yik Wai Tung - Representer

**Ma Tso Lung and Hoo Hok Wai DPA**

R1 (H. K. Cheung)

H.K. Cheung - Representer

Chan Ling Shuk - Representer's Representative

**Sha Tau Kok DPA**

R1 (Marlon Cheung, Manager of the Cheung Clan's Properties & Yau Man Ching, Manager of the Yau Clan's Properties)

Marlon Cheung - Representer

R2 & C1 (Yau Man Ching, IIR of Tong To Tsuen)

Yau Man Ching - Representer and Commenter

R3 (Lee Fong Ching, Manager of Li Kwok Kei Tso and IIR of Sheung Wo Hang Tsuen)

Lee Fong Ching - Representer

R5 (Wong Tin Seng and Mo Lap Sun, IIRs of Shan Tsui Tsuen)

Mo Lap Sun - Representer

R6 (Wan Wah On, Chui Kwok Sun, Wan Sun Yau and Wan Tim Fat, IIRs/VR of Tam Shui Hang Tsuen)

Wan Wah On ) Representer

Wan Sun Yau )

R7 (Nam Tin Sang, IIR of San Tsuen)

Nam Tin Sang - Representer

R9 (Li Wai Yin, IIR of Muk Min Tau and Tsiu Hang)

Li Wai Yin - Representer

116. The Chairman extended a welcome and explained that HYKNT, STKDRC, SSDRC and LMHVO had written to the Board and requested for deferral of the hearing by one month. The main ground was that the Chinese version of the Paper was only received on 22.8.2011 and more time was required to study the Paper and to consult villagers on their views about the proposed amendments to the DPA Plans. Notwithstanding, the Chairman said that the English version of the Paper was issued on 19.8.2011 and PlanD had briefed the Rural Committees on the proposed amendments to the DPA Plans during the week to facilitate better understanding of the Paper. The Chairman explained that the Board would first consider the request for deferral of the hearing and the representatives from HYKNT and the Rural Committees were invited to explain their reasons for the deferral request.

C3 (STK), C8 (LMH), C1 (TKLN), C1 (MKT), C1 (MTL & HHW)

(Heung Yee Kuk New Territories)

117. Ms. Chan Ka Mun, Carmen, representative of HYKNT, made the following main points:

- (a) the HYKNT was a statutory consultative body with the main functions to enhance communication amongst the New Territories inhabitants as well as their communication with the Government;
- (b) over the past six months, PlanD had consulted the relevant rural committees, village offices and representers about the proposed amendments to the DPA Plans. However, the HYKNT had not been formally consulted. Hence, HYKNT only learnt about the proposed amendments to the DPA Plans upon receipt of the Paper on 22.8.2011; and
- (c) more time was required to study the Paper and to gauge the views of the villagers and the Board was requested to defer the hearing by one month.

118. In response to the Chairman's question, Ms. Chan Ka Mun, Carman said that HYKNT had consulted the Rural Committees and the villagers attending the hearing and there was no objection to their request for deferral of the hearing.

119. Mr. Lee Koon Hung, Chairman of the STKDRC, made the following main points:

- (a) upon receipt of the Paper on 22.8.2011, the STKDRC had held a number of meetings with the IIRs/VRs and villagers over the week. They needed more time to consult the IIRs/VRs and villagers to solicit their views on the proposed amendments to the DPA Plans and to formulate further proposed amendments to the DPA Plans; and
- (b) the Board was requested to defer the hearing.

120. Mr. Hau Chi Keung, Chairman of the SSDRC, made the following main points:

- (a) he agreed with HYKNT that the hearing should be deferred by one month;
- (b) the new developments in the planned Kwu Tung North New Development Area (NDA) would affect many villagers. Currently, many villagers were forced to live in temporary structures in Kwu Tung North as they could not find land within "V" zone and the 'Village Environs' ('VE') of their own villages to develop Small Houses;
- (c) Government's data on outstanding Small House applications could not reflect the real demand for Small Houses as many Small House applications were rejected due to the applicant's inability to find land within the "V" zone and / or 'VE'. Such rejected applications would not be counted as outstanding Small House applications in the Government's record; and
- (d) there had been no planning for expansion of the "V" zones and 'VE' in the New Territories for the past 20 years. Hence, where land was available, the "V" zone and / or 'VE' of some villages, including Ho Sheung Heung,

Hang Tau Tsuen, Tsung Pak Lang and Yin Kong, should be expanded.

R2 (LMH) Yip Wah Ching – IIR of LMH village and Chairman of LMHVO

121. Mr. Yip Wah Ching agreed with HYKNT that the hearing should be deferred for one month. He said that they only received the Paper on 24.8.2011 and it was unfair to them if the Board proceeded with the hearing.

R1 (MTL & HHW) H.K. Cheung

122. Mr. H.K. Cheung made the following main points:

- (a) he agreed that the hearing should be deferred for one month;
- (b) he requested that information about the location of government land within the DPA Plans should be provided. This would allow them to understand whether there was unfair treatment between private and government land. The villagers would like to know whether the Government would zone their private land on the DPA Plans as “Green Belt”, “Agriculture’ or “CA” which had low development potential, and on the other hand reserve government land for future land sale for new private developments;
- (c) in the next three to five years, the new developments in the planned Kwu Tung North, Fanling North and Ta Kwu Ling / Ping Che NDAs would result in destruction of the whole area and the displacement of many villages. It was inevitable that the five areas covered by the DPA Plan within the Frontier Closed Area would be the next to be developed after the new development areas and existing villagers would be further affected. The existing compensation and re-housing policies were not adequate to address the need of the affected villagers as evident from the ‘Choi Yuen Village saga’; and
- (d) within the five DPA Plans, only about 10% of the land had been zoned as “V”. PlanD should reserve some government land within each of the DPA

Areas for rehousing villagers that would be affected by the above mentioned future developments. This would reduce conflicts with and negative impacts on villagers.

123. The Chairman explained that the Board had to submit the draft DPA Plans to the CE in C for approval within a statutory time frame. Deferral of the hearing by one month might affect the submission to the CE in C. The Board considered that the hearing could be deferred for two weeks instead of one month and he asked whether that was acceptable to the representers, commenters and their representatives.

124. On behalf of those present, Ms. Chan Ka Mun, Carmen said that with the understanding that there was a statutory time frame for the Board to submit the draft DPA Plans to the CE in C for approval, the HYKNT, STKDRC, SSDRC and other representers, commenters and their representatives present at the meeting considered that a deferral of two weeks was acceptable and she thanked the Board for agreeing to a deferral of the hearing. There was no objection from all representers, commenters and their representatives present at the meeting.

125. As the representers, commenters and their representatives had no further comment to make and Members had no further question, the Chairman said the procedure for consideration of the deferral request had been completed and the Board would inform them of the confirmed date and time of the deferred hearing in due course. The Chairman thanked them and the government's representatives for attending the meeting. They all left the meeting at this point.

#### Deliberation Session

126. After deliberation, Members agreed that the deferred hearing should be held on 8.9.2011 at 9:00am. The representers, commenters and their representatives would be informed accordingly.

**Agenda Item 8**

[Closed Meeting]

127. This item was recorded under confidential cover.

[Mr. Timothy K.W. Ma left the meeting at this point.]

**Agenda Item 14**

[Closed Meeting]

128. This item was recorded under confidential cover.

**Agenda Item 15**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Further Representations to the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan No. S/K13/26 (TPB Paper 8903)

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[This item was conducted in Cantonese]

129. The Secretary reported that on 27.5.2011 and 1.6.2011, the Board considered all the representations and comment on the draft OZP and decided to propose amendments to the OZP to partially meet some representations. The proposed amendments to the OZP, including an amendment to revise the maximum building height restriction (BHR) stipulated for the Kai Tak Mansion site from 110mPD to 130mPD, were published under section 6C(2) of the Ordinance on 30.6.2011. Upon expiry of the 3-week publication period, a total of 286 valid further representations were received. One of the further representations (FR) No. 1 (F1), opposed the proposed amendment to relax the BHR for the Kai Tak Mansion site and all of the remaining FRs (F2 to F286) opposed the proposed BHR of 130mPD and considered that the BHR should be further relaxed.

130. As the representations and comment were considered by the full Board on 27.5.2011 and 1.6.2011, it was considered more appropriate for the full Board to hear the

further representations without resorting to the appointment of a Representation Hearing Committee. The hearing could be accommodated in the Board's regular meeting and a separate hearing session would not be necessary.

131. After deliberation, the Board agreed that the further representations should be heard by the Board in the manner as proposed in paragraphs 2.1 and 2.2 of the Paper.

**Agenda Item 16**

[Open Meeting]

Any Other Business

[This item was conducted in Cantonese.]

132. There being no other business, the meeting was closed at 3:45pm.