

**Minutes of 996th Meeting of the
Town Planning Board held on 11.11.2011**

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

Professor Edwin H.W. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Dr. C.P. Lau

Dr. James C.W. Lau

Mr. Maurice W.M. Lee

Mr. Clarence W.C. Leung

Mr Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Miss Anita W.T. Ma

Dr. Winnie S.M. Tang

Professor S.C. Wong

Ms. Pansy L.P. Yau

Dr. W.K. Yau

Assistant Director (2), Home Affairs Department
Mr. Eric Hui

Deputy Director of Environmental Protection
Mr. Benny Wong

Director of Lands
Miss Annie Tam

Director of Planning
Mr. Jimmy C.F. Leung

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

Secretary

Absent with Apologies

Mr. Rock C.N. Chen

Ms. Julia M.K. Lau

Mr. Timothy K.W. Ma

Mr. Stephen M.W. Yip

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Mr. Fletch Chan

In Attendance

Assistant Director of Planning/Board
Mr. C.T. Ling

Chief Town Planner/Town Planning Board
Miss H.Y. Chu (a.m.)
Ms. Christine Tse (p.m.)

Senior Town Planner/Town Planning Board
Ms. Donna Tam (a.m.)
Town Planner/Town Planning Board
Ms. Karina Mok (p.m.)

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 995th Meeting held on 28.10.2011

[The meeting was conducted in Cantonese.]

1. The minutes of the 995th meeting held on 28.10.2011 were confirmed without amendments.

Agenda Item 2

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

(i) Town Planning Appeal Received

2. The Secretary reported that a Notice of Appeal dated 1.11.2011 against the decision of the Town Planning Board (TPB) on 26.8.2011 to reject on review the Application No. A/YL-SK/163, for temporary open storage of vehicles (buses, minibuses, private cars and goods vans) pending repair or having been repaired, for a period of 3 years in “Agriculture” (“AGR”) zone on the Shek Kong Outline Zoning Plan (OZP) was received by the Appeal Board Panel (Town Planning). The TPB rejected the review application for the following reasons:

- (a) the development was not in line with the planning intention of the “AGR” zone. 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 TPB 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 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 in the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

3. The Secretary said that the hearing date of the appeal had yet to be fixed. The Secretariat would act on behalf of the TPB in dealing with the appeal in the usual manner.

(ii) Town Planning Appeal Abandoned

Town Planning Appeal No. 06 of 2010

Proposed Minor Relaxation of Building Height Restriction for

Permitted Residential Use in “Residential (Group B)” zone, 170C, 170D, 170E and 170F, Boundary Street, Ho Man Tin

(KIL No. 3277s.C, s.D, s.E and s.F), Kowloon

(Application No. A/K7/92)

4. The Secretary reported that the appeal (No. 06/2010) was abandoned by the appellant of his own accord. The subject appeal was received by the Appeal Board Panel (Town Planning) (ABP) on 23.4.2010 against the decision of the Town Planning Board on 5.2.2010 to relax the building height restriction for the application site for 3m (from 80mPD to 83mPD) in “Residential (Group B)” zone on the Ho Man Tin Outline Zoning Plan. On 18.10.2011, the appeal was abandoned by the appellant. On 4.11.2011, the ABP formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations of the Town Planning Ordinance.

Town Planning Appeal No. 16 of 2010
Proposed School (Tutorial School) in “Residential (Group B)” zone,
Ground Floor, 108C Boundary Street, Ho Man Tin, Kowloon (NKIL 2323)
(Application No. A/K7/99)

5. The Secretary reported that the appeal (No. 16/2010) was abandoned by the appellant of his own accord. The subject appeal was received by the Appeal Board Panel (Town Planning) (ABP) on 20.12.2010 against the decision of the Town Planning Board on 8.10.2010 to reject on review the planning application No. A/K7/99 for a proposed school (tutorial school) in “Residential (Group B)” zone on the Ho Man Tin Outline Zoning Plan. On 31.10.2011, the appeal was abandoned by the appellant. On 2.11.2011, the ABP formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations of the Town Planning Ordinance.

(iii) Town Planning Appeal Statistics

6. The Secretary reported that as at 11.11.2011, 22 cases were yet to be heard by the Appeal Board Panel (Town Planning). Details of the appeal statistics were as follows:

Allowed	:	27
Dismissed	:	118
Abandoned/Withdrawn/Invalid	:	153
Yet to be Heard	:	22
<u>Decision Outstanding</u>	:	<u>4</u>
Total	:	324

- (iv) Appeal to the Court of Appeal on (CACV 231/2011)
on the Unauthorized Columbarium Development at the “Shrine”,
Ngau Tam Mei, Yuen Long

7. The Secretary said that on 14.10.2011, the Board was briefed on the High Court Judgment on the Judicial Review (JR) (HCAL 3 of 2011) in respect of an unauthorized columbarium development at “The Shrine” at certain lots of land at D.D. 104, Ngau Tam Mei, Yuen Long. The JR was lodged against the decisions of the Director of Planning in issuing several enforcement notices pursuant to s.23(1) of the Town Planning Ordinance requiring the discontinuation of the unauthorized development. The appellants argued that the development fell within the meaning of ‘shrine’ under paragraph (9)(b) of the Notes of the Outline Zoning Plan, which was a use always permitted under the “Village Type Development” zone. The JR was dismissed by the High Court on 3.10.2011 with costs awarded to the Government.

8. The Secretary informed the Board that on 27.10.2011, the appellants served a Notice of Appeal to the Court of Appeal and the hearing of the appeal was yet to be fixed.

- (v) High Court’s Judgment (HCMA 404/2011) on
Appeal against Conviction on Unauthorized Storage and Workshop Development
at Leung Uk Tsuen, Pat Heung, Yuen Long

9. The Secretary informed the Board that arising from the complaints in February 2008 from the residents of Leung Uk Tsuen on odour nuisance of a suspected unauthorized development in their neighbourhood, and with reference to the advice from the Agriculture, Fisheries and Conservation Department that the vermiculture activities at the site was a non-agricultural activity, the Planning Authority instituted enforcement and subsequently prosecution actions on the suspected unauthorized storage and workshop development at the site. On 4.5.2011, the concerned defendants were convicted, after trial, on failing to comply with the enforcement notice served under section 23(1) of the Town Planning Ordinance. On 12.5.2011, the defendants lodged a notice of appeal against conviction under the Magistrates Ordinance. The appeal was heard at the High Court (Court of First Instance) on 22.9.2011 and was allowed on 1.11.2011.

10. The Secretary said that the High Court ruled that the main activity of rearing earthworms at the subject site was an agricultural activity and thus such use was permitted in “Agriculture” (“AGR”) zone on the Pat Heung Outline Zoning Plan. It is noted that the Judgment on this case in defining an agricultural use was based on the facts of this specific case with regard to the production process actually undertaken at the site. The land used for rearing of animals that should be regarded as an agricultural use was in fact consistent with the definition of “Agricultural Use” adopted by the Town Planning Board in the Definition of Terms (DoT).

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

Tuen Mun and Yuen Long District

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL/181

Temporary Shop and Services (Real Estate Agency and Grocery Store)

for a Period of 6 Years in “Comprehensive Development Area” zone,

Lot 455 S.C RP (Part) in D.D. 116, Yuen Long

(TPB Paper No. 8947)

[The hearing was conducted in Cantonese.]

11. Mr. Raymond Y.M. Chan declared an interest in this item as the consultant of the subject application was his acquaintance. However, there was no pecuniary interest involved. As Mr. Chan’s interest was indirect, Members agreed that Mr. Chan could be allowed to stay in the meeting for the item.

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

Presentation and Question Session

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

Ms. Amy Cheung	District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL)
Mr. Tang Kwun Yung	Applicant
Mr. Lau Tak) Applicant's Representatives
Mr. So Lek Hang, Lake)

13. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Ms. Amy Cheung to brief Members on the background of the application.

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

- (a) the applicant sought planning permission for temporary shop and services (real estate agency and grocery store) for a period of six years on the application site which was zoned "Comprehensive Development Area" ("CDA") on the draft Yuen Long Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 22.7.2011 and the reasons were:
 - (i) the development was not in line with the planning intention of the "CDA" zone which was intended for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. There was no strong planning justification in the submission for a departure from such planning intention; and
 - (ii) the development would frustrate the implementation of the approved comprehensive development at the site. The applicant failed to

demonstrate that the proposed development could integrate with the approved comprehensive development within the “CDA” zone and was technically feasible;

- (c) the applicant had not submitted any written submission in support of the review application;
- (d) the site was the subject of 18 previous applications for comprehensive commercial/residential development, with the last application No. A/YL/151 approved by the Board with conditions on 2.11.2007 with validity up to 2.11.2011. Phase I (Yoho Midtown) of the approved development was completed. Phases II and III development were not yet commenced. The subject site fell within Phase III development and, according to the development programme under approval condition (c) of the approved application, Phases II and III development would be implemented from 2012 to 2015 and from 2015 to 2018 respectively;
- (e) departmental comments – the Chief Town Planner/Urban Design and landscape (CTP/UD&L) did not support the application from the urban design perspective as there was no information in the submission to demonstrate that the design of the proposed development could integrate with the approved comprehensive commercial/residential development within the “CDA” zone. Other relevant departments had no objection to or adverse comments on the proposed development;
- (f) public comments – one comment from a member of the public was received. The commenter objected to the application mainly on the grounds that the structures within the application site were illegally erected without any prior approval from relevant government departments, and these unauthorised structures had damaged the trees nearby and affected the environment; and
- (g) PlanD’s views – PlanD did not support the review application based on the assessments set out in paragraph 6 of the Paper, which were summarized

below:

- (i) while the applied use was not incompatible with the residential uses and vacant land in the surrounding areas, and could serve the local population, the planning intention of the “CDA” zone was for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. The zoning was to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints. Since land within this zone was primarily intended for comprehensive development and there was already an approved comprehensive commercial/residential scheme covering the site under application No. A/YL/151, there were no strong justifications provided by the applicant to deviate from the planning intention; and

- (ii) the approval of the application for six years up to 2017 would frustrate the implementation of the Phase III of the approved comprehensive development at the site, which was scheduled to be implemented from 2015 to 2018 according to the development programme of the approved application No. A/YL/151. Besides, there was no information in the submission to demonstrate that the proposed development could integrate with the approved comprehensive development within the “CDA” zone and was technically feasible.

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

15. The Chairman then invited the applicant’s representatives to elaborate on the application.

16. Mr. Lau Tak tabled a written submission and made the following main points:

- (a) the applicant intended to operate a real estate agency and a grocery store to serve the residents of the newly completed Yoho Town development within the same “CDA” site;
- (b) it was indicated by DPO/TMYL that Phase III of the approved development of Yoho Town within the subject “CDA” site would be implemented in 2015. However, it should be noted that the land within Phase III of the approved development was owned by the ‘Chu Chan Tsun Tso’ (朱震川祖) and the relevant managers of the Tso were all living abroad. The land would not be sold or made available for development. Therefore, Phase III of the approved Yoho Town development could never be implemented;
- (c) the applicant only intended to make use of the land to operate temporary shops before the implementation of Phase III of the Yoho Town development;
- (d) the applicant intended to apply for the proposed use through lawful means. The applicant had applied to District Lands Officer/Yuen Long (DLO/YL) for using the site as shops. DLO/YL advised in his letter to the applicant, which was shown at the meeting for Members’ reference, that planning permission from the Board was required before DLO/YL could consider granting a short term tenancy (STT) for the proposed commercial uses at the subject site;
- (e) if the application was approved by the Board, the applicant would demolish the existing structures on the site and submit building plans to the Buildings Department (BD) for a temporary building permit for erection of temporary structures for the proposed shops. There would no longer be any illegal structures on the site;
- (f) while there was a public comment pointing out that the structures on the site were illegal, it should be noted that it was a pre-requisite for the applicant to first obtain planning permission before he could apply to

DLO/YL and BD to regularize the proposed use as a temporary real estate agency and grocery shop and submit building plans;

- (g) all relevant departments had no adverse comments on the application from the land, traffic, environmental, fire safety and drainage perspectives;
- (h) the proposed development was only a temporary use and would not affect implementation of the Phase III development of Yoho Town; and
- (i) the applicant was willing to accept PlanD's proposal as stated in paragraph 7.2 of the TPB Paper for a shorter approval period of three years.

17. A Member asked why the applicant applied for an approval period of six years, instead of applying for a shorter period. In response, Mr. Lau Tak said that under the Notes of the OZP, temporary use less than five years did not require planning permission. However, DLO/YL would not take this as an approval from the Town Planning Board and approve the STT application. Instead, DLO/YL would need to consult relevant departments in considering the STT application. This would take at least two to three years to process.

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

18. In response to a Member's question, Ms. Amy Cheung said that PlanD did not support the proposed use for six years as it might frustrate the implementation of the approved "CDA" development. However, if the approval period was shortened to three years, it would tally with the tentative implementation programme of the Phase III development of Yoho Town. PlanD would have no objection to the temporary use.

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

19. The Secretary informed Members that according to the Notes of the OZP, the proposed temporary use of three years did not require planning permission from the Board. Ms. Amy Cheung, in response to the Secretary's question, said that it was a practice that DLO would circulate STT application to DPO for comment. For the subject case, as the applicant applied for a term of six years, which was more than five years, she had advised

DLO that planning permission was required.

20. A Member said that as indicated by the applicant's representative, the land of the Phase III "CDA" development was owned by 'Chu Chan Tsun Tso' and would not be made available for development. He asked if the applicant had any contact with the Tso on renting the land for the proposed use. In response, Mr. Lau Tak clarified that the land owned by the 'Chu Chan Tsun Tso' did not include the application site. The applicant rented the land from another owner for running the proposed shops.

[Professor S.C. Wong arrived to join the meeting at this point.]

21. In response to a Member's question, Mr. Lau Tak said that the applicant intended not to use the existing structures on the site. As such, the applicant needed to submit building plan for the construction of new structures on the site. Planning permission was required before building plan submission was to be made.

22. In response to a Member's questions, Mr. Lau Tak said the Phase III Yoho Town development might not be implemented in the near future owing to land assembly problem. The applicant intended to make use of the site on a temporary basis before it was required for the implementation of Phase III Yoho Town development. While it was noted that temporary use less than five years did not require planning permission, the applicant submitted the subject application to facilitate the future processing of STT application and coordination of relevant departments' comments on the proposed use by the DLO.

[Mr. Laurence L.J. Li and Ms. Anna S.Y. Kwong arrived to join the meeting at this point.]

23. In response to two other Members' comments that the applicant did not need to apply for planning permission if the applicant converted the existing structures on site for temporary shop use for three years and be able to tie in with the implementation programme of the Phase III development of Yoho Town, Mr. Lau Tak said that there was provision under the Notes of the OZP for application for the proposed temporary use. The applicant intended to obtain planning permission from the Board for the temporary shop use before the site was required for development.

24. Mr. Lau Tak added that although planning permission was not required for temporary use less than five years, the Notes did not stipulate that planning application for temporary use less than five years could not be submitted to and considered by the Board. He suggested that the Board should revise the Notes to indicate clearly that submission of planning applications for temporary use of less than five years were not allowed if this was the intention of the Board. In response, the Chairman said that the comments and proposal to revise the Notes of the OZP were outside the scope of the review hearing of the subject application.

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

Deliberation Session

26. The Secretary drew Members' attention that while according to the Notes of the OZP, planning permission was not required for temporary use less than five years, this did not mean that the proposed temporary use was acceptable from the planning point of view as there might be other district planning considerations pertaining to the case.

27. The Chairman said that as the current application was for using the site for a real estate agency and grocery store for a period of six years, Members should consider the application under the provision of the "CDA" zone. Members considered that the proposed development should not be supported as the development was not in line with the planning intention of the "CDA" zone and would frustrate the implementation of the approved comprehensive development at the site.

28. Mr. Jimmy C.F. Leung said that a message should be conveyed to the applicant that according to the Notes of the OZP, planning permission was not required for temporary use less than five years.

29. In response to a Member's question on PlanD's suggestion to grant a shorter approval period as stated in paragraph 7.2 of the TPB Paper, the Secretary said that if the applicant built permanent structure at the subject site, it would still be regarded as a permanent development although the period applied for was less than five years, and should be processed under the relevant provision of the OZP. The applicant's intention to apply to BD for a temporary building permit was only made known at the hearing.

30. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 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 "CDA" zone which was intended for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. There was no strong planning justification in the submission for a departure from such planning intention; and
- (b) the development would frustrate the implementation of the approved comprehensive development at the site. The applicant failed to demonstrate that the proposed development could integrate with the approved comprehensive development within the "CDA" zone and was technically feasible.

31. Members also decided to advise the applicant that according to the Notes of the OZP, planning permission was not required for temporary use less than five years.

Sai Kung and Islands District

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/SK-HC/191

Temporary Private Garden ancillary to House for a Period of 3 Years in “Green Belt” zone,
Government Land adjoining Lot 761 in D.D. 249, Kai Ham, Sai Kung

(TPB Paper No. 8948)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

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

Mr. Ivan Chung	District Planning Officer/Sai Kung and Islands (DPO/SKIs)
Mr. Yung Sai Yuk	Applicant
Mr. Tsang Ka Kau) Applicant’s Representatives
Mr. Yip Chak Yu)

33. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. Ivan Chung to brief Members on the background of the application.

34. With the aid of a Powerpoint presentation, Mr. Ivan Chung presented the application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for temporary private garden ancillary to house use for a period of three years on the application site zoned “Green Belt” (“GB”) on the Ho Chung Outline Zoning Plan (OZP);

- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 6.5.2011 and the reasons were:
- (i) the 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. There was no strong justification in the submission for a departure from the planning intention even on a temporary basis; and
 - (ii) the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the natural environment;
- (c) the applicant had submitted written representations in support of the review application and the major grounds were summarized in paragraph 3 of the TPB Paper;
- (d) departmental comments – relevant departments had no objection to or adverse comments on the proposed development, except that Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD had some reservation on this application as the proposed temporary private garden was incompatible with the planned and surrounding natural environment and landscape character of “GB” zone; part of the platform/garden to the south had been nearly enclosed with glass canopy and balustrade and did not function as a garden; and approval of the application would set an undesirable precedent and attract similar applications within “GB” zone. The cumulative effect of approving similar applications would result in a general degradation of the environment;
- (e) public comments – four public comments were received during the publication of the review application and three public comments were

received during the publication of the further information submitted by the applicant. The commenters all objected to the application and the grounds included the blocking of access to adjacent lots, nuisance problems, hindrance of other villagers' right of and applications for building Small Houses on government land, fung shui impacts, ecological impacts in the vicinity, setting of undesirable precedents, and the maintenance problem of water pipe within the site;

(f) PlanD's views – PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were summarized below:

- (i) the private garden use 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. There was no strong planning justification in the submission to warrant a departure from the planning intention of the “GB” zone, even on a temporary basis;
- (ii) while the applicant argued that the application complied with the TPB Guidelines No. 10 for development within “GB” zone in that the application did not involve any clearance of existing natural vegetation and it did not affect any existing trees or features, CTP/UD&L had reservation on the review application as mentioned above;
- (iii) the site was a piece of government land and was previously covered by dense vegetation. It was formed as part of the site formation works in relation to the Small House development on Lots 760 to 762 in D.D. 249. There was no strong planning justification to utilize this piece of government land for private garden purpose;

- (iv) the previous approval given by the Director of Planning was for the Small House developments at Lots 760, 761 and 762 and the approval given by the Building Authority was for site formation works at the surrounding government land. These approvals did not cover the site for private garden use. The approval of the application would set an undesirable precedent for similar applications within the same “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the natural environment of the area; and

- (v) the application site originally formed part of the passageways to the adjacent two Small Houses at Lots 760 and 762 in D.D. 249 to the east of the application site. The applicant had subsequently fenced off the site for private garden purpose. The residents of the Small Houses at Lots 760 and 762 had been denied the use of the original passageways to their houses through the site. The pedestrian access to the planned Small Houses at Lots 787 and 788 would also be blocked by the private garden on the site. The village representatives of Kai Ham Village and Lot owners of Lots 787 and 788 had submitted public comments to the Board raising objection to the blocking of access to Lots 760, 762, 787 and 788. The site was a piece of government land and should be open for use by the public, in particular the adjacent lot owners, without any blockage.

35. The Chairman then invited the applicant’s representatives to elaborate on the application.

[Dr. W.K. Lo arrived to join the meeting at this point.]

36. With the aid of a Powerpoint presentation, Mr. Tsang Ka Kau made the following main points:

- (a) the application was for the use of a piece of government land of 66.8m² for private garden ancillary to the applicant’s house within the “GB” zone;

- (b) if planning permission was granted, the private garden would be administered by the District Lands Officer (DLO) under a short term tenancy (STT) for a period of three years. The DLO had no objection to the STT application;
- (c) the applicant respected the government right to protect its land interests and the principle of “pay-as-you-use”;
- (d) the proposed private garden was confined to part of the formed area for the three houses approved by the Building Authority in 1992. The then DPO did not raise any objection to the three houses at that time. The site formation works for the three houses were only of minimum scale and the Building Authority also had no objection to the site formation works;
- (e) the existing platform was considered as an existing use. The proposed private garden was confined within the existing platform and there was no extension to the “GB” area and no further development was envisaged;
- (f) as the house was built on a platform of 6m high, balustrade was installed in the southern part of the site to prevent people from falling off. The balustrade also helped to prevent potential attack from wild animals. The glass canopy was installed to protect the residents from falling leaves and bird droppings. The applicant undertook to keep the site clean and tidy;
- (g) the temporary private garden and its structures did not pose any impact on the surrounding environment. While no permanent plants could be grown on the formed platform, potted plants would be placed on the paved ground and the timber deck. Creeping plants would also be grown to cover the canopy and blend it with the natural surroundings;
- (h) there were local objections to the private garden use on the ground that it had blocked the access to the houses at Lots 760 and 762. However, it should be noted that there was an existing passageway to the east of the

two houses linking to Kiu Ham Road. There was an existing drop-off point at Kiu Ham Road;

- (i) as the application site was a 6m high platform, it could not serve as a logical means of access to Lots 787 and 788. There was a separate passageway next to the application site which led directly to the two lots;
- (j) the applicant had submitted information to address the public comments regarding the issues on access, fung shui and maintenance of water pipes. Owners of the adjacent Lots 760 and 762 were also located on the same raised platform. They just did not intend to take up the garden tenancy and pay rent;
- (k) granting approval to the subject application was to echo with the public voice for fairness, awareness for early action against adverse possession, revenue collection and government's land control tasks; and
- (l) granting approval to the application with approval conditions could help regularize the existing land use, which would not have adverse impact on the surrounding environment, in a proper manner. The applicant undertook to comply with all requirements imposed by relevant departments by way of approval conditions.

37. A Member had the following questions on the application:

- (a) whether the application site fell entirely within the extent of site formation works approved in 1992;
- (b) whether the applicant had just paved the platform approved in 1992 and no other structural works had been done;
- (c) whether the glass house shown in Plan R-4d of the Paper had any cover and whether the access to the adjacent house was blocked by the glass house;

- (d) when were the fence, glass house and timber deck as shown in Plan R-4d built and who built them? Were they built by the applicant or were they present when the applicant bought the house?
- (e) who constructed the stairs shown in Plan R-4b and what was the function of the stairs? and
- (f) did the applicant have any response to CTP/UD&L's comments in paragraph 5.2.1(a) of the TPB Paper?

38. In response, Mr. Tsang Ka Kau and Mr. Yung Sai Yuk made the following main points:

- (a) the application site fell entirely within the extent of site formation works approved in 1992;
- (b) no additional structural works had been done;
- (c) the glass house shown in photo 4 in Plan R-4d was a glass canopy underneath the balcony of the applicant's house. The door in front of the site was originally installed for security reason and to prevent wild animals from entering the house. Following the advice by DLO that the site should not be enclosed, the door had been removed. The wall at the back of the site had already been installed when the applicant bought the house;
- (d) the timber deck shown in Plan R-4b was built to cover the water pipes and soften the area. The stairs were already there when the applicant bought the house;
- (e) the balustrade was built for safety reason as the platform was 6m high and the glass canopy was a rain shelter; and
- (f) the applicant would be willing to remove the structures as required by

DLO under the STT.

39. A Member asked if the approval granted in 1992 as mentioned by the applicant's representative was for the site formation works of the platform where the house was built or for the private garden use. This Member also enquired about the similar applications as mentioned in paragraph 3(i) of the TPB Paper. In response, Mr. Yip Chak Yiu said that the similar applications were detailed in the supplementary information submitted by the applicant (Annex E of the TPB Paper). Mr. Yiu also said that the subject platform was in existence when the house was bought. The applicant installed the canopy and the balustrade in order to protect the elderly in the family from falling down the platform. As advised by DLO, since the installation of the canopy and balustrade had rendered the place virtually a private garden, an application for STT for occupying the government land for private garden use should be submitted.

40. A Member said that as the applicant's house and the two houses in Lots 760 and 762 shared a common platform, the area outside these houses on the platform would serve as common access to the houses. The conversion of the application site to a private garden would essentially block the common area and access to the other houses. This Member asked if the owners of the two other houses had the intention to install similar structures surrounding their houses for private garden use. In response, Mr. Yip Chak Yiu reiterated that the balustrade was built mainly for safety reason. The wall was however not built by the applicant.

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

41. The Vice-chairman said that the applicant's representative had indicated that the local objections had already been addressed. He asked how the applicant had addressed the villagers' objection related to the maintenance problem of the water pipes within the site and whether the village representative (VR) and local villagers still had any objection to the application. In response, Mr. Tsang Ka Kau said that water pipes were located along the western side of the site. There would be no maintenance problem for the water pipes. The applicant had explained the case to the District Council and the VR and there was no objection received.

42. In response to a Member's questions, Mr. Yip Chak Yiu said that the area shown in photo 5 in Plan R-2b was not blocked. The miscellaneous items stored there could be relocated if the area was required for access to the other houses in the area. Mr. Yip said that as indicated earlier in the presentation of Mr. Tsang Ka Kau, the main access to the two houses at Lots 762 and 760 was from the passageway to the east. There was a mini-bus stop along the passageway. The area to the west of the applicant's house was however a slope and was not a proper access.

43. In response to the Chairman's question, Mr. Yip Chak Yiu said that the wall shown in photo 4 in Plan R-4d could not be demolished by the applicant as it was linked to the glass house of the adjacent house.

44. A Member said that as shown in Plan R-4b, some water pipes should have been enclosed under the timber deck which was not entirely within the platform approved in 1992 as mentioned by the applicant's representative. In addition, a gate was installed in front of the timber deck and the stairs. This had made the area become a private area. In response, Mr. Yip Chak Yiu said that the timber deck was built by the applicant. Half of it was located within the original formed area. There were water pipes underneath one-fourth of the timber deck area. The gate in front of the stairs was not locked and people could gain access via the gate. If the timber deck was a concern of the Board, the applicant was willing to undertake some modification works to the timber deck. Mr. Tsang Ka Kau supplemented that the proposed STT covered the area of the timber deck.

[Miss Annie Tam arrived to join the meeting at this point.]

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

Deliberation Session

46. The Chairman said that the area was enclosed by the applicant for private garden use and it was not the original intention of the platform. Members agreed that the proposed private garden use within the “GB” zone should not be approved as it was not in line with the planning intention of the “GB” zone and the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone.

47. 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 “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. There was no strong planning justification in the submission for a departure from the planning intention even on a temporary basis; and
- (b) the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the natural environment.

[Ms. Maggie M.K. Chan left the meeting at this point. Professor Edwin H.W. Chan arrived to join the meeting at this point.]

Sha Tin, Tai Po and North District

Agenda Item 5

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/303

Proposed Columbarium in “Government, Institution or Community” zone,
Soka Gakkai International of Hong Kong Cultural and Recreational Centre,
Tai Po Town Lot 127 (Part), 33 Shan Nam Road, Tai Po
(TPB Paper No. 8943)

[The hearing was conducted in Cantonese.]

48. Ms. Anna S.Y. Kwong declared an interest in the item as she worked with Mr. Ted Chan, consultant of applicant, in a team for another project. As Ms. Kwong’s interest was indirect, Members agreed that she could stay in the meeting for the item.

49. The Chairman informed Members that there was a petition from members of the public against the subject application. The petition letter signed by some members of the public was tabled for Members’ reference.

Presentation and Question Session

50. The following representative of the PlanD and the applicant’s representatives were invited to the meeting at this point:

Mr. W.K Hui	District Planning Officer/Shan Tin, Tai Po and North (DPO/STN)
Mr. John Ng)
Mr. Ted Chan)
Mr. Ng Chi Ming)
Mr. David Choy) Applicant’s Representatives
Mr. Denial Wei)
Mr. Andrew Law)

Ms. Monica Ma)
Mr. Robin Li)
Ms Michelle Kwok)

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

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

(a) the applicant sought planning permission for a proposed columbarium building to accommodate 6,000 double-urn niches (or 12,000 urns) at the Soka Gakkai International of Hong Kong (HKSGI) Cultural and Recreational Centre at Shan Nam Road, Tai Po zoned “Government, Institution or Community” (“G/IC”) on the draft Ting Kok OZP;

(b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 3.6.2011 and the reason was:

the applicant failed to demonstrate that the proposed transport arrangement was practicable and enforceable and the proposed columbarium would not cause adverse traffic impact on the nearby road network, especially during Ching Ming Festival and Chung Yeung Festival;

(c) the applicant had submitted written representation including a traffic impact assessment (TIA) in support of the review application and the major points were summarized in paragraph 3 of the TPB Paper;

(d) departmental comments – the Commissioner for Transport (C for T) advised that he was prepared to withdraw his reservation on the application subject to imposition of approval conditions on traffic and phasing aspects, amongst others, junction management measures to avoid aggravating the heavily trafficked condition of Boundary Street and phased development of

the proposed columbarium. The Commissioner of Police (C of P) maintained his previous concerns about the potential impact on police resources for the traffic and crowd management during festival days. The District Officer/Tai Po (DO/TP) advised that the Tai Po District Council (TPDC) passed a motion objecting to the application. At the TPDC Environment Housing and Works Committee meeting on 7.9.2011, TPDC members reiterated their objections on the application. The villagers of six villages in Ting Kok Heung, i.e. Ting Kok, Lo Tsz Tin, Shan Liu, Tai Mei Tuk, Lung Mei and Lai Pek Shan, held a join meeting on 25.4.2010 to discuss the application. The participants opposed the proposed development and collect signatures from villagers against the proposed development for submission to the Board. Objection letters and signatures were also received from the local villagers. Other concerned departments had no objection to or adverse comments on the application on environmental, drainage, sewerage, geotechnical, visual and landscape aspects;

- (e) public comments – 520 public comments against the application were received from various parties including the TPDC, the TPDC member for the area, the Tai Po Rural Committee, the Rural Committee/Village Council, Village Representatives and the villagers/residents of the nearby villages. The commenters objected to the columbarium use on adverse impacts on traffic, environment, landscape, visual, ecology, fung shui, living environment, the health and psychology of nearby residents, public security and setting of undesirable precedent; and
- (f) PlanD's views – PlanD had no objection to the review application based on the assessments set out in paragraph 7 of the Paper, which were summarized below:
 - (i) the proposed development did not contravene the planning intention of the "G/IC" zone and it complied with the TPB Guidelines No. 16 in that the provision of GIC facilities within the HKSGI Centre at Tai Po would not be jeopardized. The proposed 2-storey

columbarium building which formed part of the HKSGI Centre at Tai Po was considered not incompatible with the existing GIC facilities on site within the religious compound. The proposed use would not be in conflict with the existing religious use on the site. Concerned government departments had no objection to or no adverse comments on the application on environmental, drainage, sewerage, geotechnical, visual and landscape aspects;

- (ii) in response to concerns raised by the C for T, the applicant had submitted a supplementary statement and a TIA with proposed traffic arrangements and mitigation measures including the use of “dedicated coaches only” arrangement, visitors movement control, management measures, phased implementation, police assistance, traffic arrangement for Kowloon Centre at Boundary Street and implementation commitment. The C for T was prepared to withdraw his reservation on the application subject to imposition of approval conditions on traffic and phasing aspects;
- (iii) to address the C of P’s concerns on the potential impact of grave sweepers on police resources, an approval condition to require “the submission and implementation of operation plans on traffic and crowd management for the proposed development during Ching Ming Festival and Chung Yeung Festival” was recommended to be imposed in the planning permission; and
- (iv) there were public comments against the application, raising objection to columbarium use on grounds of adverse impacts on traffic, environment, landscape, visual, ecology, fung shui, living environment, the health and psychology of nearby residents, public security and setting of undesirable precedent. As no burning of joss sticks and offerings would be involved as pointed out by the applicant, the proposed development was unlikely to cause any significant adverse environmental impacts on the surrounding areas. Concerned departments had no objection to or no adverse comments

on traffic, environment, ecology, public security, visual and landscape aspects of the application. The applicant would be advised to liaise with the local villagers/residents to address their concerns.

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

54. Mr. Ted Chan introduced the applicant's representatives and invited Mr. David Choy to present the case. Mr. David Choy made the following main points:

- (a) the applicant, Soka Gakkai International Hong Kong (HKSGI) was established in 1961 and was a registered Buddhist association in Hong Kong. Over the years, the HKSGI could not provide graveyards and columbarium facilities for the members and their relatives. Since some members were getting old, it was necessary for HKSGI to provide such facilities to serve the members and their relatives' needs so that they could pray for their ancestors in their own religious institution. The proposed columbarium would be provided within the existing HKSGI Cultural and Recreational Centre at Tai Po;
- (b) the applicant had engaged consultants to submit proposals to address the technical problems of the proposed development and to reduce impact of the development on local villages and the public;
- (c) the applicant had meetings with local villagers and TPDC to explain the proposal to them. The applicant would continue to liaise with local villagers to address their concerns on the subject proposal;
- (d) the traffic consultants of the applicant had proposed mitigation measures to address concerns raised by C for T on the potential impact of the proposed development and the applicant would accept the conditions imposed by C for T; and

- (e) the provision of columbarium within the applicant's own premises to serve its members could help address the shortage of niche spaces in Hong Kong.

55. Mr. Robin Li made the following main points:

- (a) road junction improvement schemes were proposed based on C for T's advice. The Police would also be hired to provide assistance in carrying out traffic management, if required, during the festival days; and
- (b) the HKSGI would set up a traffic control team to supervise and coordinate the traffic arrangement during the festival days.

56. Mr. Ted Chan made the following main points:

- (a) the columbarium building would be located within the existing HKSGI Cultural and Recreation Centre at Tai Po. The site was screened off by the slope within the "Green Belt" zone to the west of the site and was not visible from the surrounding villages;
- (b) the proposed columbarium was a 2-storey building. It was compatible with the existing buildings within the existing HKSGI Centre at Tai Po. The front part of the building would be the gathering hall and the niches would be located at the rear part of the building, which would not be visible from outside;
- (c) the existing mature tree at the site would be preserved in-situ;
- (d) the applicant had made efforts to address the concerns raised in the local objections, which were mostly technical issues relating to traffic and environmental impacts. The consultants of the applicant had already proposed mitigation measures to address the issues;

- (e) the applicant also had meetings with the TPDC and the local villagers to explain the proposal. With regard to the concern raised by a DC member's representative on the use of coffin vehicles, the applicant had already explained that coffin vehicles would not be used to transport human ashes to the columbarium; and
- (f) the granting of planning permission for the proposed development helped provide a platform for the applicant to further explain to local villagers on the development.

57. In response to some Members' questions, Mr. David Choy, Mr. Andrew Law and Mr. Robin Li made the following main points:

- (a) the proposed columbarium would only provide niches for members of the HKSGI and their relatives. The main purpose was to allow members of the HKSGI to pray for their ancestors in their own religious institution;
- (b) the HKSGI's practice of holding memorial ceremony would only be in the form of sutra reading by the members and their relatives. There would not be any burning of joss sticks and offerings;
- (c) there were columbaria of SGI in different countries. They were all built with modern architectural design. The subject columbarium building would also adopt a modern design. The outer wall would be installed with non-transparent glass such that the inside of the columbarium would not be visible from outside, but the building could still have natural lighting;
- (d) the HKSGI had been holding Buddhist functions at the HKSGI Centre at Tai Po every Sunday since 1996. Dedicated coaches were arranged by the HKSGI to transport members to the Tai Po Centre during the functions. There had been no traffic problem created or complaints from local villagers on traffic issue. This practice would be used during the festival days for visitors attending the memorial ceremony. Normal functions at

the Centre would be suspended during festival days to reduce traffic. It was estimated that there would be not more than 18 coaches visiting the columbarium per hour during festival days. Furthermore, picking up of visitors would be within the HKSGI's Kowloon Centre site and there would not be on-street loading/unloading activities. The potential impact on traffic in the areas of the Tai Po Centre and Kowloon Centre would be minimum;

- (e) while limited number of parking spaces would be available for use by members with special requirements, including the elderly and disabled persons, people using the private car parking spaces needed to buy parking tickets in advance;
- (f) the applicant accepted C for T's requirement to undertake junction improvement measures at Ting Kok Road and Shan Liu Road. Same as the practice of many other private organizations, the Police would also be hired, with payment, to coordinate traffic management during festival days;
- (g) the HKSGI welcomed any person sharing the same religious beliefs with SGI to be members of the HKSGI. The niches in the proposed columbarium would be sold subject to conditions to be worked out by HKSGI. The condition would include compulsory use of coach provided by HKSGI for visiting the columbarium during festival days; and
- (h) the human ashes would be transported to the columbarium using private cars, vans or taxis.

58. As visitors to the proposed columbarium would be picked up by coaches at HKSGI Kowloon Centre, to avoid congestion at Boundary Street, a Member suggested that C for T should be requested to consider restricting parking and loading/unloading activities there during festival days. Members agreed.

59. As the applicant's representatives had no further comment to make and Members had no further questions, the Chairman informed the applicant's representatives that the

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

Deliberation Session

60. The Chairman said that the local objections against the proposed columbarium were noted. The Board should consider the application on planning considerations, taking into account the local concerns. Members considered that the proposed development did not contravene the planning intention of the "G/IC" zone and the use and scale of the proposed development was not incompatible with the religious use and the adjacent setting at the HKSGI Centre at Tai Po. In response to concerns raised by the C for T, the applicant had submitted a TIA with proposed traffic arrangements and mitigation measures including the use of "dedicated coaches only" arrangement, visitors movement control, management measures, phased implementation, police assistance, traffic arrangement for Kowloon Centre at Boundary Street and implementation commitment. C for T was prepared to withdraw his reservation on the application subject to imposition of approval conditions on traffic and phasing aspects. The C of P's concerns on the potential impact of grave sweepers on police resources could be addressed by imposing an approval condition to require the submission and implementation of operation plans on traffic and crowd management for the proposed development during Ching Ming Festival and Chung Yeung Festival. Other concerned government departments had no objection to or no adverse comments on the application on traffic, environmental, drainage, sewerage, geotechnical, visual and landscape aspects.

61. After further deliberation, the Board decided to approve the application on review, on the terms of the application as submitted to the Board. The permission should be valid until 11.11.2015, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- (a) no cremation facilities and no burning of incense and offerings on site as proposed by the applicant were allowed;

- (b) the maximum number of niches within the site should not exceed 6,000;
- (c) the submission of an implementation programme, with phasing proposals to tie in with the completion of the traffic improvement measures and the submission of a review at the end of each phase, to the satisfaction of the Director of Planning or of the Town Planning Board;
- (d) the submission of a revised traffic impact assessment and implementation of the mitigation measures identified therein to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (e) the submission and implementation of operation plans on traffic and crowd management for the proposed development during Ching Ming Festival and Chung Yeung Festival to the satisfaction of the Commissioner of Police or of the Town Planning Board;
- (f) the submission of drainage proposal and provision of drainage facilities to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (g) the design and provision of emergency vehicular access, water supplies for fire fighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board;
- (h) the submission of landscape and tree preservation proposal prior to commencement of any site works to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (i) the implementation of the approved landscape and tree preservation proposal to the satisfaction of the Director of Planning or of the Town Planning Board.

62. Members also agreed to advise the applicant:

- (a) to apply to the District Lands Officer/Tai Po (DLO/TP) for a lease modification or a temporary waiver for implementation of the proposed development;
- (b) to note comments of the C for T that the applicant should provide measures to avoid aggravating the heavily trafficked condition of Boundary Street including withdrawal of the proposed run-in at Boundary Street and allow passengers being picked-off/dropped-off at side roads without impeding the local traffic. The applicant should hire the Police to provide assistance on traffic management during Ching Ming and Chung Yeung Festivals;
- (c) to note comments of the Chief Engineer/Development (2), Water Supplied Department (WSD) that for provision of water supply to the proposed development, the applicant might need to extend his inside services to the nearest suitable Government water mains for connection. The applicant should resolve any land matter (such as private lots) associated with the provision of water supply and should be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards. Water mains in the vicinity of the site could not provide the standard fire-fighting flow;
- (d) to note comments of the Chief Engineer/Mainland North, Drainage Services Department that there were no existing public stormwater drains available for connection in this area. The applicant was required to submit and implement a drainage proposal for the site to ensure that it would not cause adverse drainage impact to the adjacent area. The applicant/owner was also required to maintain such systems properly and rectify the systems if they were found to be inadequate or ineffective during operation. The applicant/owner should also be liable for and should indemnify claims and demands arising out of damage or nuisance caused by a failure of the systems. Public sewerage system in the vicinity of the area would be constructed under the "Tolo Harbour Sewerage of Unsewered Areas Stage 1 Phase 2C" project, which was tentatively

scheduled for completion in 2013. Upon completion of the sewerage project, the Director of Environmental Protection (DEP) might require the owner to make proper sewer connection from the proposed development to the public sewer at his own cost. Prior to carrying out any connection to public sewerage system, the applicant should assessed its effects on existing public sewerage system downstream of the connection, and to propose and implement sewerage upgrading works if necessary. As the public sewerage connection was currently not available for the site, the DEP should be consulted regarding the sewage treatment/disposal aspects of the development and the provision of septic tank;

- (e) to note comments of the Director of Agriculture, Fisheries and Conservation that sufficient room should be allowed for favourable growth of the Liquidamber formosana (楓香) to be preserved onsite;
- (f) to note comments of the Chief Town Planner/Urban Design & Landscape, PlanD that the existing tree was originally planted in a raised planter and the tree had already adapted to such growing condition. The applicant was advised not to change the existing soil level around the root flare of the tree and a proper tree protection zone should be erected up to the drip-line of the tree;
- (g) to note comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department that there were a few registered slope features within and in the vicinity of the site. The applicant was reminded to make necessary submissions to the DLO and/or the Building Authority for approval in accordance with the provisions of the Buildings Ordinance; and
- (h) to liaise with the nearby villagers/residents and the concerned parties and to provide them with relevant information of the proposed development to address their concerns.

[Professor Paul K.S. Lam, Mr. Raymond Y.M. Chan, Dr. James C.W. Lau, Professor P.P. Ho and Professor Eddie C.M. Hui left the meeting at this point. Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-MUP/63

Temporary Open Storage of New and Scrap Stainless Steel

for a Period of 3 Years in “Agriculture” zone,

Lots 758 S.B RP (Part) and 767 S.B (Part) in D.D. 46

and Adjoining Government Land, Sha Tau Kok Road, Fanling

(TPB Paper No. 8942)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

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

Mr. W.K. Hui	District Planning Officer/Shu Tin, Tai Po and North (DPO/STN)
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Mr. Tsoi Chuen Pan	Applicant
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Mr. Ngai Sik Keung)
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Ms. Candy Ng) Applicant’s representatives
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Ms. Tsoi Pui Shan)
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64. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. W.K. Hui to brief Members on the background of the application.

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

- (a) the applicant sought planning permission for temporary open storage of new and scrap stainless steel for a period of 3 years at the site zoned “Agriculture” (“AGR”) on the approved Man Uk Pin Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 14.1.2011 for the following reasons:
 - (i) the development under application was not in line with the planning intention of the “AGR” zone for the area which was primarily intended to retain and safeguard good agricultural land/farm/fishponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
 - (ii) the development under application did not comply with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and the applicant had failed to demonstrate that the development under application would have no adverse environmental impact on the surrounding areas;
 - (iii) the development under application was not compatible with land uses of the surrounding areas which were largely rural and agricultural in character; and
 - (iv) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone, the cumulative impact of approving similar applications would result in a general

degradation of the environment in the area;

- (c) the application site was subject to recent enforcement action for unauthorized storage use and workshop use. An enforcement notice (EN) was issued to the land owner (i.e. the applicant) and the occupier on 3.11.2009, requiring that the said unauthorized development be discontinued by 3.1.2010. As the requirement of the EN was not complied with upon expiry of the notice, prosecution action was taken against the notice recipients. The defendants were convicted and fined by the Magistrate after trial on 27.7.2011;
- (d) the applicant had submitted written representation in support of the review application and the major grounds of review were summarized in paragraph 3 of the TPB Paper;
- (e) departmental comments – the Director of Agriculture, Fisheries and Conservation (DAFC) maintained his views of not supporting the application as the site had high potential for agricultural rehabilitation and active agricultural activities were found in the vicinity of the site. The District Officer/North, Home Affairs Department (DO/N, HAD) advised that the Chairman of the Sha Tau Kok District Rural Committee (STKDRC) and Indigenous Inhabitant Representative (IIR) of Man Uk Pin raised objections to the application on the grounds that the concerned land use might destroy the tranquil rural scenic environment and affect the “fung shui” of the village and that the natural rural environment of Sha Tau Kok district should be treasured and preserved. In response to the further information submitted by the applicant, objections were received from the Chairman of the STKDRC and Residents’ Representative (RR) of Man Uk Pin. Chairman of the STKDRC raised similar concern as in the previous consultation period. RR of Man Uk Pin objected to the review application on the grounds that the access road had not been widened, traffic of heavy vehicles will cause danger to the villagers; and all villagers objected to the existence of storage sites as the ‘green’ village environment should be preserved;

- (f) public comments – a total of six public comments had been received during the publication of the review application and the further information submitted by the applicant. One comment submitted by the North District Council indicated no comment on the review application. Other commenters, including Designing Hong Kong Limited, the Village Representative of Man Uk Pin, the Chairman of the STKDRC, and IIR of the Man Uk Pin Village, objected to the application on the grounds that the use under application would cause environmental blight and was not in line with the planning intention of the “AGR” zone. The use under application would ruin the tranquil environment and affect the ‘fung shui’ of their village;

- (g) PlanD’s views – PlanD did not support the review application based on the assessments set out in paragraph 7.1 of the Paper, which were summarized below:
 - (i) there was active and fallow agricultural land to the immediate east and south of the application site. The development under application was not in line with the planning intention of the “AGR” zone which was primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC did not support the subject application from an agricultural development point of view as the site had high potential for agricultural rehabilitation and active agricultural activities were found in the vicinity of the site. There was no strong planning justification for a departure from the planning intention, even on a temporary basis;

 - (ii) although the areas to the immediate north and west of the application site were currently being used as works area for drainage improvements, the areas to the east and south of the site were predominantly rural in nature comprising plant nurseries, fallow

agricultural land and a number of domestic structures. According to DSD, the drainage improvement project was tentatively to be completed by end of 2012 and the works area would be reinstated into amenity upon completion of the project;

- (iii) the application site fell within Category 3 area of the TPB Guidelines No. 13E. According to the said guidelines, 'existing' and approved open storage and port back-up uses within the Category 3 area were to be contained and further proliferation of such uses was not acceptable. Applications falling within Category 3 areas would normally not be favourably considered unless the applications were with previous planning approvals. The application did not comply with the TPB No. 13E in that there was no previous planning approval for similar open storage use granted to the application site and there were local objections to the application;
- (iv) the area on both sides of this section of Sha Tau Kok Road within the coverage of Man Uk Pin OZP were zoned "AGR" and the current open storage uses on both sides of the same section of Sha Tau Kok Road were mostly suspected unauthorized developments which might be subject to enforcement action. Nearly all similar applications for open storage uses within these two "AGR" zones were rejected by the Committee or the Board on review on grounds of not in line with planning intention of "AGR" zone, incompatible with TPB Guidelines No. 13E, and setting undesirable precedent; and
- (v) three previous applications (No. A/NE-MUP/11, 36 and 44) on the site for the same use were rejected by the Board on review on 2.8.1996, 1.2.2002 and 14.2.2003 respectively mainly on the grounds of not in line with the planning intention of the "AGR" zone, incompatible with the surrounding land uses and approval of these applications would set an undesirable precedent for other similar applications.

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

67. With the aid of a Powerpoint presentation, Mr. Ngai Sik Keung made the following main points:

- (a) the sale and purchase agreement for acquiring the subject site was signed on 20.3.1990 and the land transaction was registered in the Land Registry on 26.9.1990. The site formation works then started for converting the site for open storage use;
- (b) subsequently, on 12.10.1990, the Interim Development Permission Area (IDPA) Plan for the area was published by the PlanD designating the area covering the site as "Unspecified Use" area;
- (c) developments and land uses in the rural areas were frozen immediately upon gazetting of the IDPA Plan, when detailed land use planning of the areas were yet to be undertaken. People had no channel to know about the Government's planning of the area;
- (d) the amendments to the Town Planning Ordinance to extend planning control to the rural areas in the New Territories were made on 23.1.1991. However, the Amendment Ordinance had retrospective effect back to 1990 at the time when the IDPA Plan was gazetted;
- (e) before the enactment of the Amendment Ordinance in 1991, the applicant had already purchased the subject site and undertook site formation works for open storage use;
- (f) when the first OZP for the area was published in 1994, the applicant had already been using the site for open storage for four years. The applicant had no intention to break the law;

- (g) the first application submitted by the applicant in 1996 was supported by PlanD, but was rejected by the Board for reason that proliferation of open storage use should be stopped. However, it should be noted that the scale of the subject open storage was small and should have no substantial impact on the environment. Furthermore, the application was rejected by the Town Planning Appeal Board as the proposed drainage works in the area were not yet confirmed. If the information on the drainage works was available at that time, the appeal might have been allowed;
- (h) subsequent applications/appeals for the same use were all rejected;
- (i) there would soon be changes in planning circumstances in the area. The Closed Area would be open for development and there was a highway proposal passing through the area. There was also a proposed new development area at Ping Che;
- (j) the subject site with an area of 912m² had no potential for rehabilitation for agricultural use. In addition, the site was located at Sha Tau Kok Road and was not accessible. Conversion into plant nursery use was not practical or economically viable; and
- (k) there had been no complaints from the public on the subject open storage use, as confirmed in Director of Environmental Protection's comments. Relevant government departments had no objection to the subject application and the previous applications.

68. In response to the Chairman's question, Mr. W.K. Hui said that the Ping Che new development area and the highway running across the area were only a proposal without firm implementation programme.

69. In response to a Member's question, Mr. Ngai Sik Keung said that the Town Planning (Amendment) Ordinance 1991 was to extend planning control to the rural areas in the New Territories. To avoid further proliferation of open storage use, the Amendment Ordinance provided provision to freeze all developments in the rural New Territories upon

publication of the IDPA Plans.

70. In response to another Member's question, Mr. W.K. Hui said that the history of the subject case was summarized in paragraph 7.5 of the TPB Paper. He said that after the gazetting of the IDPA Plan for the subject area on 12.10.1990, uses and developments within the area were all subject to planning permission from the Director of Planning. However, uses or developments existed before the first publication of the IDPA Plan were regarded as "existing use" and could be tolerated under the provision of the Ordinance. Mr. Hui informed Members that when the IDPA Plan was gazetted on 12.10.1990, the subject site was not for open storage use, although the site had been formed. The open storage use of the site was an unauthorized development. An enforcement notice (EN) was issued to the land owner and the occupier on 3.11.2010. As the requirement of the EN was not complied with upon expiry of the notice, prosecution action was taken against the notice recipients. The defendants were convicted and fined by the Magistrate after trial on 27.7.2011.

71. In response to another Member's question on the court ruling, Mr. Ngai Sik Keung said that while the applicant was convicted, the court ruled that there was existence of a certain degree of operational activity on the site before 12.10.1990.

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

[Professor S.C. Wong left the meeting at this point.]

Deliberation Session

73. The Chairman said that the enforcement action and the court ruling on the UD at the site were not relevant considerations of the Board on the subject case. The Board should consider whether there were changes in the planning circumstances pertaining to the case

which warranted a departure from the Board's previous decisions to reject the open storage use at the site.

74. A Member said that it might not be a reasonable ground to reject the application as the development was not compatible with the planning intention of the "AGR" zone. This Member also had concern on whether the site had any potential for rehabilitation. This view was shared by another Member.

75. In response, the Secretary said that since the application site was located within the "AGR" zone, the Board should consider the application having regarded to the planning intention of the "AGR" zone. She said that the Agriculture, Fisheries and Conservation Department had a policy on agricultural rehabilitation. The DAFC would provide comments on development within the "AGR" zone based on DAFC's policy for the Board's consideration.

76. A Member noted that the subject application was not in line with the Board's Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site. This Member enquired about the rationale of this consideration in the Guidelines No. 13E.

77. In response, the Secretary said that areas in the New Territories were divided into four categories as set out in the Guidelines No. 13E. Category 1 areas were areas considered suitable for open storage and port back-up uses. Category 2 areas were areas mostly without clear planning intention or fixed development programme, to be affected by major upcoming infrastructure projects, within or close to clusters of open storage or port back-up sites which were regarded as "existing uses" under the Ordinance and/or subject of previous planning approvals, and areas not subject to high flooding risk. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Category 3 areas were those outside Categories 1, 2 and 4 areas. Within these areas, "existing" and approved open storage and port back-up uses were to be contained and further proliferation of such uses was not acceptable. Applications falling with Category 3 areas would normally not be favourable considered unless the applications were on sites with previous planning approvals. Category 4 areas were the no-go areas.

They were areas with ponds or wetland or with extensive vegetation or close to environmentally or ecologically sensitive areas, areas which were mostly used for residential purpose or proposed for such purposes, areas near existing major village settlements or areas subject to extremely high flooding risk. The subject application site was within the Category 3 areas. The application did not comply with Guidelines No. 13E as there was no previous planning approval for similar open storage use granted to the application site and there were local objections on the application. The current use was also subject to enforcement action under the Ordinance. The Board should consider whether there was any change in the planning circumstances that warranted a departure for the previous rejection to the similar applications for open storage use at the site.

78. In response to another Member's question, the Secretary said that under s.26 of the Town Planning (Amendment) Ordinance 1991, the Director of Planning could prepare IDPA Plans. Within areas designated as interim development permission area, planning permission was required for all developments. The IDPA Plans for the rural New Territories were published in the gazette in October 1990, and the Amendment Ordinance enacted in January 1991 had retrospective effect back to the date of publication of the IDPA Plans. This was to avoid establishment of "existing use" during the discussion of the Amendment Bill by the Legislative Council (LegCo). There was wide public discussion on the extension of planning control to the rural area during the scrutiny of Amendment Bill by the LegCo. As for the subject case, while the applicant argued that the subject site was acquired in March 1990 before the enactment of the Amendment Ordinance in 1991, the open storage use was not in operation before the publication of the IDPA Plan for the area in October 1990.

79. After further deliberation, Members agreed that the application should be rejected as it was not in line with the planning intention of the "AGR" zone and the development did not comply with the Board's Guidelines No. 13E. The development under application was not compatible with land uses of the surrounding areas which were largely rural and agricultural in character and the approval of the application would set an undesirable precedent for similar applications within the "AGR" zone.

80. After further deliberation, the Board decided to reject the application on review. Members then went through the reason for rejection as stated in paragraph 8.1 of the Paper

and considered that it was appropriate. The reasons were:

- (a) the development under application was not in line with the planning intention of the “AGR” zone for the area which was primarily intended to retain and safeguard good agricultural land/farm/fishponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the development under application did not comply with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and there were local objections to the application;
- (c) the development under application was not compatible with land uses of the surrounding areas which were largely rural and agricultural in character;
and
- (d) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone, the cumulative impact of approving similar applications would result in a general degradation of the environment in the area.

[Mr. Walter K.L. Chan and Mr. Clarence W.C. Leung left the meeting at this point.]

Agenda Item 7

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-LT/416

Two Proposed Houses (New Territories Exempted Houses) in

“Agriculture” and “Village Type Development” zones and an area shown as ‘Road’,

Lots 228, 230 and 231 in D.D.16 and adjoining Government Land,

Lam Kam Road, Lam Tsuen, Tai Po

(TPB Paper No. 8946)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

81. The following representatives of the Planning Department (PlanD) and the applicant’s 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. Wong Kwong Chung)
Mr. Lau Yuet Ming, Alain) Applicant’s Representatives
Mr. Ma Ching Yuen, Joseph)

82. The Chairman extended a welcome and invited Mr. W.K. Hui to brief Members on the background of the application.

83. With the aid of plans, Mr. W.K. Hui presented the application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for two New Territories Exempted Houses (NTEHs) at the site partly zoned “Agriculture” (“AGR”) and “Village Type Development” (“V”) and partly within an area shown as “Road” on the approved Lam Tsuen Outline Zoning Plan (OZP);

- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 6.5.2011 and the reasons were:
- (i) the proposed development was not in line with the planning intention of the “AGR” zone, which was primarily 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. There was no strong planning justification in the current submission for a departure from the planning intention;
 - (ii) the applicant failed to demonstrate in the submission that the proposed development could not be accommodated within his own private lots to avoid taking up government land covered by natural vegetation which served as part of the green buffer separating the agricultural area and village houses area; and
 - (iii) the approval of the application would set an undesirable precedent for similar applications for house developments in the area, which would adversely affect the existing pleasant rural landscape quality of the area;
- (c) the applicant had submitted written representation in support of the review application and the grounds of review were summarized in paragraph 3 of the TPB Paper;
- (d) departmental comments – the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) advised that the application for NTEH (non-Small House) developments by way of land exchange within village ‘environs’ (‘VE’) would not normally be entertained by his office. The Director of Agriculture, Fisheries and Conservation (DAFC) maintained his previous views of not supporting the application from agriculture point of view as the site had high potential of rehabilitation for agricultural activities. The Chief Town Planner/Urban Design and Landscape

(CTP/UD&L), PlanD advised that the site was a piece of fallow agricultural land overgrown with grass and trees. The vegetation on the site served as part of the green buffer separating the agricultural area and village houses area. She had some reservation on the application from the landscape planning perspective as the approval of the application would set an undesirable precedent to similar application in the area and the cumulative impact of individual NTEH developments would inevitably detract from the pleasant rural landscape setting and the existing landscape quality of the area even though the construction of two houses in the area might not have significant impact on the landscape resources or landscape character. The Commissioner for Transport (C for T) had reservation on the application as such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development was not expected to be significant, such type of development outside the “V” zone, if permitted, would set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial. The proposed NTEHs should not be located within an area shown as ‘Road’ on the OZP, although there was no plan to widen the concerned section of Lam Kam Road;

- (e) public comments – no public comment was received on the review application;
- (f) PlanD’s views – PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were summarized below:
 - (i) a portion of the application site fell within area shown as ‘Road’. The proposed use of land for house development was definitively not in line with the planning intention of the ‘Road’ area. C for T pointed out that while he currently had no plan to widen the concerned section of Lam Kam Road, the proposed NTEHs should not be located within the area shown as ‘Road’ on the OZP;

- (ii) the applicant indicated that he had no intention to build over the 'Road' area, which would be surrendered to the Government in exchange for the government land in "AGR" zone. However, the proposed development was not in line with the planning intention of the "AGR" zone, which was primarily 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, cultivation and other agricultural purposes. Apart from the claims that a portion of the applicant's land had building status, which could not be verified by DLO, there was no strong planning justification to support the proposed house development;
- (iii) the two NTEHs could be accommodated within the lots owned by the applicant without the need to encroach onto government land;
- (iv) the subject site formed part of a much larger linear strip of land with trees and natural vegetation along Lam Kam Road and connected to more vegetated agricultural land to the south. The channel to the east of the site was a trained stream connecting to She Shan River currently undergoing river improvement works. CTP/UD&L, PlanD commented that the vegetation on the site served as part of the green buffer separating the agricultural area and village houses area and the approval of the application would set an undesirable precedent to similar applications in the area, which would inevitably detract from the pleasant rural landscape setting and the existing landscape quality of the area;
- (v) DAFC also maintained his previous views of not supporting the application from agriculture point of view as the site had high potential for rehabilitation for agricultural activities; and
- (vi) DLO/TP advised that all the three lots under application are originally described for agricultural use. The area of building

entitlement of the lot and the development restrictions claimed by the applicant were subject to further investigation. DLO/TP also pointed that according to the New Territories Small House Policy, application for NTEH/Small House development by non-indigenous villagers would not be considered.

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

85. With the aid of a Powerpoint presentation, Mr. Joseph Ma made the following main points:

- (a) the applicant owned Lots 228, 230 and 231 in D.D. 116, with a total registered area of about 485.62m²;
- (b) Lot 228 was a house lot, the building on which had been demolished;
- (c) in 2009, the applicant intended to rebuild on the lot and submitted building plans to the Buildings Department (BD). However, the building plans were rejected on the ground that the proposed house fell partly within area shown as "Road" on the OZP;
- (d) in March 2011, the applicant submitted the current application, proposing to shift the proposed NTEHs towards the government land to the southeast to avoid encroaching onto the "Road" area;
- (e) subject to agreement to relevant departments, the applicant also proposed to surrender part of the house lot in exchange for the small plot of government land to facilitate the implementation of the proposed NTEHs, if the subject planning application was approved;
- (f) within the same "AGR" zone, there had been five planning applications involving 30 NTEHs approved by the Board. These approved applications demonstrated that development of NTEHs was acceptable

within the “AGR” zone;

- (g) about 0.03 acre of land within Lot 228 had house status. This could be confirmed in DLO’s letter of 16.12.2008 shown at the meeting. The aerial photo of 1963 of the area also confirmed the presence of a house within the same lot. The applicant therefore had a right for redevelopment within the site;
- (h) the application site was sandwiched between the “Road” area and a drainage channel. It was not contiguous to the overall “AGR” zone;
- (i) the lot index plan also showed that there were many building licences within the “AGR” zone;
- (j) the layout proposed by the applicant showed that the two NTEHs could be accommodated within the land owned by the applicant. However, the layout was too cramped and considered undesirable;
- (k) the approval of the application would not set an undesirable precedent as Lot 228 carried house lot status. The fulfillment of the entitlement was however blighted by the “Road” area and it was noted that there was no programme for the construction of this proposed road. The applicant’s proposed land exchange would facilitate the proposed road widening in future; and
- (l) the proposed size and build over area of the re-positioned NTEHs would remain identical to its entitlement in Lot 228. No additional government land was proposed to be acquired.

86. Miss Annie Tam drew the attention of the applicant’s representatives to DLO/TP’s comments that the applicant should note that land exchange for NTEH (non-Small House case) development within the “VE” was not normally entertained by DLO as stated in paragraph 5.2.2(e) of the TPB Paper and asked if the applicant was an indigenous villager. In response, Mr. Joseph Ma confirmed that the applicant was not an indigenous

villager.

87. Mr. Alain Lau said that the comments of DLO/TP and the Small House Policy were noted. He said that the subject application did not relate to the Small House Policy as the subject site had house status and the applicant only intended to rebuild the NTEHs according to his entitlement under the lease. The surrender of the land within the “Road” area on the OZP for exchange of government land was regarded as a win-win situation as it facilitated the implementation of the road project and redevelopment of the NTEHs by the applicant.

88. As the applicant’s representatives had no further comment to make and Members had no further questions, the Chairman informed the applicant’s representatives that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board’s decision in due course. The Chairman thanked the applicant’s representatives and the representative of PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

89. In response to a Member’s question, Miss Annie Tam said that as reflected in the “A” Book Records, land rent was charged in respect of 0.03 acre of house land within Lot 228. However, the area of building entitlement of the lot and the development restrictions were subject to further investigation. Redevelopment within the applicant’s own land would be considered from the land administration point of view. There was no information on whether the applicant’s land would be affected by the proposed road works in the area.

90. After further deliberation, the Chairman summed up Members’ view that the application should not be supported as it was not in line with the planning intention of the “AGR” zone. The natural vegetation on site served as part of the green buffer separating the agricultural area and village houses area. The approval of the application would disintegrate this buffer area and set an undesirable precedent for similar applications for housing developments within the subject “AGR” zone.

91. 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 “AGR” zone, which was primarily 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. There was no strong planning justification in the current submission for a departure from the planning intention; and
- (b) the natural vegetation on site served as part of the green buffer separating the agricultural area and village houses area. The approval of the application would disintegrate this buffer area and set an undesirable precedent for similar applications for housing developments within the subject “AGR” zone. The cumulative impact of approving such applications would adversely affect the existing pleasant rural landscape quality of the area.

Agenda Item 8

[Open meeting]

Review of Application No. A/NE-TK/352

Two Proposed Houses (New Territories Exempted Houses - Small Houses)

in “Green Belt” zone, Lots 297 S.A ss.1 and ss.6 in D.D. 26,

Shuen Wan Chim Uk, Tai Po

(TPB Paper No. 8945)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

92. The following representative of the Planning Department (PlanD) and the applicant’s representative were invited to the meeting at this point:

Mr. W.K. Hui

District Planning Officer/Shu Tin, Tai
Po and North (DPO/STN)

Mr. Hui Kwan Yee

Applicant's representative

93. The Chairman extended a welcome and invited Mr. W.K. Hui to brief Members on the background of the application.

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

- (a) the applicant sought planning permission for two New Territories Exempted Houses (NTEHs) – Small Houses at the site zoned “Green Belt” (“GB”) on the draft Ting Kok Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 15.4.2011 and the reasons were:
 - (i) 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) the proposed development did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (Interim Criteria) as more than 50% of the footprints of the proposed Small Houses were outside the “Village Type Development” (“V”) zone and the village ‘environs’ (“VE”) of any recognised villages; and

- (iii) the approval of the application would set an undesirable precedent for other similar applications in the area.
- (c) the applicant had not submitted any written representation in support of the review application;
- (d) departmental comments – District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD) did not support the application as the proposed Small Houses fell outside the “V” zone and ‘VE’ of any recognized villages. The Commissioner for Transport (C for T) had reservation on the application and considered that such type of development should be confined within the “V” zone as far as possible. Although additional traffic generated by the proposed development was not expected to be significant, such type of development outside “V” zone, if permitted, would set an undesirable precedent case for similar applications in the future. The resulting cumulative adverse traffic impact could be substantial;
- (e) public comments – 36 public comments were received from the Chairman of Owners’ Committee of Treasure Sport Garden representing 18 flat owners and 35 individuals in two standard letter formats. The commenters objected the application mainly on the grounds of adverse impacts of the proposed development on the subject “GB” zone;
- (f) PlanD’s views – PlanD did not support the review application based on the assessments set out in paragraph 7.1 of the Paper, which were summarized below:
 - (i) 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) although there was a general shortage of land in meeting the future Small House demand in the “V” zone of the concerned villages, the proposed development did not comply with the Interim Criteria as more than 50% of the footprints of the proposed Small Houses fell outside the “V” zone and the ‘VE’ of any recognised villages. DLO/TP, LandsD did not support the application; and
- (iii) since 2003, the Board had rejected five previous planning applications (No. A/NE-TK/161, 162, 214, 216 and 333) and two previous rezoning applications (No. Y/NE-TK/8 and Z/NE-TK/10) for development of Small Houses at the subject site. There was no change in planning circumstances to merit a departure from the Board’s decisions on the previous applications.

95. The Chairman then invited the applicant’s representative to elaborate on the application.

96. Mr. Hui Kwan Yee made the following main points:

- (a) this was the fourth application submitted by the applicants for development of Small Houses at the subject site. The applicants were indigenous villagers and intended to build their own Small Houses in their own village and to meet their own housing needs. The applicants did not own other land for building of their Small Houses;
- (b) it was clearly shown in paragraph 6.2 of the TPB Paper that there was insufficient land within the subject “V” zone to meet the Small House demand of the villages. Some land within the “VE” was zoned “Government, Institution or Community”, “Site of Specific Science Interest” and “GB”. Some land had been resumed for road use. The “V” zone should be reviewed and extended to tally with the “VE” of the villages in Shuen Wan;

- (c) 14 Small Houses within the “GB” zone were previously approved by the Board; and
- (d) the Tai Po Rural Committee fully supported the review of the “V” zone in the area to meet the Small House demand. The Board should request PlanD to review the subject “V” zone.

97. As the applicant’s representative had no further comment to make and Members had no further questions, the Chairman informed the applicant’s representative that the hearing procedures for the review had been completed and the Board would further deliberate on the application in her absence and inform the applicant of the Board’s decision in due course. The Chairman thanked the applicant’s representative and the representative of PlanD for attending the meeting. They all left the meeting at this point.

Deliberation Session

98. In response to a Member comment that as shown in Plan R-2, the area was not green, the Chairman said that this could be considered under PlanD’s on-going review of “GB” zone.

99. After further deliberation, the Chairman summed up Members’ view that the application should not be supported as it was not in line with the planning intention of the “GB” zone, the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories as more than 50% of the footprints of the proposed Small Houses were outside the “V” zone and the ‘VE’ of any recognised villages and approval of the application would set an undesirable precedent for other similar applications in the area.

100. 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 “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;
- (b) the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories as more than 50% of the footprints of the proposed Small Houses were outside the “V” zone and the ‘VE’ of any recognised villages; and
- (c) the approval of the application would set an undesirable precedent for other similar applications in the area.

Agenda Item 9

[Open meeting]

Review of Application No. A/NE-TK/347

Proposed House (New Territories Exempted House - Small House)

in “Village Type Development” and “Agriculture” zones,

Government Land in D.D. 15, Shan Liu Village, Tai Po

(TPB Paper No. 8944)

[The meeting was conducted in Cantonese.]

101. As sufficient notice had been given to the applicant to invite him to attend the meeting, Members agreed to proceed with the hearing of the review application in the absence of the applicant who had indicated that he would not attend the hearing.

Presentation and Question Session

102. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Mr. W.K. Hui

District Planning Officer/Shu Tin, Tai
Po and North (DPO/STN)

103. The Chairman extended a welcome and invited Mr. W.K. Hui to brief Members on the background of the application.

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

- (a) the applicant sought planning permission for a proposed house (New Territories Exempted House (NTEH) – Small House) at the site zoned “Agriculture” (“AGR”) and “Village Type Development” (“V”) on the draft Ting Kok Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 18.3.2011 and the reasons were:
 - (i) the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories (the Interim Criteria) in that it would likely involve site formation, slope stabilisation and access construction works resulting in clearance of mature trees and dense vegetation that would damage the landscape quality of the area surrounding Pat Sin Leng Country Park. The applicant failed to demonstrate that the proposed development would not cause adverse geotechnical and landscape impacts on the surrounding areas; and
 - (ii) the approval of the application would set an undesirable precedent for other similar applications in the area and the adjacent “AGR” zone. The cumulative impacts of approving such applications would result in further encroachment onto the woodland surrounding the country park area and a general degradation of the environment and landscape quality of the area;

- (c) the applicant had submitted written representations in support of the review application and the grounds of review were summarized in paragraph 3 of the TPB Paper;
- (d) departmental comments – the Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application as the site had high potential for agricultural rehabilitation. The Chief Town Planner/Urban Design & Landscape (CTP/UD&L), PlanD maintained her objection to the application from landscape planning point of view as the site was at the edge of existing woodland on the upper foothills of Pat Sin Leng. The proposed development would lead to adverse impact on the existing trees and vegetation on top of the slope. The Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advised that the proposed development on top of the slope would affect two existing slope features. While the stability conditions of these two slope features were unknown, the applicant was required to make site formation submission covering the investigation of stability of any man-made slopes/retaining walls and natural slopes within or near the proposed development to the Building Authority and/or DLO for approval as required under the provisions of the Buildings Ordinance. Any necessary stabilization works should be carried out as part of the development;
- (e) public comments - one public comment was received against the planning application at the s.16 stage for the reason that the proposed development would cause removal of natural vegetation and irreversible impact on the nearby landscape in the area. No public comment was received in respect of the review application;
- (f) PlanD's views – PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were summarized below:

- (i) the site fell within the 'VE' of Shan Liu Village and there was a general shortage of land in meeting the demand for Small House development in the concerned "V" zone. While the site was within the WGG, the concerned departments had no objection to the proposed development from the water quality impact point of view subject to the proposed Small House being able to be connected to the public sewage system and the occupation of the Small House would only take place after the public sewerage system was completed in the area;

- (ii) notwithstanding the above, the site was a piece of government land at the edge of steep slope features on the northeast and surrounded by the dense woodland of the Pat Sin Leng Country Park. The site and the area to its northwest were overgrown with mature trees and dense vegetation on natural hill slopes. The H(GEO), CEDD advised that the proposed development on top of the slope would affect two existing slope features. While the stability conditions of these two slope features are unknown, the applicant was required to make site formation submission covering the investigation of stability of any man-made slopes/retaining walls and natural slopes within or near the proposed development to the Building Authority and/or DLO for approval as required under the provisions of the Buildings Ordinance. Any necessary stabilization works should be carried out as part of the development.

- (iii) the proposed NTEH/Small House development did not comply with the Interim Criteria in that the proposed development would cause adverse landscape impacts on the surrounding area. The CTP/UD&L objected to application from landscape planning point of view as the site was at the edge of existing woodland on the upper foothills of Pat Sin Leng. The proposed development would lead to adverse impact on the existing trees and vegetation on top of the slope;

- (iv) the DAFC did not support the application from agricultural point of view as the site had high potential for agricultural rehabilitation; and
- (v) the applicant failed to provide sufficient information in the submission to address the geotechnical and landscape concerns. The approval of the application would set an undesirable precedent for other similar applications in the area and adjacent “AGR” zone. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area encroaching onto the woodland surrounding the country park area.

105. As Members had no further questions, the Chairman thanked Mr. W.K. Hui for attending the meeting. Mr. Hui left the meeting at this point.

Deliberation Session

106. Members agreed that there was no change in planning circumstances, RNTPC’s decision to reject the subject application should be upheld.

107. After 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 did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in the New Territories in that it would likely involve site formation, slope stabilisation and access construction works resulting in clearance of mature trees and dense vegetation that would cause irreversible damage to the landscape quality of the area surrounding the Pat Sin Leng Country Park. The applicant failed to demonstrate that the proposed development would not cause adverse geotechnical and landscape impacts on the surrounding areas; and

- (b) the approval of the application would set an undesirable precedent for other similar applications in the area and adjacent “AGR” zone. The cumulative impacts of approving such applications would result in further encroachment onto the woodland surrounding the country park area and a general degradation of the environment and landscape quality of the area.

108. The meeting was adjourned for lunch at 1:00 p.m.

109. The meeting was resumed at 2:15 p.m..

110. 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

Mr. B.W. Chan

Mr. Y.K. Cheng

Mr. Felix W. Fong

Dr. James C.W. Lau

Professor Eddie C.M. Hui

Mr. Roger K.H. Luk

Ms. Pansy L.P. Yau

Deputy Director of Environmental Protection

Mr. Benny Wong

Director of Lands

Miss Annie Tam

Director of Planning

Mr. Jimmy C.F. Leung

Sha Tin, Tai Po and North District

Agenda Items 10 to 13

[Open Meeting (Presentation and Question Session only)]

Consideration of Further Representations on the Proposed Amendments 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 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 Arising from the Consideration of Representations and Comments (TPB Paper No. 8941)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

111. The Secretary said that as the Heung Yee Kuk New Territories (Heung Yee Kuk) was the commenter of the subject Sha Tau Kok (STK), Lin Ma Hang (LMH), Man Kam To (MKT), and Ma Tso Lung and Hoo Hok Wai (MTL & HHW) Development Permission Area (DPA) Plans, the following Members had declared interests in this item:

Mr. Stephen M.W. Yip - being an ex-officio Executive Councillor of Heung Yee Kuk
Dr. W.K. Yau] being a co-opted Councillor of Heung Yee Kuk
Dr. C.P. Lau]

112. Members noted that Mr. Stephen M.W. Yip, Dr. W.K. Yau and Dr. C.P. Lau had tendered apologies for being unable to attend the meeting.

113. The Secretary said that a letter dated 10.11.2011 from the village representative of Fung Wong Wu Tsuen, who was the representer (R1) of the draft MKT DPA Plan, was tabled at the meeting. Mr. Yik said that he could not attend the hearing due to work commitments, but requested Members to consider extending the “V” zone extension area on the draft MKT DPA Plan to cover the entire Lot 212 in D.D. 82 as the concerned lot was owned by the villagers. In addition, the LMH Village Office had

launched a petition against the planning of the LMH Village for conservation purpose before the hearing today. The petition letter was also tabled at the meeting.

114. The following representatives of the Planning Department (PlanD) and the Agriculture, Fisheries and Conservation Department (AFCD) were invited to the meeting:

- Mr. W.K. Hui - District Planning Officer/Shau Tin, Tai Po and North (DPO/STN), PlanD
- Mr. P.K. Ip - Senior Town Planner/Frontier Closed Area (STP/FCA), PlanD
- Mr. Terry Chao - Town Planner/Frontier Closed Area, PlanD
- Ms. Jackie Yip - Senior Nature Conservation Officer/North (Acting), AFCD
- Miss Cynthia Chan - Nature Conservation Officer/North, AFCD

115. The following further representers, representatives, commenters and their representatives were invited to the meeting:

All Four DPA Plans

Heung Yee Kuk – C3 (STK DPA Plan), C8 (LMH DPA Plan), C1 (MKT DPA Plan) and C1 (MTL & HHW DPA Plan)

- Ms. Chan Ka Mun, Carmen]
- Mr. Chan Hon Kwan, Henry] Commenters' representatives (all
- Mr. Chan Tung Ngok, Tony] four DPA Plans)
- Ms. Chan Shui Man]
- Mr. Lee Koon Hung - Commenters' representative (STK and LMH DPA Plans)
- Mr. Fung Wai Fat } Commenters' representatives (MKT
- Mr. Fung Wai Kwong } and MTL & HHW DPA Plans)
- Mr. Man Sun Choi] Commenters' representatives (MKT
- Mr. To Shu Hoi] DPA Plan)

STK DPA Plan

F1 – Hong Kong Bird Watching Society

Mr. Cheng Nok Ming - Further representer's representative

R5 – Mo Lap San

Mr. Mo Lap San - Representer

C2 –Sha Tau Kok Farm Organic Co. Ltd.

Mr. Raymond Ng - Commenter's representative

LMH DPA Plan

F1 – Ip King Wing

Mr. Ip King Wing - Further representer

F3 and R5 - Designing Hong Kong

Miss Eva Tam - Further representer / representer's representative

F11 - World Wide Fund Hong Kong, Designing Hong Kong and Green Power

Dr. Alan Leung]
Miss Sandra Chow]
Dr. Michael Lau] Further representer's representatives
Miss Eva Tam]
Dr. Karen Woo]

F13 – Kadoorie Farm & Botanic Garden Corporation

Mr. Yip Sin Hang - Representer's representative

F15 - World Wide Fund Hong Kong

Dr. Alan Leung] Further representer's representatives
Miss Sandra Chow]

R2 – LMH Village Office

Mr. Yip Wah Ching]
Mr. Lau Kwok Keung]
Mr. Tsang Yuk On]

Mr. Yip Yuk Yan]	Representer's representatives
Mr. Yip Cheung Ying]	
Mr. Yip Yuk Kwan]	
Mr. Man Poon]	
Ms. Ip Sun Kiu]	
Ms. Chan Yuet Ying]	
Mr. Yip Lung Heung]	
Mr. Yip Shek Keung]	
Mr. Yip Tong Fuk]	
Mr. Yip Chueng Fung]	
Mr. Yip Yuk On]	
Ms. Yip Yin Chu]	
Mr. Yip Kuai Sun]	
Mr. Yip Kam Cheung]	
Ms. Yip Mee Fook]	

R7 -World Wide Fund Hong Kong

Dr. Alan Leung - Representer's representative

116. As sufficient notice had been given to invite all the further representers and the relevant original representers and commenters to attend the meeting, Members agreed to proceed with the hearing of the further representations in the absence of the further representers and the relevant representers and commenters who had indicated that they would not attend or did not reply to the invitation to this meeting.

117. The Chairman extended a welcome and explained the procedures of the hearing to the further representers, representers, commenters and their representatives. He then invited PlanD's representative to brief Members on the further representations.

118. With the aid of a Powerpoint presentation, Mr. P.K. Ip, STP/FCA, made the following main points as detailed in the Paper:

Background

- (a) on 30.7.2010, the draft STK DPA Plan No. DPA/NE-STK/1, the draft LMH DPA Plan No. DPA/NE-LMH/1, the draft MKT DPA Plan No.

DPA/NE-MKT/1, the draft MTL & HHW DPA Plan No. DPA/NE-MTL/1 and the draft Ta Kwu Ling North DPA Plan No. DPA/NE-TKLN/1 were exhibited under s.5 of the Town Planning Ordinance (the Ordinance) to take forward the recommendations of the Study on Land Use Planning for the Closed Area (the FCA Study). During the statutory publication periods of the five draft DPA Plans and the representations, a total of 38 representations and 14 comments were received respectively;

- (b) after giving consideration to the representations and comments on 25.2.2011, the Town Planning Board (the Board) decided to defer a decision on the representations and comments pending further review by PlanD on the land use proposals, in particular the “Village Type Development” (“V”) zones, taking into account the views of the representers/commenters and other relevant planning considerations;
- (c) on 8.9.2011, the Board gave further consideration to the representations and comments and decided to propose the following amendments to four draft DPA Plans to partially meet some representations :
 - (i) revision of the respective “V” zones on the draft STK DPA Plan (R1 to R11), the draft MKT DPA Plan (R1) and the draft MTL & HHW DPA Plan (R3); and
 - (ii) rezoning of the buffer area of the LMH Stream from “Conservation Area” (“CA”) to “Green Belt” (“GB”) on the draft LMH DPA Plan (R1 and R2);
- (d) on 16.9.2011, the proposed amendments were exhibited for public inspection under s.6(C)2 of the Ordinance. During the respective statutory publication periods, two further representations for the STK DPA Plan, 15 further representations for the LMH DPA Plan, one further representation for the MKT DPA Plan and another further representation for the MTL & HHW DPA Plan were received. On 14.10.2011, the

Board agreed to consider all the further representations collectively in one group as they were similar in nature;

The Further Representations

V” Zone Extensions on the STK DPA Plan

- (e) F1 (Hong Kong Bird Watching Society) in respect of the draft STK DPA Plan opposed the proposed rezoning of a strip of land to the north of Sheung Tam Shui Hang from “GB” to “V”; the areas to the east, south and north of Tsiu Hang from “Agriculture” (“AGR”) to “V”; and the areas to the south and west of San Tsuen from “AGR” to “V”. F1 considered that agricultural land should be retained for agricultural purposes which could also facilitate biodiversity conservation, recreational agriculture and revival of agricultural activities. Developments should be carefully controlled through the planning permission system to ensure that they would not cause adverse impacts on the area. Moreover, the extension of the “V” zones was unjustified as they had extended beyond the ‘village environs’ (‘VE’) of the concerned villages. F1 proposed to revoke the concerned amendment Items A2, B2 and B4;

Lack of Layouts for DPA Plans

- (f) Designing Hong Kong (DHK) submitted one further representation for each of the STK DPA Plan (F2), the MKT DPA Plan (F1) and the MTL & HHW DPA Plan (F1) expressing concerns on the haphazard development relating to the proposed “V” zone extensions which followed a pattern of landownership resulting from traditional agricultural uses. Moreover, the DPA areas lacked sustainable layout plans of infrastructure for the health and well being of residents and for quality urban design. This would lead to deterioration of the environmental quality and landscape value of the area and cause health/social problems. DHK had not put forward any specific proposal;

Buffer Area of the LMH Stream on the LMH DPA Plan

(g) F1 to F15 in respect of the draft LMH DPA Plan opposed the rezoning of the buffer area on both sides of the LMH Stream from “CA” to “GB”. Their grounds of representations were summarised below:

- (i) F1 (Ip King Wing) pointed out that the LMH Stream was a channel built by their ancestors for irrigation and diversion of storm water to avoid flooding. Moreover, a large area which was suitable for Small House (SH) development within the buffer area was lost without compensation;
- (ii) F2 (Cheng Nok Ming) considered that “CA” or “Site of Special Scientific Interest” (“SSSI”) were suitable zonings for the riparian habitat of the LMH Stream as it was an integral part of the stream ecosystem and an important habitat for animals. “SSSI” zoning had been adopted for the area surrounding Sha Lo Tung Stream whilst “CA” zoning had been adopted to serve as a buffer area around Country Parks and ecologically important sites such as the Ngong Ping SSSI;
- (iii) F3 to F10 (DHK, Tony Nip, Mike Kilburn, Guy Shirra, Martin Williams, John Wright, J Chau and Eva T respectively) considered that the buffer area protected the LMH Stream, which was of high ecological value, from the development areas nearby. The “GB” zoning for the buffer area was insufficient to safeguard the SSSI and did not reflect the ecological value of the area. Instead, the original “CA” zoning could ensure a sustainable development of the area and safeguard the environment. The conservation objectives for the stream and its environs had been clearly identified and confirmed by PlanD in the public engagement exercises of the FCA Study. There was no overriding need and insufficient information (including an assessment of the costs and benefits) was provided to support the proposed rezoning;

- (iv) F11 (DHK, Green Power and World Wide Fund Hong Kong) raised similar points as F3 to F10;
- (v) F12 (Conservancy Association) could not accept that SH development should be catered for at the expense of the stream ecology. The LMH Stream had high local conservation value for the freshwater fish community in Hong Kong. The proposed rezoning to “GB” would increase the polluted surface run-off and threaten the stream ecology;
- (vi) F13 (Kadoorie Farm & Botanic Garden Corporation) considered that the “GB” zoning could not provide adequate protection for the riparian habitat of the LMH Stream which had been designated as a SSSI due to its high conservation value. The riparian habitat became part of the stream during heavy rain and provided shelter/foraging ground for fresh water fishes. With the proposed rezoning to “GB”, future developments would likely take place, which would degrade the freshwater fish community and the natural environment;
- (vii) F14 (Green Lantau Association) considered that the proposed rezoning to “GB” and reliance on the planning process to allow possible developments within the buffer area of the stream were a highly retrograde move. Under the “GB” zoning, accidents and unauthorised developments could take place on privately owned land; and
- (viii) F15 (World Wide Fund Hong Kong) considered that the proposed rezoning was not in line with the general planning intention of the LMH DPA Plan. The riparian corridor should be preserved as a buffer for the stream, and could serve as a land corridor to conserve the habitats for wildlife associated with the stream and, as a vegetated buffer, to separate village developments from the stream. The buffer could also provide an added protection to the in-stream

habitat;

- (h) the proposals made by the further representers were summarised as follows:
- (i) F1 requested that a similar size of land be swapped with the buffer area of the LMH Stream so as to compensate for loss of land for SH development;
 - (ii) F2 to F15 proposed to maintain the original “CA” zoning for the buffer area; and
 - (iii) F11 and F15 also proposed to rezone the buffer area to “SSSI” and incorporate the LMH Stream and its drainage basin into part of the proposed Robin’s Nest Country Park;

Others

- (i) F1 (Ip King Wing) in respect of the draft LMH DPA Plan also opposed the “Government, Institution or Community” (“G/IC”) zoning for the Macintosh Fort (Kong Shan), “SSSI” zoning for the LMH Lead Mine, and “GB” zoning for Robin’s Nest and the “GB” area around the village;

PlanD’s Responses to the Further Representations

- (j) PlanD’s responses to the further representations were detailed in paragraph 4 of the Paper and summarised below:

“V” Zone Extensions on the STK DPA Plan

- (i) in reviewing all the “V” zones in the FCA area, PlanD had taken note of the latest SH demand provided by the District Lands Officer/North and had drawn up a set of general criteria for reviewing the boundaries of “V” zones, as follows :

- the current “V” zones on the DPA Plan would need to be extended if the available land for SH development within the

“V” zone could not meet the demand;

- the extended areas of the “V” zone should be within or contiguous to the ‘VE’ and should preferably include Government land;
- the “V” zone would be extended to meet the increased demand but up to the limit equivalent to the area bounded by the ‘VE’; and
- the current “V” zones on the DPA Plan would not need to be extended if the available land for SH development within the “V” zone was sufficient to meet the demand;

- (ii) the “V” zone extensions on the draft STK DPA Plan were intended to cater for the future SH demand for the villages of San Tsuen, Muk Min Tau, Tsiu Hang and Tam Shui Hang. Due to physical constraints, the proposed “V” zone extension areas for San Tsuen, Muk Min Tau and Tsiu Hang had been adjusted to meet the new SH demand up to the extent equivalent to about 95% of the size of the ‘VE’. They mostly fell within the ‘VE’ and included fallow agricultural/vacant land without encroaching the 10m setback from Sha Tau Kok Road;
- (iii) for Tam Shui Hang, the site at the proposed Amendment Item A2 on Plan FH-1b of the Paper, which formed part of the “V” zone extension areas, was currently covered by weeds and shrubs. Moreover, where land at the periphery of but outside the boundary of ‘VE’ was included for the “V” zone extension areas, it was to make up for land unsuitable for development within the ‘VE’ such that the total area of “V” zone was not less than the ‘VE’ area so as to adequately meet the forecast SH demand. A balance had been struck between the need for retaining fallow agricultural land and the need for village type development;
- (iv) the proposed “V” zone extension areas on the draft STK DPA Plan had a total area of 8.81ha (about 1.58% of the total area of the DPA

Plan) which would not cause significant ecological, landscape and environmental impacts. Concerned departments, including AFCD, also had no objection to the proposed “V” zone extension areas. In light of the above, F1’s proposal to revoke the concerned amendments of the draft STK DPA Plan was not supported;

Lack of Layouts for DPA Plans

- (v) PlanD had prepared a number of layout plans covering various recognized villages in the territory and would update them if required. The preparation of new village layout plans would depend on a number of factors including the availability of resources for implementation, etc. For new DPA Plans, OZPs should first be prepared before layout plans could be contemplated. The DPA Plans would in the meantime provide basis for development control and as a framework for guidance of development;

- (vi) notwithstanding, there were proposed infrastructure programmes to cater for the land uses in the areas. Examples included the improvement proposals for Lin Ma Hang Road and other roads in the area, as well as the “North District Sewerage Stage 2” project which was scheduled to commence by end-2011;

Buffer Area of the LMH Stream on the LMH DPA Plan

- (vii) the land use proposals as shown on the draft LMH DPA Plan had struck a fine balance between the villagers’ need for SH and conservation. In the course of the FCA Study, the ecological significance of LMH Stream was recognized and a 20m buffer on both sides of the stream was recommended. To compensate for the low-lying topography of “V” land within the buffer area which might not be feasible for SH development, the size of the “V” zone had already been enlarged (which was about 107% of the ‘VE’);

- (viii) noting the predominantly private land status of the buffer area, the existence of village houses and agricultural activities adjacent to some sections of the LMH Stream and the low ecological value of the buffer area as advised by DAFC, the Board did not see the need for zoning the buffer area as “SSSI”. As there was an existing community along the banks of the stream, the Board considered that the rezoning of the buffer area from “CA” to “GB” would enable the Board to regulate development and maintain a proper balance between conservation and the community need for development;
- (ix) there was adequate control for protecting the LMH Stream buffer under the Notes for the “GB” zone. Firstly, there was general presumption against development under the “GB” zone. Secondly, as compared with “CA” zone, the additional Column 1 uses under the “GB” zone included ‘Agricultural Use’, ‘Barbecue Spot’, ‘Government Use (Police Reporting Centre only)’, ‘On Farm Domestic Structure’, ‘Picnic Area’, ‘Public Convenience’ and ‘Tent Camping Ground’. Of these, ‘Agricultural Use’ and ‘On Farm Domestic Structure’ had already been recommended for inclusion as Column 1 uses for the stream buffer after consultation with DAFC at the hearing on 8.9.2011. The remaining uses, except ‘Tent Camping Ground’, were mainly Government uses and/or subject to stringent control by the concerned departments. ‘Tent Camping Ground’ seemed to fit in the passive recreational opportunities provided from the relatively low ecological value of the stream buffer and the scenic setting of the area. It was also a use that could be considered as meeting the fine balance between conservation and limited recreation. Thirdly, for the Column 2 uses, the “GB” zone provided more flexibility but at the same time development would be subject to the scrutiny of the Board under the planning permission system. Unauthorised development would also be subject to enforcement by the Planning Authority in accordance with the provisions of the Ordinance. As such, the

further representers' proposals to zone the buffer area as "SSSI" or to revert it back to "CA" zone was not supported;

- (x) as the stream courses in Sha Lo Tung and the adjacent buffer area had higher ecological value and no human settlement was found nearby, the situation in Sha Lo Tung was considered not appropriate to be compared with that of LMH; and

Others

- (xi) the "G/IC" zoning for the Macintosh Fort (Kong Shan), "SSSI" zoning for the LMH Lead Mine, and "GB" zoning for Robin's Nest and the "GB" area around the village as opposed by F1 (Ip King Wing) were not related to the proposed amendments of the draft LMH DPA Plan.

119. The Chairman then invited the further representers, representers, commenters and their representatives to elaborate on their submissions.

F1 of LMH DPA Plan (Ip King Wing)

120. With the aid of photographs and an aerial photo, Mr. Ip King Wing made the following main points:

- (a) the LMH Stream was not a natural stream, but an artificial channel built by his ancestors many years ago for irrigation and diversion of storm water to prevent flooding. In fact, one of the villagers who was present at the meeting, Mr. Yip Cheung Ying, had been practising farming in the area and repairing the channel every winter. Therefore, it was a wrong decision to designate the LMH Stream as a SSSI in the first place, as that had not taken into account the background and history of the stream. In such circumstances, it was not necessary to designate a buffer area for the protection of the stream;
- (b) the buffer area for the LMH Stream had an area of about 1 million sq.ft.

If the buffer area was to be maintained, the affected landowners should be compensated for the loss of land within the buffer. While the Board did not have the power to make monetary compensation, it could designate the same area of land at an alternative site for village housing development as compensation; and

- (c) with respect to the Macintosh Fort, the LMH Lead Mine, Robin's Nest and the area around the LMH Village which were zoned "G/IC", "SSSI" and "GB" on the draft LMH DPA Plan, these areas were used for the plantation of pine trees. The aerial photo taken on 6.11.1945 also showed that these areas were agricultural land. They should not be regarded as natural areas and subject to various restrictions on the use of land.

F1 of STK DPA Plan (Hong Kong Bird Watching Society)

121. Mr. Cheng Nok Ming made the following main points:

- (a) as there was a lack of comprehensive planning and ecological assessment for the sustainable development of agricultural land, the agricultural land in the territory had gradually been lost over the years due to the proliferation of SH development. On the other hand, there were instances that farmers could not find suitable land for agricultural rehabilitation. In this regard, the Board should closely monitor the demand for agricultural land;
- (b) with the lack of information about the ecological value of agricultural land, it was considered prudent to retain the agricultural land and monitor the SH demand through the planning permission system. The latter would provide a mechanism for public consultation on the proposed SH development. If the proposed SH development could satisfy the 'Interim Criteria for Consideration of Application for New Territories Exempted House/SH in the New Territories', the Board might give favourable consideration to the application. In light of the above, it was

considered not necessary to rezone large tract of agricultural land to “V” on the draft STK DPA Plan as the extension areas; and

- (c) there were queries as to whether PlanD and AFCD had confirmed that the proposed “V” zone extension areas had no or low ecological value and why the latest SH demand had increased so substantially as compared with that at the time of preparing the draft DPA Plan. Such increase required an addition of 8.81ha of land as “V” zone extension areas.

F11 of LMH DPA (World Wide Fund Hong Kong, DHK and Green Power)

122. Dr. Karen Woo made the following main points:

- (a) it was considered not appropriate to rezone the buffer area of the LMH Stream from “CA” to “GB”. While the LMH Stream had been designated as a SSSI, the riparian habitat on both sides of the stream was also ecologically important due to the close relationship between the stream and the riparian habitat in terms of nutrient recycling, hydrology, etc. The riparian habitat also provided forging ground for the wildlife associated with the stream. In fact, according to the SSSI Register, the LMH Stream was reported as the most species-rich site in Hong Kong in terms of primary freshwater fishes, some of which were rare species;
- (b) as both sides of the LMH Stream were subject to flooding risk, the suitability of the buffer area for village housing development was doubtful; and
- (c) there were concerns on the ‘Agricultural Use’ and ‘On-Farm Domestic Structure’ which were under Column 1 of the “GB” zone. The use of pesticide and herbicide associated with the farming activities would pollute the LMH Stream. Trees might be felled, particularly as tree felling on private land was permitted under the lease. Besides, there had been many cases of “Destroy First and Build Later” in the rural areas. A

recent case was about tree felling on private land within the country park enclave area.

F13 of LMH DPA Plan (Kadoorie Farm & Botanic Garden Corporation)

123. Mr. Yip Sin Hang made the following main points:

- (a) the LMH Stream was designated as a SSSI in July 2007 due to its high ecological value. According to the SSSI Register, the stream supported 20 primary freshwater fish species in Hong Kong. Besides, the ecological impact assessment conducted by Kadoorie Farm & Botanic Garden Corporation for the FCA and North East New Territories areas in 2003 revealed that the LMH Stream had great quantity and diversity of species of freshwater fishes. Two of them were global and local species of conservation concern. The designation of the riparian habitat on both sides of the LMH Stream as a buffer to protect the stream was therefore welcomed and supported; and
- (b) the proposed “GB” zoning could not provide adequate protection for the stream buffer nor reflect its ecological value. As there was close relationship between the stream and its riparian habitat, this would also have adverse impacts on the LMH Stream. On the other hand, under the original “CA” zone, a clear line could be drawn between conservation and development. If an applicant could provide sufficient justifications for the proposed development within the “CA” zone, the Board could consider approving the application based on the individual merits of the case. In light of the above, it was considered that the original “CA” zoning should be maintained for the stream buffer in order to maintain the biodiversity of the stream and to strike a balance between conservation and the community need for development.

[Mr. Roger K.H. Luk left the meeting temporarily at this point.]

F15 of LMH DPA Plan (World Wide Fund Hong Kong)

124. With the aid of a Powerpoint presentation, Dr. Alan Leung made the following main points:

- (a) the riparian zone of a stream was part of the ecosystem and the ecological value of the stream would hardly be sustained if its riparian zone was not effectively protected. The important functions served by the riparian zone included safeguarding the water quality of the stream, providing habitats for wildlife, moderating stream temperature, stabilizing stream banks, reducing flooding risk and providing detrital input for stream organisms. For the LMH Stream, the riparian zone was of particular importance because the stream contained aquatic species of high conservation value which were sensitive to water quality changes and the riparian zone itself provided habitats for species which were of conservation concern;
- (b) according to the Environmental Impact Assessment Report of Drainage Improvement in the Northern New Territories – Package C, the LMH Stream and its riparian zone had high conservation value. In the Working Paper No. 6 of the FCA Study, it was recommended that both the LMH Stream and its buffer area should be effectively protected. The SSSI Register pointed out that activities that would change the water quality/hydrology of the stream (e.g. pollution, channelization or diversion) might affect the fish fauna. Besides, developments which altered considerably the existing land use surrounding the stream might also affect the stream and the riparian zone;
- (c) according to the Notes of the draft LMH DPA Plan, the planning intention of the “SSSI” zone was to conserve and protect the features of special scientific interest and their habitats. There was also clear planning intention under the “CA” zone to protect and retain the existing natural landscape, ecological or topographical features of the area and to separate sensitive natural environment such as SSSI from

the adverse effects of development. However, the rezoning of the buffer area to “GB” would pose serious risks to the LMH Stream, particularly as passive recreational outlets would be allowed as stated in the planning intention of the “GB” zone. There was reservation on allowing passive recreational outlets in that there were already ample spaces designated for recreation purposes within the Closed Area. Moreover, certain Column 1 uses under the “GB” zone such as ‘Barbeque Spot’ and ‘Picnic Area’ would also pose serious risks to the ecosystem and water quality of the stream;

- (d) many international scientific studies had confirmed that the riparian zone was important for the protection of the stream. In overseas countries, the width of the buffer area could range from about 10m to over 100m. Locally, the Sha Lo Tung Stream had a 30m-wide buffer which was zoned “SSSI” on the relevant statutory plan. In a golf course development at Kau Sai Chau, a 20m-wide buffer was designated on each side of a stream for conserving a freshwater shrimp species which was of conservation concern;
- (e) according to the Consultation Document of the “Regional Cooperation Plan on Building a Quality Living Area”, protection of wetlands was one of the key elements in building a quality living area and stream was a kind of wetland. There was also proposal to plan and coordinate regional ecological protection work for the Wutong Shan National Forest Park in Shenzhen and the proposed country park at Robin’s Nest in Hong Kong. As shown on a satellite photo, the LMH Stream was possibly the last remaining tributary of the Shenzhen River which remained mostly natural and so was its basin area; and
- (f) to conclude, it was recommended that a buffer zone of at least 5-10m wide be designated under “SSSI” zoning on each side of the LMH Stream. Additionally, there should be an outer zone of 10-15m wide under conservation zoning. After the Tai Long Sai Wan incident, the Government had clear intention to protect and conserve the country park

enclaves. The situation of the LMH area was similar to the country park enclaves. The Government should consider incorporating the LMH area into part of the proposed country park at Robin's Nest.

R2 of LMH DPA Plan (LMH Village Office)

125. Mr. Tsang Yuk On made the following main points:

- (a) as the LMH area fell within the Closed Area, many villagers had left the village and went to overseas countries to work. However, with the opening up of the Closed Area by the end of this year, many villagers would return to live in the village. It was considered unreasonable and impracticable to protect the stream which was located in the middle of the village. Sustainable development was for the protection of people, including the villagers at LMH; and

[Mr. Roger K.H. Luk returned to join the meeting at this point.]

- (b) while six villages within the existing Closed Area would be opened up under the revised Closed Area boundary, people might not be aware that the Closed Area boundary for the STK Town would only be pushed northwards up to the entrance to the town (i.e. the location of 'Gate One'). As a result, many people might still flock to the STK Town, thereby causing heavy traffic in the area. To ease the traffic problem, it was suggested that a "GB" site be designated near 'Gate One' for public use, e.g. car park.

126. With the aid of a photo, Mr. Yip Yuk On made the following main points:

- (a) the villagers of LMH did not use pesticide in farming, but the agricultural products were still tasty due to the availability of good irrigation water from the LMH Stream. The LMH Stream was not a natural stream. Instead, it was an artificial channel built by their ancestors with drop-gates built at various sections of the stream to store water; and

- (b) Mr. Yip had been practising farming in the area since he was young. Back in the 1950s/60s, two buckets of small fish, shrimps or crabs could be caught in a single field. The high ecological value of the LMH Stream was the result of the efforts put in by the villagers in maintaining the stream over the years. Without the villagers' efforts, the water quality of the stream would have deteriorated.

127. With the aid of photos, an aerial photo, newspaper cuttings and records, Mr. Yip Wah Ching made the following main points:

- (a) the aerial photo taken in 1945 showed that there were large tracts of agricultural fields in the LMH and Robin's Nest areas as water could be drawn from the LMH Stream. The villagers treasured very much the area that they lived in and the resources that they had. This was evident by the good upkeep of the fung shui woodland in the area. There was no need to impose planning controls to keep the stream and the village in good natural form;
- (b) the LMH Stream was not a natural stream, but an artificial channel built by their ancestors for irrigation and flood prevention. Drop-gates were built at the wider area to store water. In winter time, all villagers would assist in the maintenance and repairing of the stream. Otherwise, the stream would have been blocked by debris/boulders and the river banks would be collapsed during heavy rains;
- (c) the villagers of LMH had fought in overthrowing the Qing dynasty and in the 1911 Revolution. During the Second World War, they also resisted and fought the Japanese and got back the LMH Lead Mine;
- (d) the buffer area on both sides of the LMH Stream had an area of about 1 million sq.ft.. Land within the buffer area was privately owned. If it was considered necessary to conserve the LMH Stream and its buffer, compensation should be provided to the affected landowners. It was

unfair and unreasonable to zone the private land of the villagers for a public purpose of conservation without any compensation. This was tantamount to robbing the private land from the villagers. Planning should be “people-centred” and hence the impacts on the villagers should be duly considered in conserving the stream;

- (e) the Robin’s Nest area was previously used by their ancestors for planting pine trees and herbs. It was not a natural area as such. Regarding the tree felling problem mentioned by the green groups, villagers had to plant a certain number of trees as compensation before they were allowed to cut any trees;
- (f) in the past, the villagers of LMH had to leave the village and went overseas as they could not earn a living due to the Closed Area policy. However, the economic condition of the overseas countries was not good in recent years. Many villagers intended to return to the village for agricultural rehabilitation. The population of the village would exceed 10,000 persons upon their return; and
- (g) many high-rise buildings were built in Shenzhen. The housing price was not low as the beautiful vista of LMH could be viewed from the flats. If the Government did not treasure the LMH area, the villagers were prepared to apply to the Central Government in future for the LMH Village to be governed by the Shenzhen Government.

128. Mr. Yip Shek Keung made the following main points:

- (a) Mr. Yip was a villager of LMH residing in the United Kingdom. He and a few other villagers came back to Hong Kong to attend the hearing;
- (b) the villagers of the LMH Village had held a meeting in the United Kingdom and obtained hundreds of signatures of villagers declaring their intent and desire to return to reside in the LMH Village in the next ten years; and

- (c) it was hoped that the Board could thoroughly consider the villagers' views and concerns before making a decision and enable the villagers to live in the village happily and harmoniously.

[Mr. Y.K. Chen left the meeting temporarily at this point.]

129. Mr. Yip Wah Ching supplemented that the signature campaign was organized in both the United Kingdom and Hong Kong. Over 380 signatures were collected within a month and had been submitted to the Secretariat of the Board before the meeting. That was only the first batch of signatures collected. As such, it was incorrect that there was no SH demand for the LMH Village. The impacts on the villagers had to be duly considered in achieving the conservation objective. The nature conservation policy should be reviewed by the Government, taking into account the Special Committee on Compensation and Betterment's report published in 1992 that recommended the provision of compensation to those landowners whose private properties were adversely affected by planning controls.

[Mr. K.Y. Leung left the meeting temporarily at this point.]

C3 of STK DPA Plan, C8 of LMH DPA Plan, C1 of MKT DPA Plan and C1 of MTL & HHW DPA Plan (Heung Yee Kuk)

130. Ms. Chan Ka Mun, Carmen made the following main points :

- (a) while the green groups had expressed their appreciation of the LMH Stream, much efforts had been put in by the villagers to maintain the stream over the years. This reflected that the villagers and their ancestors had environmental awareness and they treasured the area that they lived in more than any other people;
- (b) Members might have concern on whether the environment of the area would be adversely affected by developments with the opening up of the Closed Area. However, it should be noted that the conservation of an

area did not rely solely on land use planning. In overseas countries including those adopting the common law system, conservation and villagers' right were not necessarily in conflict with each other. It was disappointed that the green groups had not put forward any concrete proposal that could strike a proper balance between conservation and development;

- (c) before the LMH Stream was zoned "SSSI", the villagers could fish and swim in the stream. They could also repair and maintain the stream. The zoning of the LMH Stream as "SSSI", though not the subject matter of discussion at this hearing, was not the most effective way for the conservation of the stream because of the management problem. For instance, under the "SSSI" zoning, villagers might not be allowed to undertake repair works for the stream. In this regard, to be successful in achieving the conservation objective, apart from the ecological value, it was equally important to understand the history of the stream and the culture of the area;
- (d) apart from designating a 20m-wide buffer on both sides of the LMH Stream, the Government should consider if the conservation objective could be achieved by other means. In overseas countries, people could build houses and live by the side of a lake. There was no reason why the same could not happen in Hong Kong;
- (e) while there was no provision under the Ordinance to compensate the landowners who were being adversely affected by the imposition of planning controls, consideration should be given to review the Government's policy in future such that compensation could be made for the loss of the villagers due to conservation;
- (f) it was hoped that Members and the green groups could understand the grievances of the villagers. In fact, the village houses had not been built haphazardly. The villagers had to submit applications for the proposed SH and meet the regulations/requirements of the relevant government

departments. The houses were built on their own land; and

- (g) it was noted that the area that had been designated as “V” zone and its extension areas on the draft DPA Plans was small as compared with the other land use zones.

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

131. Mr. Chan Tung Ngok, Tony made the following main points :

- (a) while the green groups were concerned about the conservation of the stream, they did not know that the villagers had put in much effort over the years to maintain the stream in its current state. Planning was for the well being of the residents. It was therefore important to take into account the history and culture of an area;

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

- (b) the Special Committee on Compensation and Betterment was set up in 1991 under the chairmanship of Mr. John Todd who was the former Director of Lands. In the report published by the Special Committee in 1992, it was recommended that the landowners whose private properties were adversely affected by planning controls be compensated. However, the Ordinance had not been amended to take forward the above recommendation; and

[Mr. Roger K.H. Luk left the meeting temporarily and Mr. Y.K. Chen returned to join the meeting at this point.]

- (c) the villagers of LMH were not in opposition of any change to the status quo of the stream buffer. In fact, the proposed “GB” zoning for the stream buffer was already a more restrictive land use control in that planning permission from the Board was required for those Column 2 uses. There was private land within the buffer area. As the use and

development potential of the private land within the buffer area would be adversely affected for the purpose of conserving the stream, compensation should be provided to the affected landowners.

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

132. Mr. Chan Hon Kwan, Henry made the following main points :

- (a) the grounds of objections made by the various green groups were essentially the same, just like students copying homework;
- (b) in dealing with conservation issue, the green groups should also request the Government to examine how the affected landowners could be compensated. The affected landowners were not restricted to the rural people but all people in Hong Kong; and

[Mr. Roger K.H. Luk returned to join the meeting at this point.]

- (c) it was unfair to require the landowners to pay the price for conservation. If the affected landowners were not compensated, they would have strong grievances as the LMH villagers. The LMH Stream constituted only a small part of the areas of conservation concern in the territory. As such, if the Government did not handle the issue of compensation properly, the harmony of society could be significantly affected.

133. With the aid of photos and a plan, Mr. Fung Wai Kwong made the following main points:

- (a) regarding the proposed “V” zone extension areas for Liu Pok Village on the draft MTL & HHW DPA Plan, an area to the south of the car park at the entrance to the village was occupied by some graves. There were also many graves in the area along the road to the north of the aforesaid car park. Therefore, the above areas were not suitable for village housing development;

- (b) the designation of “V” zone was intended for the development of Small Houses by indigenous villagers. However, it was not appropriate to rezone land which was not owned by the villagers to “V”. Firstly, it was ironic that the villagers could not build houses on their own land, but had to buy land or houses from other people. Secondly, the land owner might not be willing to sell the land to the villagers. Also, the selling price of the land or houses built on such land might not be affordable to the villagers. As such, the proposed “V” zone extension area to the north-west of Liu Pok Village which was owned by people outside the village was of no use to the villagers;

[Mr. Roger K.H. Luk left the meeting at this point.]

- (c) as compared with the villagers’ original request, the proposed “V” zone extension area to the north of the village was smaller. One of the reasons was that the excluded area was closer to the wetlands in HHW. However, the excluded area was physically separated from HHW by a hill which served as a natural buffer. As village houses were of three storeys high only, the wetlands in HHW would not be adversely affected by having village houses in that area. Another reason for not extending the “V” zone further north was due to the existence of a marsh which was of some ecological value according to AFCD. However, the so-called “marsh” was only formed by the trapping of water in a low-lying area and the source of water came from the waste water of Liu Pok Village and the nearby streams. The ecological value of that “marsh” was doubtful;
- (d) there was a large piece of fallow and low-lying “AGR” land to the north of Liu Pok Village. That piece of land was owned by the villagers of Liu Pok Village. Members were invited to consider whether that piece of land could be rezoned to “V” to serve as an extension area, but excluding the so-called “marsh” which was of some ecological value according to AFCD;

- (e) many birds that could be seen in Hong Kong were only migratory birds that stayed in the territory for a short period of time. The birds might also carry virus and diseases such as bird flu. In fact, not many people liked to watch birds. For those people who liked to watch birds, they could go to the aviary. Birds could also be kept at their homes; and
- (f) if conservation was for the public interest, the Government should use public money to properly compensate the affected landowners. It was unreasonable and unfair that the private land was used for a public purpose of conservation without compensation.

[Dr. James C.W. Lau left the meeting temporarily at this point.]

134. Mr. Lee Hoon Hung made the following main points :

- (a) the objectors of the proposed amendments of the draft DPA Plans were not rational. They objected for the sake of objecting against any proposed amendments made by the Board which were to partially meet the representations submitted by the villagers; and
- (b) however, it should be noted that the proposed amendments were made by the Board after having fully considered all the representations and comments at the hearing held on 8.9.2011. Except the proposed amendments for the draft LMH DPA Plan, the sites involved in the other proposed amendments were all minor in scale and hence would unlikely cause significant adverse impacts on the surrounding areas. There was query as to whether the objectors knew the location of the sites of the proposed amendments.

135. With the aid of a plan, Mr. To Shu Hoi made the following main points:

- (a) the proposed rezoning of an area to the north of Chow Tin Tsuen on the draft MKT DPA Plan from “AGR” to “V” as the village extension area was opposed by the green groups. It was not clear about their grounds

of objection; and

- (b) while not agreeing to the objection of the green groups, if the Board eventually considered that the concerned area was unsuitable for rezoning to “V”, it was suggested as a compromise to relocate the village extension area to the south-west of the village.

136. Ms. Chan Ka Mun, Carmen concluded and made the following main points:

- (a) it was much appreciated that the Board and PlanD had spent much time and efforts in listening to the villagers’ views in the planning process. The proposed amendments which were mainly relating to the rezoning of agricultural land to “V” to serve as the village extension areas on the draft STK, MKT and MTL & HHW DPA Plans were supported; and
- (b) with regard to the draft LMH DPA Plan, there were still concerns about the LMH Stream and its buffer. The LMH villagers had already expressed their views at the hearing. It was hoped that the Board would understand the grievances of the villagers. While the exercise of powers by the Board was subject to various constraints, such constraints should be duly addressed in future such that the traditional villagers’ right would be properly protected whilst achieving the conservation objective.

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

R2 of LMH DPA Plan (LMH Village Office)

137. Mr. Yip Wah Ching made the following main points:

- (a) the villagers of LMH had already expressed their objections and requests in respect of the draft LMH DPA many times before the Board agreed to rezone the buffer area of the LMH Stream from “CA” to “GB”; and
- (b) the Ordinance should be reviewed to enable the Board to compensate the

landowners if their private properties were adversely affected by the imposition of planning controls as recommended in the 1992 report of the Special Committee on Compensation and Betterment.

R5 of STK DPA Plan – Mo Lap San

138. With the aid of a plan, Mr. Mo Lap San made the following main points:

- (a) with the opening up of the Closed Area, many villagers would return to reside in the Shan Tsui Village. However, the only site that was proposed as the village extension area for the village on the draft STK DPA Plan was previously used as a burial ground. That site was not suitable for village housing development; and
- (b) the Board was requested to re-consider the villagers' original proposal for the village extension areas as shown on Drawing Ha-9 of TPB Paper No. 8900.

139. The Chairman asked DPO/STN to clarify the proposed "V" zone extension area to the south of the car park at the entrance to Liu Pok Village. With the aid of a plan, Mr. W.K. Hui said that the concerned area which comprised some graves did not fall within the boundary of the "V" zone or its extension areas. The red pecked line on the plan was the boundary of the 'VE' for Liu Pok Village which was drawn up by the Lands Department. It was different from the "V" zone boundary on the draft DPA Plan.

140. Mr. Fung Wai Kwong said that the area to the north of the car park at the entrance to Liu Pok Village was occupied by graves, road and drains. The remaining area was not sufficient for building village houses. As such, that area should not be zoned as "V" on the draft MTK & HHW DPA Plan. He reiterated that the proposed "V" zone extension area to the north-west of Liu Pok Village was of no use to the villagers as that piece of land was owned by people outside the village. With the aid of a plan, it was proposed to rezone a piece of land to the north of the village from "AGR" to "V" to serve as an extension area.

141. As Members had no further question to raise, the Chairman said that the hearing procedures had been completed and the Board would deliberate on the further representations in the absence of the further representers, representers, commenters and their representatives. The further representers and the relevant representers and commenters would be informed of the Board's decision in due course. The Chairman thanked the representatives of PlanD, AFCD, the further representers, representers, commenters and their representatives for attending the meeting. They all left the meeting at this point.

[A short break of three minutes was taken at this point.]

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

Deliberation

142. The Chairman said that the green groups considered that the proposed "GB" zoning for the buffer area of the LMH Stream could not provide adequate protection for the stream which was designated as a SSSI in 2007. On the other hand, the villagers were concerned that their private land within the stream buffer would be adversely affected without any compensation. Members considered that the "GB" zoning would enable the Board to regulate development within the buffer area through the planning permission system. With the proposed rezoning of the buffer area from "CA" to "GB", a fine balance had been struck between conservation and the community need for development. In this respect, Members agreed that the draft LMH DPA Plan should be amended by the proposed amendment.

143. Regarding the draft MTL & HHW DPA Plan, Members noted that DPO/STN had clarified that the graves to the south of the car park at Liu Pok Village did not fall within the "V" zone. While the proposed "V" zone extension area to the north-west of Liu Pok Village was owned by people outside the village, it was not the practice of the Board to take into account landownership when considering the land use zoning of a particular site. With respect to the villagers' proposal to rezone a piece of land owned by the villagers from "AGR" to "V", the proposed area was located closer to the Shenzhen River and wetlands in HHW. After discussions, Members considered that the proposed

area was not suitable for village housing development and agreed that the draft MTL & HHW DPA Plan should be amended by the proposed amendments.

144. Regarding the draft STK and MKT DPA Plans, Members noted that detailed assessments had been conducted by PlanD in reviewing the “V” zones and recommending the proposed “V” zone extension areas. Members had also fully considered all representations and comments, including their proposals, on 8.9.2011. In this respect, Members agreed that the villagers’ proposals to re-consider their original proposals or to further revise the proposed “V” zone extension areas should not be acceded to and the two draft DPA Plans should be amended by the proposed amendments.

145. Members considered that nature conservation policy was outside the purview of the Board. However, in view of the villagers’ grievances relating to conservation without compensation as expressed at the hearing, Members were of the view that their views could be conveyed to the Environment Bureau (ENB) for consideration.

146. A Member said that compensation would be provided to the affected landowners for the resumption of private land or properties for a public purpose under the Lands Resumption Ordinance. The same was, however, not available for conservation purpose. The affected landowners would inevitably have grievances. To ease the grievances of the affected landowners, ENB should explore if government funding could be made available to compensate for the loss of the affected landowners due to conservation.

147. The Chairman said that substantial area on the draft DPA Plans had been zoned “AGR” under which agricultural use was always permitted. The Notes of the draft DPA Plans had clearly set out the uses which were always permitted and uses which required planning permission from the Board under different zonings. It was therefore incorrect to say that the private land of the villagers was being taken away. A Member said that while there was no provision under the Town Planning Ordinance to make compensation, the Government could explore if there were any measures that would allow the green groups and the affected villagers/landowners to collaborate in achieving the conservation objective.

148. A Member pointed out that there was currently a lack of mechanism that would enable the green groups and the affected villagers/landowners to discuss issues of conservation concern. The Chairman said that as far as he knew, Heung Yee Kuk and the green groups had engaged in dialogues on certain issues in recent years.

149. Another Member said that among the various land use types, “SSSI” and “CA” zones were most relevant to the protection of sites of high conservation value. There was a general presumption against developments within the “SSSI” and “CA” zones. As compared with the “SSSI” and “CA” zones, the planning control under the “GB” zone was already less stringent in that planning applications for SH development or other Column 2 uses could be submitted for the consideration of the Board.

150. The Vice-chairman said that under the current nature conservation policy, there was no mechanism to compensate the affected landowners for conservation purpose. This might have caused misunderstanding among the villagers that the compensation should be made by the Board through rezoning or imposition of less restrictive development control. The issue of how to strike a proper balance between nature conservation and protection of the development rights of landowners should be addressed by the Government at the policy level.

151. A Member noted that the LMH Stream was reported as the most species-rich site in Hong Kong in terms of primary freshwater fishes whereas the villagers claimed that the stream was actually an artificial channel built by their ancestors. This Member said that apart from reading the written submissions and hearing the oral presentations, site visit should be conducted in some cases. The Chairman said that professional advice could be obtained from the relevant government departments. The Secretary added that briefings to the Board and site visits to the study area would normally be arranged for major studies such as the FCA Study. In fact, site visits to the FCA had been conducted twice. The Secretariat of the Board could arrange site visits for Members if considered useful.

152. A Member said that a stream could be maintained in good condition if it was used for farming in the agricultural land nearby. If the agricultural land was abandoned, the water quality of the stream would gradually turn poor and have a layer of oil-like substance on top. As such, this Member considered that the “GB” zoning for the buffer

area of the LMH Stream was appropriate as the villagers could continue farming in the buffer area which would help conserve the stream. Management agreement had been adopted as a measure to encourage local farmers and landowners to participate in the conservation of the Long Valley. The same measure would also be adopted for the conservation of wetlands in the Deep Bay area. With the opening up of the Closed Area, more villagers would return to reside in the villages in the Closed Area. It was agreed that there should be a mechanism to strike a proper balance between conservation and development.

153. Mr. Benny Wong, the Deputy Director of Environmental Protection, said that whether compensation should be provided to the affected landowners for conservation purpose had to be addressed at the policy level. Nevertheless, under the existing mechanism, two measures had been adopted for the conservation of ecologically important sites, namely the management agreement scheme and public-private partnership (PPP) pilot scheme. Under the management agreement scheme, non-governmental organizations (NGOs) could apply for funding from the Environment and Conservation Fund (ECF) for entering into management agreements with the landowners. The NGOs could provide the landowners with financial incentives in exchange for management rights over their land or their cooperation in enhancing conservation of the sites concerned. With grants from the ECF, pilot management agreement projects at Fung Yuen and Long Valley had been launched and each project had funding of about \$2-3 million. Under the PPP pilot scheme, development of an agreed scale would be allowed at the ecologically less sensitive portion of the 12 priority sites identified for enhanced conservation, provided that the project proponent undertook to conserve and manage the rest of the site that was ecologically more sensitive on a long-term basis. Nevertheless, the success of the above measures in achieving the conservation objective would depend on the willingness of the landowners to participate. In response to the Chairman's enquiry, Mr. Benny Wong advised that the management agreement scheme could be implemented at sites other than the 12 priority sites.

154. After further discussions, Members noted DHK's concerns regarding the sustainable layouts for the draft STK DPA Plan (F2), the draft MKT DPA Plan (F1) and the draft MTL & HHW DPA Plan (F1). Members agreed that the part of F1 in respect of the draft LMH DPA Plan regarding the "G/IC", "SSSI" and "GB" zonings for the

Macintosh Fort, the LMH Lead Mine, Robin's Nest and the "GB" area around the village was invalid as it was not related to the proposed amendments of the draft LMH DPA Plan gazetted on 16.9.2011. Members also agreed not to uphold F1 in respect of the STK DPA Plan regarding the "V" zone extensions and F1 to F15 in respect of the LMH DPA Plan regarding the buffer area of the LMH Stream. Members then went through the reasons for not upholding these further representations as stated in paragraphs 6.1 and 6.3 of the Paper and considered that they were appropriate.

155. Members also agreed to request the Secretariat to relay Members' views as expressed at the meeting regarding the nature conservation policy to ENB for its consideration.

Draft STK DPA Plan

Further Representation No. F1

156. After further deliberation, the Board decided not to uphold Further Representation No. F1 and considered that the draft Sha Tai Kok Development Permission Area Plan No. DPA/NE-STK/1 should be amended by the proposed Amendment Items A2, B2 and B4 for the following reason :

- the proposed "Village Type Development" zone extensions were to cater for the future Small House demand for the villages of Sheung Tam Shui Hang, Tsiu Hang and San Tsuen and to compensate for land suitable for small house use within the 'village environs' of the concerned villages.

Further Representation No. F2

157. After further deliberation, the Board noted the concerns of Further Representation No. F2 regarding the sustainable layout for the draft Sha Tau Kok Development Permission Area Plan No. DPA/NE-STK/1.

Draft LMH DPA Plan

Further Representation No. F1 (part)

158. After further deliberation, the Board agreed that the part of Further Representation No. F1 in relation to the “Government, Institution or Community”, “Site of Special Scientific Interest” and “Green Belt” (“GB”) zonings for the Macintosh Fort, the Lin Ma Hang Lead Mine, Robin’s Nest and the “GB” area around the village should be regarded as invalid.

Further Representations No. F1 (part) and F2 to F15

159. After further deliberation, the Board decided not to uphold Further Representations No. F1 (part) and F2 to F15 and considered that the draft Lin Ma Hang Development Permission Area Plan No. DPA/NE-LMH/1 should be amended by the proposed Amendment Item A for the following reason :

- under “Green Belt” (“GB”) zoning, there was a general presumption against development. Noting that the buffer area carried a low intrinsic ecological value, the proposed rezoning of the buffer area of Lin Ma Hang Stream from “Conservation Area” to “GB” would enable the Town Planning Board to regulate development within the buffer area and maintain a proper balance between conservation and the community need for development.

Draft MKT DPA Plan

Further Representation No. F1

160. After further deliberation, the Board noted the concerns of Further Representation No. F1 regarding the sustainable layout for the draft Man Kam To Development Permission Area Plan No. DPA/NE-MKT/1.

Draft MTL & HHW DPA Plan

Further Representation No. F1

161. After further deliberation, the Board noted the concerns of Further Representation No. F1 regarding the sustainable layout for the draft Ma Tso Lung and Hoo Hok Wai Development Permission Area Plan No. DPA/NE-MTL/1.

162. The Board also agreed that :

- (a) the draft Sha Tau Kok Development Permission Area (DPA) Plan No. DPA/NE-STK/1, the draft Lin Ma Hang DPA Plan No. DPA/NE-LMH/1, the draft Man Kam To DPA Plan No. DPA/NE-MKT/1 as well as the draft Ma Tso Lung and Hoo Hok Wai DPA Plan No. DPA/NE-MTL/1 should be amended by the proposed amendments and such amendments should form part of the draft DPA Plans. In accordance with s.6H of the Town Planning Ordinance (the Ordinance), the DPA Plans should thereafter be read as including the amendments;
- (b) the amendments should be made available for public inspection until the Chief Executive in Council had made a decision in respect of the draft DPA Plans under s.9 of the Ordinance; and
- (c) administratively, the Building Authority and relevant government departments would be informed of the decision of the Board and would be provided with a copy/copies of the amendments.

Procedural Matters

Agenda Item 14

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of
Further Representations to the Draft Tai Po Outline Zoning Plan No. S/TP/22
(TPB Paper No. 8949)

[The meeting was conducted in Cantonese.]

163. The Secretary said that the following Members had declared their interests in this item:

- Mr. Stanley Y.F. Wong - co-owned with his spouse a flat and two car parks in Tai Po
- Dr. W.K. Yau - owned some properties and land in Tai Po and being the Chairman of the Management Committee of the Tai Po Environmental Association which managed the Fung Yuen Butterfly Reserve and Education Centre
- Dr. W.K. Lo - owned two houses in Tai Po
- Mr. Laurence L.J. Li - worked in the same chamber as the further representer No. F4

164. Members noted that Dr. W.K. Yau, Dr. W.K. Lo and Mr. Laurence L.J. Li had tendered apologies for being unable to attend the meeting. As the item was procedural in nature and no deliberation was required, Members agreed that Mr. Stanley Y.F. Wong could stay at the meeting.

165. The Secretary briefly introduced the Paper. On 17.9.2010, the draft Tai Po Outline Zoning Plan (OZP) No. S/TP/22 was exhibited for public inspection under s.5 of the Town Planning Ordinance (the Ordinance). During the statutory publication periods of the draft OZP and the representations, a total of 22 valid representations and three comments were received respectively. Upon consideration of the representations and comments on 25.2.2011 and 27.5.2011, the Board decided to partially meet R4 by revising the building height restriction of the “Government, Institution or Community” zone

covering the Ting Lai Road Substation from 2 storeys to 4 storeys, and to partially meet R8 to R12 by revising the Notes for the “Green Belt”(“GB”) zone to include ‘House (rebuilding of New Territories Exempted House (NTEH) or replacement of existing domestic building by NTEH only)’ under Column 1 and to correspondingly revise ‘House’ in Column 2 to ‘House (not elsewhere specified)’. On 17.6.2011, the proposed amendments were published under s.6C(2) of the Ordinance and four further representations were received. The four further representations were all in respect of the revision of the Notes for the “GB” zone. Moreover, the representations were considered by the full Board on 25.2.2011 and 27.5.2011. It was thus recommended that the four further representations be heard by the full Board without resorting to the appointment of a Representation Hearing Committee.

166. The Secretary continued to say that it was stated in paragraph 2.3 of the Paper that the tentative hearing date of the further representations was 9.12.2011. However, due to the re-scheduling of the agenda items, the hearing would be re-scheduled to 25.11.2011.

167. After deliberation, the Board agreed that the further representations should be heard by the Board in the manner as proposed in paragraphs 2.1 to 2.3 of the Paper.

Agenda Item 15

[Open Meeting]

Submission of the Draft To Kwa Peng and Pak Tam Au Development Permission Area Plan No. DPA/NE-TKP/1A to the Chief Executive in Council for Approval
(TPB Paper No. 8950)

[The meeting was conducted in Cantonese.]

168. The Secretary said that the following Members had declared their interests in this item:

Ms. Anna S.Y. Kwong - being the Authorised Person responsible for a residential development project in To Kwa Peng area

Mr. Stephen M.W. Yip - being a former consultant of the Executive Committee under the Sai Kung North Rural Committee

169. Members noted that Ms. Anna S.Y. Kwong and Mr. Stephen M.W. Yip had tendered their apologies for being unable to attend the meeting.

170. The Secretary briefly introduced the Paper. On 7.1.2011, the draft To Kwa Peng and Pak Tam Au Development Permission Area (DPA) Plan No. DPA/NE-TKP/1A was exhibited for public inspection under s.5 of the Town Planning Ordinance (the Ordinance). During the statutory publication periods of the draft DPA Plan and the representations, a total of 206 representations and 227 comments were received respectively. Upon consideration of the representations and comments on 15.7.2011, the Board noted the views of R1(part), R2(part), R3(part), R4, R5(part) and R180 to R206 and decided not to uphold R6 to R179 and not to amend the draft DPA Plan to meet the proposals made by R1 to R3 and R5 to R7. Since the representation consideration process had been completed, the draft DPA Plan was ready for submission to the Chief Executive in Council (CE in C) for approval in accordance with s.8 of the Ordinance. For submission to the CE in C, opportunity had been taken to update the Explanatory Statement (ES) to reflect the latest position of the draft DPA Plan.

171. After deliberation, the Board :

- (a) agreed that the draft To Kwa Peng and Pak Tam Au DPA Plan No. DPA/NE-TKP/1A at Annex I of the Paper and its Notes at Annex II of the Paper were suitable for submission under s.8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated ES for the draft To Kwa Peng and Pak Tam Au DPA Plan No. DPA/NE-TKP/1A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft DPA Plan and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C

together with the draft DPA Plan.

Agenda Item 16

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

172. There being no other business, the meeting was closed at 4:45 p.m..