

**Minutes of 1009th Meeting of the
Town Planning Board held on 13.4.2012**

Present

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

Chairman

Mr. Stanley Y.F. Wong

Vice-Chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Professor K.C. Chau

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Dr. Wilton W.T. Fok

Mr. Ivan C.S. Fu

Mr. Sunny L.K. Ho

Mr. Lincoln L.H. Huang

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms. Janice W.M. Lai

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Mr. Patrick H. T. Lau

Ms. Julia M.K. Lau

Ms. Christina M. Lee

Mr. Maurice W. M. Lee

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Ms. Anita W.T. Ma

Mr. Stephen H.B. Yau

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

Deputy Director of Environmental Protection
Mr. Benny Wong

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

Director of Lands
Miss Annie Tam

Director of Planning
Mr. Jimmy Leung

Deputy Director of Planning/District

Secretary

Miss Ophelia Y.S. Wong

Absent with Apologies

Mr. H. F. Leung

Mr. Roger K.H. Luk

Dr. W.K. Yau

In Attendance

Assistant Director of Planning/Board

Mr. C.T. Ling

Chief Town Planner/Town Planning Board

Miss H.Y. Chu

Senior Town Planner/Town Planning Board

Ms. Maggie Chin

1. The Chairman extended a welcome to the newly appointed Members and briefly explained the Board's meeting schedule and procedures.

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1008th Meeting held on 23.3.2012

[The meeting was conducted in Cantonese.]

2. The minutes of the 1008th Meeting held on 23.3.2012 were confirmed without amendment.

Agenda Item 2

Matters Arising

[The meeting was conducted in Cantonese.]

(i) New Judicial Review Application

Application for Judicial Review (HCAL 34/2012)

Against the Decision of the Town Planning Board

in respect of the Draft Ngau Tau Kok and Kowloon Bay

Outline Zoning Plan No. S/K13/26

[Open Meeting]

Declaration of Interests

3. The following Members had declared interests in this item as the University of Hong Kong (HKU) and Ove Arup and Partners Hong Kong Limited (OAP) were consultants of the Applicant (Oriental Generation Limited) (OGL) who had lodged a representation (R6) to the draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/26 (OZP No. 26) :

Professor Edwin H.W. Chan - being a visiting lecturer and external

examiner to HKU SPACE

Professor S.C. Wong

- Professor, Department of Civil Engineering, HKU and external examiner, HKU SPACE and had business dealings with OAP

4. Members considered that as Professor Chan and Professor Wong were not associated with the Department of Architecture and Department of Mechanical Engineering of HKU who were consultants of R6, their interests were indirect. Members also agreed that Professor Wong's interest with OAP was indirect and remote. Both Professor Chan and Professor Wong should be allowed to stay in the meeting. Members noted that Professor Edwin H.W. Chan had not yet arrived to join the meeting.

5. The Secretary said that on 15.3.2012, a judicial review (JR) application was lodged by the Applicant against the Town Planning Board's (TPB/the Board) decision made after hearing the further representation, on 3.2.2012 to confirm the proposed amendments to OZP No. 26 in respect of the Kai Tak Mansion site (the Site). This was the third JR lodged by the Applicant in respect of the Site. The Secretary said that the relevant Notice of Application (Form 86) of the JR had been dispatched to Members for information.

6. The Secretary added that the first JR (HCAL 62/2011) lodged by the Applicant was against the TPB's decision on 27.5.2011 and 1.6.2011 (the representation hearing) in relation to the proposed amendments to the OZP No. 26 to only partially uphold the Applicant's representation by relaxing the building height restriction (BHR) of the Site from 110mPD to 130mPD. The Applicant proposed, inter alia, to relax the BHR to 203mPD. The second JR (HCAL 109/2011) was against the Board's gazetting of OZP No.27 on 7.10.2011 and 14.10.2011 with identical restrictions in relation to the Site as shown on OZP No.26. The Board had been briefed on these two previous JRs at the meetings on 18.8.2011 and 13.1.2012 respectively.

7. For the third JR, the Applicant mainly repeated the grounds of the first and second JR and they were summarised as follows:

Ground 1: Ultra Vires

- a) the TPB acted outside its power derived under the Town Planning Ordinance (the TPO) by imposing the three restrictions on the Site, i.e. BHR of 110mPD, two 10m-wide non-building areas (NBA) and a 20m-wide building gap restriction;

Ground 2: Irrationality - Air Ventilation Assessment (AVA)

- b) the TPB did not rely on the AVA Study to formulate the BHRs but acted irrationally by using the AVA Study to justify *ex post facto* the BHRs preset by the Planning Department (PlanD);
- c) the TPB erred in placing undue weight on the AVA Study by fully adopting its quantitative recommendations but refused to give weight to the Applicant's scheme because it was an indicative scheme, despite the fact that PlanD's alternative option was also an indicative scheme;
- d) the TPB erred in rejecting the Applicant's AVA study on the basis that it did not follow the Government's Technical Guidelines;

Ground 3: Irrationality - Inconsistent, Discriminatory or Arbitrary Treatment of BHR

- e) the TPB acted irrationally in stating that the Applicant's proposed scheme at 203mPD was out of context and also acted irrationally in applying the stepped BH concept, which requirements were arbitrary and highly unclear ;

Ground 4: Irrationality - NBA

- f) the TPB acted irrationally by imposing the NBA on the Site in an arbitrary and discriminatory manner and failed to explain the need for and the width of the NBA.

Ground 5: Irrationality - Minor Relaxation Application

- g) the TPB erred in relying on the possibility of a minor relaxation application as a reason not to uphold the Applicant's representation.

Ground 6: Violation of Basic Law

- h) the three restrictions imposed on the Site unlawfully interfered with the Applicant's rights under Articles 6 and 105 of the Basic Law;

Ground 7: Procedural Impropriety - Attendance of Meeting

- i) the Applicant's submission could not be fairly and fully considered because the TPB members stayed for different durations of time for the FR hearing. Hence, some who heard part of the representation did not assist in making the decision; and some who participated in making the decision did not hear the representation fully;

Ground 8: Procedural Impropriety - Apparent Bias

- j) there was apparent bias in the FR hearing because some TPB members were closely associated with PlanD (i.e. the Director of Planning and the Deputy Director of Planning/District as the Secretary) and the presenters (including the Applicant) were not allowed to be present at the deliberation when such PlanD-related TPB members answered questions from other TPB members;

Ground 9: Procedural Impropriety - Duty to Give Adequate Reasons

- k) the reasons given by the TPB for its decision were extremely brief and did not deal with the specific arguments put forward by the Applicant. The reasons given were identical to those given by PlanD in the TPB Paper before the FR hearing;

Ground 10: Breach of Natural Justice/Procedural Impropriety

- l) the TPO's public consultation process had led to an unfair situation faced by the applicant as the applicant could not submit FR in respect of OZP No.26 and could not make representations in respect of OZP No.27. There was also no obligation under TPO for the Board to gazette a new OZP to incorporate the FR decision and that the FR

decision was superseded by OZP No.27 which made the representation and FR process meaningless.

8. The relief sought for the JR application included, inter alia:

- a) an order of certiorari to quash the decision;
- b) an order of Mandamus to direct TPB to reconsider the decision in accordance with law;
- c) a declaration that the OZP No. 26 was *ultra vires* and invalid *ab initio*, or alternatively, the three restrictions in relation to the Site in OZP No. 26 were *ultra vires* and invalid *ab initio*, and could not confer on the Building Authority the power to refuse approval of building plans under s.16(1)(d) of the Buildings Ordinance;
- d) alternatively, an order that TPB to incorporate the decision in the OZP No.27 or the latest OZP affecting the Site at the time of the order;
- e) an order that the substantive hearings for the three JRs (HCAL 62/2011, 109/2011 and 34/2012) be heard together; and
- f) an interim stay of submission of the OZP 26 to the Chief Executive in Council (CE in C) for approval pending the final determination of the JR proceedings.

9. The Secretary said that on 16.3.2012, the High Court granted leave for the third JR (HCAL 34/2012) and ordered that there was no need to grant an interim stay as there was already an interim stay in relation to OZP No.26 under the first JR (HCAL 62/2011). On 26.3.2012, the High Court ordered consolidation of the three JRs and that the consolidated hearing be fixed on 3rd and 4th of May 2012. The Secretary would represent the Board in all matters relating to the JR in the usual manner. Members noted.

ii) **New Town Planning Appeal Received**

Town Planning Appeal No. 5 of 2012
Temporary Storage of Metal and Wood
for a Period of 3 Years in “Green Belt” zone,
Lot 2432 RP (Part) in D.D. 130 and Adjoining Government Land,
Shun Tat Street, Tuen Mun, New Territories
(A/TM-LTYY/211)

10. The Secretary reported that an appeal was received by the Town Planning Appeal Board (TPAB) on 16.3.2012 against the decision of the Town Planning Board (TPB) on 23.12.2011 to reject on review an application for temporary storage of metal and wood for a period of three years at the application site in the “Green Belt” (“GB”) zone on the approved Lam Tei and Yick Yuen OZP No. S/TM-LTYY/6. The application was rejected by the TPB for the following reasons:

- a) the applied use was not in line with the planning intention of “GB” 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 applied use was not in line with the TPB Guidelines No. 10 for ‘Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance’ as it was not compatible with the uses of the surrounding areas in particular the residential use to the west of the site, and would cause adverse environmental impacts on the local residents and surrounding environment. The applicant failed to demonstrate that the applied use would not have adverse drainage and landscape impacts on the surrounding areas and nearby residents; and
- c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.

11. The hearing date of the appeal had not yet been fixed. The Secretary would act on behalf of the Board in dealing with the appeals in the usual manner.

Appeal Statistics

12. The Secretary reported that as at 13.4.2012, there were 27 appeal cases not yet heard by the TPAB. Details of the appeal statistics were as follow:

Allowed	:	28
Dismissed	:	122
Abandoned/Withdrawn/Invalid	:	155
Yet to be Heard	:	27
<u>Decision Outstanding</u>	:	1
Total	:	333

[Professor Edwin H.W. Chan arrived to join the meeting at this point.]

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments to the
Draft Yim Tin Tsai and Ma Shi Chau Development Permission Area Plan No.
DPA/NE-YTT/1
(TPB Paper No. 9063)

[The hearing was conducted in Cantonese.]

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

14. The following representatives from the Planning Department (PlanD) and representers were invited to the meeting at this point:

Mr. Edward Lo - District Planning Officer /Sha Tin, Tai Po and North (DPO/STN)

R2 : Association for Geoconservation, Hong Kong

Ms. Cindy Choi]
Mr. Sam Ho]
Ms. Christina M.L. Chow] Representatives
Ms. Ho Suet Fan]
Ms. Lam Yik Tsz]

R5 : Columbarium Concern Group (各界關注骨灰龕法案大聯盟)

Mr. Tse Sai Kit	- Representative
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R12 : Tai Po Rural Committee

Mr. Lee Wing Keung]
Mr. Chan Mei Tak] Representatives
Mr. Shek Kwong Yin]

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

16. With the aid of a Powerpoint presentation, Mr. Edward Lo, DPO/STN made the following main points as detailed in the Paper:

- a) on 2.9.2011, the draft Yim Tin Tsai and Ma Shi Chau Development Permission Area (DPA) Plan No. DPA/NE-YTT/1 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). Upon the expiry of the two-month exhibition period, a total of 67 representations were received. Upon publication of the representations for public comments, 32 comments in relation to the representations were received;
- b) on 17.2.2012, the Town Planning Board (the Board) decided to consider the representations and comments itself collectively in one group;

Draft Yim Tin Tsai and Ma Shi Chau DPA Plan

- c) Yim Tin Tsai and Ma Shi Chau area (the Area) which covered an area of about 107.94 ha was rural and natural in character with high landscape value and scenic quality. It comprised mainly woodlands, rocky coasts, mangroves, streams, wetland, fallow agricultural land and village houses;
- d) the general planning intention of the Area was to conserve the areas of high landscape and geological significance, to protect the unique landscape character and to maintain the rural and natural character of the Area. The Area had been designated as “Residential (Group C)” (“R(C)”), “Residential (Group D)” (“R(D)”), “Site of Special Scientific Interest” (“SSSI”) and “Unspecified Use”, taking into account existing villages and development pattern, landscape character and the designated areas of high conservation value;

- e) the DPA Plan provided an interim planning guidance for future development pending preparation of an Outline Zoning Plan (OZP) and to enable enforcement action to be taken against any unauthorized developments to safeguard the Area's natural and landscape character;
- f) the DPA Plan was an interim plan which would be replaced by an OZP within three years. Detailed land use zonings would be worked out during the OZP stage, taking into account relevant assessments and studies on various aspects;

The Representations

- g) amongst the 67 representations received, 11 of them (R1 to R11) supported the preparation of the DPA Plan. 56 adverse representations were submitted by the Tai Po Rural Committee (TPRC) (R12) and the local residents (R13 to R67) of Sam Mun Tsai New Village and Luen Yick Fishermen Village in standard submissions;
- h) the main grounds of representations were summarised in paragraphs 2.2 to 2.9 of the Paper and they were summarized as follows :

Supportive Representations

- i) R1 to R11 in general supported the preparation of a DPA Plan for the Yim Tin Tsai and Ma Shi Chau area to provide planning and development guidance, and to enable enforcement action to be taken against any unauthorized developments and uncontrolled developments. In particular, R3 urged for prompt action on any unauthorized works within the Area and pointed out that the columbarium use should be excluded from Shui Mong Tin in Ma Shi Chau;

- j) while R1 to R11 were in support of the DPA Plan, R1, R2, R7, R9 and R10 also offered comments and/or concerns on parts of the Plan. Their comments/concerns were as follows:

Not to allow any graves outside the burial grounds

- i) R2, R7, R9 and R10 pointed out that any graves built outside the burial grounds should not be allowed;

Concerns on ‘Grave’ being a Column 1 use under “SSSI” zone

- ii) R1, R7, R9 and R10 raised concerns on putting ‘Grave’ under Column 1 use of the proposed “SSSI” zone;

Against the ‘existing use’ status of any unauthorized development found before the publication of the Plan

- iii) R2, R7, R9 and R10 were against the ‘existing use’ status of any unauthorized development found before the publication of the Plan. They did not agree with paragraph 3 of the covering Notes stating that ‘No action is required to make the use of any land or building which was in existence immediately before the first publication in the Gazette of the notice of the draft DPA plan conform to this Plan, provided such use has continued since it came into existence.’ R1 pointed out that paragraph 8.2 of the Explanatory Statement stating that ‘No action will be required to make uses conform to the DPA Plan’ should not be applied to cases where remedial and enforcement actions were necessary and underway, specifically for the columbarium development at Ma Shi Chau;

- iv) R5 and R6 stated that the ‘existing use’ of the land in Shui Mong Tin should be ‘agricultural use’ instead of ‘columbarium use’. R11 was of the view that only about 30 niches in the columbarium at Shui Mong Tin had ‘existing use’ right. Any addition of niches should be regarded as intensification of use and in breach of the DPA Plan and thus subject to enforcement action;

Adverse Representations

Opposing the “SSSI” zone

- k) R12 opposed the proposed “SSSI” zones as : (1) there were not enough justifications for the “SSSI” zone; (2) development was restricted or prohibited on private land in the name of conservation; (3) it was unfair to the landowners as no development was allowed and no compensation would be paid to the affected landowners. The provisions of the Basic Law in safeguarding private property rights might be breached. R13 to R67 also pointed out that a lot of private agricultural land were zoned as “SSSI” without public consultation; the rights of the landowners and public opinions were not respected; and it was very unfair to the property owners;

Opposing the “Residential (Group D)” zone

- l) R12 opposed the designation of Sam Mun Tsai New Village and Luen Yick Fishermen Village as “R(D)” zone. The residents were indigenous villagers and were not able to redevelop their houses under the restrictions stipulated under the “R(D)” zone;

Representers’ Proposals

Designation of the burial grounds as “Cemetery”

- m) R2, R7, R9 and R10 proposed to designate the burial grounds as “Cemetery”;

Putting ‘Grave’ under Column 2 of the “SSSI” zone

- n) R1 suggested putting ‘Grave’ under Column 2 of the “SSSI” zone,

and R7, R9 and R10 proposed putting ‘Grave (within designated burial ground in “SSSI(1)” only)’ under Column 2 of the “SSSI” zone;

Amendments to paragraph 3 of the Covering Notes

- o) R2, R7, R9 and R10 proposed to amend paragraph 3 of the covering Notes as ‘Any existing development or structures or land uses which are found to be unauthorized under other relevant legislation, the conditions of the Government lease concerned, and any other Government requirements, are deemed not to be in existence before the notice of the draft DPA Plan’;

Protection of the SSSI and the Ma Shi Chau Special Area by conservation zones

- p) R2, R4, R5, R6 and R11 recommended to designate the Yim Tin Tsai and Ma Shi Chau SSSI as well as the Ma Shi Chau Special Area under various conservation zones on the Plan;

Inclusion of all relevant land/water interfaces and public land steps/piers/jetties into the Plan

- q) R7, R9 and R10 mentioned that the draft DPA Plan should include all land/water interfaces and appropriate public landing steps/piers/jetties in the Area;

Rezoning of the areas under “R(D)” zone to “Village Type Development” zone

- r) R12 to R67 proposed to rezone the Sam Mun Tsai New Village and Luen Yick Fishermen Village and the surrounding area from “R(D)” to “Village Type Development” (“V”);

Proposals not Directly Related to the Plan

- s) some representers also put forward proposals not directly related to the Plan. The proposals were summarized in paragraphs 2.17 and 2.18 of the Paper;

Comments on Representations

- t) C1 to C32 supported R12's proposal of rezoning the Sam Mun Tsai New Village and Luen Yick Fishermen Village and the surrounding area from "R(D)" to "V", and the restrictions on floor area and building height should be relaxed. C1 to C32 also opposed the DPA Plan as it involved a lot of private agricultural land being zoned "SSSI" without public consultation;

PlanD's Responses to Supportive Representations and Representers' Proposals

- u) the supportive representations of R1 to R11 were noted;
- v) PlanD's responses to those comments and/or concerns raised by R1, R2, R7, R9 and R10 were summarized as follows:

Not to allow any graves outside the burial grounds and designation of the burial grounds as "Cemetery"

- i) there were two burial grounds on the southeastern side of Yim Tin Tsai. Any graves permitted by the District Officer/Tai Po (DO/TP) should only be placed inside the burial grounds. Those existing graves outside the burial grounds could be tolerated if they were erected before the launch of the hillside burial policy in 1983. Upon publication of the DPA Plan, any new graves would be restricted to the burial grounds only. Otherwise, it would be subject to planning enforcement action under the Ordinance or in breach of other government requirements;

- ii) some representers proposed to designate the existing burial grounds as “Cemetery”. It should be noted that ‘burial ground’ was reserved for burial of indigenous villagers of the New Territories (‘indigenous villagers’) and locally based fishermen. “Cemetery” was primarily intended for cemeteries, graves and related facilities serving the needs of the general public. There was a major difference between ‘burial ground’ and “Cemetery” in terms of admission and land administration. “Cemetery” was considered not an appropriate land use zoning for designated burial grounds;

Concerns on ‘Grave’ being a Column 1 use under “SSSI” zone and Putting ‘Grave’ under Column 2 of the “SSSI” zone

- iii) there was an overlapping area between the Yim Tin Tsai and Ma Shi Chau SSSI and the burial grounds. As the burial grounds were already in existence as well as the major geological features within the SSSI were found in the coastal areas falling outside the burial grounds, the Director of Agriculture, Fisheries and Conservation (DAFC) had no objection to those burial activities within the overlapping area. As such, the overlapping area was designated as a “SSSI(1)” sub-zone within which grave was an always permitted use. This arrangement was generally in line with the spirit of the Master Schedule of Notes to Statutory Plans;
- iv) the representers’ proposals of putting ‘Grave (within designated burial ground in “SSSI(1)” only)’ under Column 2 of the “SSSI” zone would complicate and lengthen the processing of hillside burial applications, which was in contravention of the traditional Chinese notion of ‘letting the deceased rest in eternal peace early’;

- v) in general, graves were permitted under the covering Notes in all zones except “SSSI”, “Conservation Area” and “Coastal Protection Area”. Normally, designated burial ground would not fall within “SSSI” zone. However, the Yim Tin Tsai and Ma Shi Chau SSSI had a unique situation as it overlapped with a designated burial ground. Therefore, ‘Grave (within designated burial ground in “SSSI(1)” only’ was included as a Column 1 use of the “SSSI” zone to respect the traditional right of indigenous villagers;

Against the ‘existing use’ status of any unauthorized development found before publication of the Plan and Amendments to paragraph 3 of the Covering Notes

- vi) paragraph 3 of the covering Notes followed the definition of ‘existing use’ as stipulated in section 1A of the Ordinance, i.e. ‘existing use’ in relation to a DPA meant ‘a use of a building or land that was in existence immediately before the publication in the Gazette of notice of the draft plan of the DPA’. The ‘existing use’ status, even if established, did not necessarily mean that such use would become a permitted use meeting all other relevant legislation and government requirements. An ‘existing use’ would not necessarily become a planned use under the OZP. Any subsequent material change of such use or any other development should also be always permitted in terms of the Plan or in accordance with a planning permission granted by the Board;

Protection of the SSSI and Ma Shi Chau Special Area by conservation zones

- vii) the eastern tip of Yim Tin Tsai island had already been zoned “SSSI” on the DPA Plan and the proposed imposition of conservation zonings for the SSSI was noted.

However, the appropriateness of the proposed conservation zonings and the exact boundaries could not be determined at this stage. Detailed land use zonings of the Area would be worked out at the OZP preparation stage. The conservation zonings proposed by presenters would be further studied in the course of preparation of the OZP;

Inclusion of all relevant land/water interfaces and public landing steps/piers/jetties into the Plan

viii) the Planning Scheme Area Boundary of the DPA Plan basically followed the high water mark level and had included all the relevant land area. The proposal of including landing steps/piers/jetties would be considered during the preparation of OZP;

Responses to Adverse Representations and Presenters' Proposals

Opposing the "SSSI" zone

w) the Yim Tin Tsai and Ma Shi Chau SSSI had been designated as SSSI since 24 September 1982. The "SSSI" zone on the DPA Plan was to reflect part of the land falling within the SSSI designation. While some private land in Ma Shi Chau was within the "SSSI" zone, the issue on whether private land should be resumed for conservation purposes and the related compensation matters were outside the purview of the Board;

x) as regards the issue on public consultation, the gazetting of the DPA Plan under section 5 of the Ordinance was a statutory means for the public to express views on the Plan. On 2.9.2011, the Yim Tin Tsai and Ma Shi Chau DPA Plan was exhibited for public inspection under section 5 of the Ordinance. The DPA Plan was also presented to the Tai Po District Council and TPRC on 7.9.2011 and 10.9.2011 respectively. During the plan exhibition period, a total of 67 representations and 32 comments were received. All the presenters and commenters had been invited to attend the hearing;

y) as regards the issue on Basic Law, the zoning of “SSSI” on the draft DPA Plan would arguably amount to a control of use of the land concerned. The zoning of “SSSI” appeared to pursue the legitimate aim of providing better planning control and did not appear disproportionate to this aim, and it would satisfy the ‘fair balance’ test. Hence, the zoning of “SSSI” did not appear to be inconsistent with the protection of private property rights afforded by Articles 6 and 105 of Basic Law;

Opposing the “R(D)” zone and Rezoning of the areas under “R(D)” to “V”

- z) the “R(D)” zone mainly covered Sam Mun Tsai New Village, Luen Yick Fishermen Village and the surrounding area. The two villages were built in the 1960s by the Government and charity groups for the settlement of fishermen;
- aa) according to the District Lands Officer/Tai Po (DLO/TP), the ex-Sam Mun Tsai Fishermen Village at the northeastern shore of Plover Cove Reservoir was not a recognized village. In 1965, fishermen of the village were relocated to Sam Mun Tsai to make way for the Plover Cove Reservoir Project. The relocated area was then named Sam Mun Tsai New Village and became a recognized village. The village ‘environs’ (‘VE’) was drawn up in 1999. Nevertheless, there was neither Indigenous Inhabitant Representative nor future Small House demand forecast for Sam Mun Tsai New Village. As to whether the residents living in Sam Mun Tsai New Village were indigenous villagers, DLO/TP had no information and no record of this nature. There was no Small House application at Sam Mun Tsai New Village currently. There were seven Small House applications but all were rejected in 1990s as the applicants were not indigenous villagers. On the other hand, Luen Yick Fishermen Village was not a recognized village;

ab) the “R(D)” zone might not be the most appropriate zoning covering the whole Sam Mun Tsai New Village, Luen Yick Fishermen Village and the surrounding area. Given the fact that there was neither Indigenous Inhabitant Representative, outstanding Small House application nor future Small House demand forecast for Sam Mun Tsai New Village, it would not be feasible to delineate a suitable “V” zone for the village at this stage. To acknowledge the unique background of Sam Mun Tsai New Village, it was proposed that the land covering Sam Mun Tsai New Village, Luen Yick Fishermen Village and the surrounding area be rezoned from “R(D)” zone to “Unspecified Use” (“U”) area so that appropriate land use zonings could be worked out in the preparation of the OZP stage. In the meantime, application for Small House developments, if any, within the “U” area could be made to the Board for consideration under s.16 of the Town Planning Ordinance;

PlanD's responses to the proposals not directly related to the Plan:

ac) PlanD's responses to the representers' proposals not directly related to the DPA Plan were summarized in paragraph 7.4 and Annex I of the TPB Paper;

PlanD's Views

ad) PlanD's Views - noted the supportive representations of R1 to R11;
- partially met R12 to R67 by rezoning the land designated under “R(D)” to “Unspecified Use”; and
- not to uphold the remaining parts of R12 to R67.

[Ms. Julia M.K. Lau arrived to join the meeting at this point.]

17. The Chairman then invited the representatives of the representers to elaborate on their submissions.

Representation No. 2 : Association for Geoconservation, Hong Kong

18. With the aid of a Powerpoint presentation, Ms. Cindy Choi, the representative of R2, made the following made points:

Geological and Conservation Value of Yim Tin Tsai and Ma Shi Chau

- a) the eastern tip of Yim Tin Tsai, the whole island of Ma Shi Chau and the tombolo connecting them had been designed as Site of Special Scientific Interest (SSSI) since 1982. The Area had valuable natural geological heritage with high scenic value;
- b) according to the information provided by Civil Engineering and Development Department, Devonian sedimentary rock, the oldest rock outcrops in Hong Kong, was found in the Ma Shi Chau island;
- c) Ma Shi Chau island consisted of outcrop of three geological eras, namely, Devonian of 400 million years, Permian of 280 million years and Late Jurassic of 180 million years. Photographs of outcrops of different geographic eras including ash tuff, breccias and rhyolite of 180 million years old were shown at the meeting;
- d) geographical features found in Ma Shi Chau included :
 - fossils;
 - unconformable contact of sedimentary rock with volcanic tuff;
 - different kinds of faults and folds;
 - geographical features caused by weathering;
 - shell beach, gravel beach, boudinage;
- e) with a variety of rare geological features and heritage, Ma Shi Chau had high conservation value and was a valuable area for earth sciences research and education purpose;

Developments at Shui Mong Tin in Ma Shi Chau

- f) photographs taken in 2006 illustrated that Ma Shi Chau and the tombolo were still very green and remained intact at that time.

However, since September 2008, site formation works had been undertaken at Shui Mong Tin. Site photographs taken in January, May and November of 2009 indicated that vegetation at Shui Mong Tin had been cleared and site formation works had been undertaken. An office structure was found at Shui Mong Tin and a floating pier was laid at the adjacent coastal water;

- g) site photographs taken in February and December 2010 indicated that the concerned development at Shui Mong Tin was for private columbarium use under the name of ‘遠福園’. The site photographs taken in February 2012 indicated that there were more burial plots found on the site when compared to the situation in December 2010 and there were people worshiping or holding ceremonies;
- h) according to the Director of Lands, the concerned development at Shui Mong Tin had breached the lease conditions and the land owner had been requested to stop the columbarium use and clear the burial plots on the site by 28.2.2012. As the owner of the site had not taken any action as required, the Director of Lands should take prompt action to clear the unauthorized development;

Conclusion

- i) R2 :
 - i) supported the zoning of the eastern tip of Yim Tin Tsai, Shui Mong Tin of Ma Shi Chau and the tombolo connecting Yim Tin Tsai and Ma Shi Chau as “SSSI”;
 - ii) opposed the ‘existing use’ status of the columbarium at Shui Mong Tin; and
 - iii) proposed to rezone the existing Yim Tin Tsai and Ma Shi Chau SSSI (96.06 ha) from “Unspecified Use” to “SSSI” on the DPA.

Representation No. 5 : Columbarium Concern Group (各界關注骨灰龕法案大聯盟)

19. With the aid of a Powerpoint Presentation, Mr. Tse Sai Kit, the representative of R5, made the following points:

- a) R5 supported the preparation of a DPA Plan for the Yim Tin Tsai and Ma Shi Chau Area. R5 proposed to designate the area as “SSSI” or ‘Hong Kong Geopark’ on the OZP to be prepared;
- b) there was an unauthorized columbarium use, ‘Union Lucky Development’ (遠福園), at Shui Mong Tin of Ma Shi Chau. The concerned site was originally a piece of vacant agricultural land covered by green vegetation. Since 2008, unauthorized site formation works and columbarium use were found on the site;
- c) the concerned site (Lot No. 96 in D.D. 27) was previously owned by an indigenous villager. In 2008, the land was purchased by the ‘Union Lucky Development Limited’ (遠福發展有限公司). The company was owned by a Ms. Lam and a Mr. Chan and the capital for the development was from the Mainland. The company had started selling the niches in Shui Mong Tin since 2009;
- d) in November 2011, R5 together with some Legislative Council Members visited the concerned site. As the columbarium use was in breach of the lease conditions, the relevant government department had been requested to undertake appropriate enforcement action;
- e) it was noted that on 18.3.2011, the landowner submitted an application to LandsD for lease modification. Upon the request of R5, LandsD had consulted the public on the subject lease modification application. In this regard, R5 raised their objection to the applied lease modification as the private columbarium use would adversely affect the natural environment of the Area. On 1.12.2011, the application for lease modification was rejected by LandsD. The landowner had been requested by the Director of Lands to rectify the breaches by 28.2.2012. However, according to a site visit conducted on

29.2.2012, it was noted that the landowner had not cleared the unauthorized development. Director of Lands should take further lease enforcement action;

- f) R5 was against the ‘existing use’ status of the private columbarium use at Shui Mong Tin as it was an unauthorized development subject to lease enforcement action. The existing use of Shui Mong Tin should be ‘agricultural use’; and
- g) the subject columbarium use was akin to ‘Destroy First and Built Later’ approach. In 2011, the Board had promulgated the approach to be adopted by the Board in considering planning applications for which the application sites were the subject of planning enforcement action. Although the subject was not a planning application, the Board should adopt the same approach in deterring the unauthorized private columbarium use at Shui Mong Tin.

Representation No. 12 : Tai Po Rural Committee

20. Mr. Lee Wing Keung, the representative of R12, made the following main points :

- a) he was the Executive Committee Member (執行委員) of the TPRC and opposed the “SSSI” and “R(D)” zonings on the draft DPA Plan;
- b) the subject hearing should focus on the consideration of representations to the draft DPA Plan, but not the private columbarium use at Shui Mong Tin as mentioned by other representers’ representatives;
- c) the subject DPA Plan was intended to provide a stopgap measure to effect planning control over the private columbarium use at Shui Mong Tin. As the DPA Plan was only an interim plan to be replaced by an OZP, the proposed “SSSI” zoning of Shui Mong Tin was too restrictive. Other conservation zonings, such as “Green Belt” (“GB”) or “Conservation Area” (“CA”) could also achieve the planning intention of conserving the natural and rural environment of the site;

“SSSI(I)” Zone

- d) there were two burial grounds on the eastern side of Yim Tin Tsai. Part of the burial grounds, however, overlapped with the Yim Tin Tsai and Ma Shi Chau SSSI and the concerned area was designated as “SSSI(I)” under the DPA. He doubted whether the concerned portion of burial ground had any ‘special scientific interest’ to warrant the “SSSI” zoning. The burial grounds were designated by the Director of Lands in consultation with Home Affair Department. Any grave to be placed in the burial grounds would require permission from the District Officer/Tai Po of the Home Affairs Department. The Government already had sufficient control on the burial grounds. In view of the lack of justification provided by PlanD, this part of burial ground should remain as “GB” on the DPA Plan;
- e) the proposed “GB” zoning was in line with the previous decision of the Board in considering the representations to the Tai Po OZP. According to his recollection, upon the consideration of the representations to the Tai Po OZP, the Board decided to retain the “GB” zoning for the burial ground at Pai Mun Shan, and not to accede to some representers’ proposal of rezoning the burial ground to “Conservation Area”;
- f) the small circular area to the northeast of Shui Mong Tin was also zoned “SSSI” on the DPA Plan. According to his understanding, this was only an old grave without any conservation value;

Shui Mong Tin at Ma Shi Chau

- g) the private columbarium use at Shui Mong Tin should be controlled by LandsD through lease enforcement action. There was no need to designate the area as “SSSI” in the draft DPA;
- h) it was doubtful whether the concerned agricultural land at Siu Mong Tin had any conservation value that justified such a stringent

conservation zoning of “SSSI”. Geological features and mangroves of conservation value were mainly found in the coastal areas;

- i) R12 opposed the “SSSI” zoning as development on land were being frozen without any compensation to the affected landowners. This amounted to confiscation of private property which was inconsistent with the protection of private property right under Basic Law Article 105;
- j) he considered that Shui Mong Tin and the burial grounds should be zoned “GB” instead of “SSSI”;

“R(D)” Zone

- k) it was inappropriate to zone Sam Mun Tsai New Village and Luen Yick Fishermen Village as “R(D)” with a maximum plot ratio of 0.4 and a maximum building height of 2 storeys. The development restrictions were so stringent that it was not feasible for the villagers to redevelop their houses;

[Mr. Eric Hui left the meeting temporarily at this point.]

- l) as indicated in Plan H-3b of the Paper, Sam Mun Tsia New Village had its village ‘environs’ (‘VE’). Under the New Territories Small House Policy which came into force in 1972, ‘VE’ was drawn up by DLO for Small House development. In this regard, the Sam Mun Tsai New Village and Luen Yick Fishermen Village and the surrounding areas should be rezoned from “R(D)” to “V”;
- m) it was stated in the Paper that there was neither Indigenous Inhabitants Representative nor Small House demand forecast for Sam Mun Tsai New Village. However, some non-indigenous villages in the New Territories such as Shung Ching San Tsuen (崇正新村) in Yuen Long had been zoned “V” on the relevant OZP; and

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

- n) there were 36 households in Sam Mun Tsai New Village. TPRC had been actively pursuing with the Government recognition of the villagers of Sam Mun Tsai New Village as indigenous villagers.
- 21. Mr. Chan Mei Tak, the representative of R12, made the following main points:
 - a) he was the Executive Committee Member (執行委員) of the TPRC and a representative of Luen Yick Fishermen Village. He opposed the “SSSI” zoning on the draft DPA;
 - b) there had been an increasing number of visitors to Ma Shi Chau since 2000. However, the Sam Mun Tsai New Village and Luen Yick Fishermen Village were two small villages. The limited parking spaces, facilities and infrastructure provision in the area could hardly meet the needs of the visitors. There should be better planning for the area to cater for the needs of the local community and visitors;

[Mr. Clarence W.C. Leung, Mr. Fletch Chan and Dr. W.K. Lo left the meeting temporarily at this point.]

- c) Ma Shi Chau was connected to Yim Tin Tsai by a tombolo that was only accessible when the tide was low. There was a plan to extend the Luen Yick Pier for about 10m to better serve the visitors. However, as the pier fell within two km of the Yim Tin Tsai and Ma Shi Chau SSSI, the relevant works was not allowed ;
- d) in 1965, the fishermen living in the ex-Sam Mun Tsai Fishermen Village in the northeastern shore of Plover Cove Reservoir were relocated to the Sam Mun Tsai New Village to make way for the Plover Cove Reservoir Project. The Government had paid very minimal allowance/compensation to each affected fishermen household;
- e) the Plover Cove Reservoir project and other reclamation projects along

the coastal area of Tai Po, Ma On Shan and Sha Tin area had significant reduced the waterbodies in Tolo Harbour and adversely affected the fishing industry and the livelihood of fishermen. However, only very limited amount of ex-gratia allowance had been provided to the fishermen by the Government; and

- f) fishermen had made significant contribution to the development of Hong Kong. However, the Government failed to pay regard to the needs of the fishermen.

[Dr. C.P. Lau, Mr. Fletch Chan and Dr. W.K. Lo returned to join the meeting at this point.]

22. Mr. Shek Kwong Yin, the representative of R12, made the following main points:

- a) he was the Executive Committee Member (執行委員) of the TPRC and a representative of the Sam Mun Tsai New Village;

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

- b) in 1965, the fishermen of the ex-Sam Mun Tsai Fishermen Village were relocated to the Sam Mun Tsai New Village to make way for the Plover Cove Reservoir Project. He was one of the relocated fishermen and he received only very minimal compensation from the Government for the relocation. The Government had neglected the need and the livelihood of the fishermen;

- c) the existing structures at Sam Mun Tsai New Village and Luen Yick Fishermen Village were erected more than 30 years ago and were in poor conditions. The development restrictions imposed under the “R(D)” zone were too restrictive; and

- d) the DPA Plan had imposed stringent restrictions on the development of the area and adversely affect the local villagers.

23. As the presentations from the representatives of the representers had been completed, the Chairman invited questions from Members.

24. The Chairman enquired about the proposal put forward by Mr. Lee Wing Keung (the representative of R12) in his presentation that the previous “GB” zoning of the burial ground at Yim Tin Tsai should be maintained. In response, Mr. Edward Lo, DPO/STN said that there was no previous “GB” zoning for the concerned portion of the burial ground as the draft Yim Tin Tsai and Ma Shi Chau DPA Plan was the first statutory town plan prepared for the Area. Under the “SSSI(1)” zoning on the draft DPA Plan, ‘grave’ was an always permitted use.

25. Mr. Lee Wing Keung clarified that he proposed to rezone the portion of the burial ground from “SSSI(1)” to “GB”. He quoted the zoning of the burial ground at Tai Po Pai Mun Shan as an example, and said that the Board decided to keep the “GB” zoning of the concerned burial ground on the draft Tai Po OZP, rather than rezoning the site to “CA” as proposed by some representers. The Chairman said that as explained by DPO/STN, ‘Grave’ was included as a Column 1 use within the designated burial ground in the “SSSI(1)” zone to respect the traditional right of indigenous villagers. For the “GB” zone, the general planning intention was for defining the limits of urban and sub-urban development areas by natural features. There was a general presumption against development within “GB” zone. He asked if Mr. Lee understood the impact of a “GB” zoning. Mr. Lee Wing Keung said that he doubted whether the concerned portion of the burial ground at Yim Tin Tsai had any ‘special scientific interests’ which warranted a restrictive “SSSI” zoning. Activities to be undertaken in burial grounds such as excavation of land and burning of joss sticks and joss papers, might not be compatible with planning intention of the conservation zone.

[Mr. Eric Hui returned to join the meeting at this point.]

26. The Chairman enquired whether the activities of burning of joss sticks and joss papers were restricted under the “SSSI(1)” zone. Mr. Edward Lo replied that the Home Affairs Department had set out criteria and procedures for handling hillside burial applications within burial grounds. Mr. Lee Wing Keung said that the criteria and procedures set out by HAD only concerned about the burial applications, but not the

worshipping activities undertaken in the burial grounds.

Sam Mun Tsai New Village : Status of 'Indigenous Villagers'

27. The Chairman said that Mr. Lee Wing Keung had mentioned in his presentation that the TPRC was actively pursuing with the Government on the recognition of the villagers of Sam Mun Tsai New Village as indigenous villagers. He enquired about the latest progress of the issue. Mr. Lee replied that TPRC had provided some information to the DO/TP for consideration. However, DO/TP had advised TPRC that the information provided could not confirm that the concerned villagers were indigenous villagers. TPRC was soliciting further information to substantiate their request.

28. In response to a Member's enquiry, Mr. Edward Lo said that the burial grounds at Yim Tin Tsai were designated in 1983 and 1999 respectively for burying of the indigenous villagers and locally based fishermen. As the burial grounds were already in existence and the major geological features within the SSSI were found in the coastal areas falling outside the burial ground boundary, AFCD had no objection to those burial activities within the overlapping area between the designated burial ground and the "SSSI" zone.

29. 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 representations in the absence of the representatives of the representers. The representers and commenters would be informed of the Board's decision in due course. The Chairman thanked the representatives of the representers and PlanD for attending the hearing. They all left the meeting at this point.

Deliberation Session

30. Members noted the supportive representations of R1 to R11.

Not to allow any grave outside the burial grounds and Designation of the burial grounds as "Cemetery"

31. Regarding the proposal submitted by some representers for designating the existing burial grounds as "Cemetery", Members noted that "Cemetery" was designated

for land primarily intended for cemeteries, graves and related facilities serving the needs of the general public whereas ‘burial ground’ meant an area reserved for burying of the indigenous villagers and locally based fishermen. As there was a major difference between ‘burial ground’ and “Cemetery” in terms of admission and land administration, “Cemetery” was considered not an appropriate land use zoning for burial grounds. Members considered that the representers’ proposal should not be acceded to.

Concerns on ‘Grave’ being a Column 1 use under “SSSI” zone and Putting ‘Grave’ under Column 2 of the “SSSI” Zone

32. In response to a Member’s enquiry, the Chairman said that any new grave to be placed inside the designated burial grounds would require permission from DO/TP. The Secretary said that many burial grounds in the New Territories were zoned “GB” on the relevant statutory town plans. In general, under the covering Notes of DPA Plans/OZPs, graves of indigenous villagers and locally based fishermen were always permitted in all zones except “SSSI”, “CA” and “Coastal Protection Area”. Normally, designated burial ground would not fall within a “SSSI” zone. However, the situation of Yim Tin Tsai and Ma Shi Chau SSSI was unique as the SSSI overlapped with a designated burial ground. Therefore, ‘Grave (within designated burial ground in “SSSI(1)” only)’ was included as a Column 1 use of the “SSSI” zone to respect the traditional right of indigenous villagers. The Chairman said that the proposal of putting ‘Grave (within designated burial ground in “SSSI(1)” only)’ under Column 2 of the “SSSI” zone would complicate and lengthen the processing of burial applications. With the above clarification, Member agreed that it was appropriate to zone the overlapping area as “SSSI(1)” where grave was an always permitted use. The Chairman said that detailed land use zonings would be worked out during the OZP stage taking into account relevant assessments and studies on various aspects. In this regard, AFCD should be requested to review the boundary of the Yim Tin Tsai and Ma Shi Chau SSSI. Members agreed. In response to a Member’s enquiry on the zoning of the site with the private columbarium use at Shui Mong Tin, the Secretary said that the site was zoned “SSSI”, instead of “SSSI(1)”, and columbarium use was neither a Column 1 nor Column 2 use.

'Existing use' status of any unauthorized development found before publication of the Plan

33. In response to two Members' enquiries on the 'existing use' status of the private columbarium use at Shui Mong Tin, the Secretary said that 'existing use' in relation to a DPA meant "a use of a building or land that was in existence immediately before the first publication in the Gazette of notice of the draft plan of the DPA". Upon publication of the draft DPA Plan, aerial photos would be taken and a freezing survey would be carried out to record the 'existing use' of the Area at that point of time. The onus of proof of the 'existing use' would be on the applicant. As such, the applicant would need to submit the necessary evidence to prove that any development was in existence immediately before the gazette of the Plan in order to claim the 'existing use' status. While 'existing use' would be tolerated under the Ordinance, any material change of such use would have to comply with the provisions of the draft DPA Plan. Besides, according to the Notes of the DPA Plan, any further excavation of land would require planning permission from the Board.

34. The Secretary continued and pointed out that for the private columbarium use at Shui Mong Tin, PlanD's on-site survey conducted at the first gazette of the draft DPA Plan on 2.9.2011 revealed that a vast majority of Shui Mong Tin was open soil ground with rows of tiles and a few stone tablets at scattered locations on the ground. If there was intensification of the columbarium use which had changed the character of the site, this would constitute a material change in the use of land. According to the Notes of the DPA Plan, any material change in the use of land without planning permission from the Board would be considered as unauthorized development subject to planning enforcement and prosecution action undertaken by the Planning Authority under the Town Planning Ordinance. It was also stipulated in the Notes of the DPA Plan that any excavation of land on the site needed planning permission from the Board. Without such planning permission, the Planning Authority again would instigate enforcement action under the Ordinance.

35. The Secretary also explained that the 'existing use' status, even if established, did not necessarily mean that such use would meet other relevant legislation and government requirements including the conditions of the lease concerned. For the application for lease modification in relation to the columbarium use at Shui Mong Tin, the application was rejected by LandsD upon receipt of objections from the Director of

Planning, the Director of Environmental Protection and the Director of Agriculture, Fisheries and Conservation. Miss Annie Tam, Director of Lands, said that LandsD were of the opinion that the lot owners had breached the lease conditions of the site and LandsD had written to the lot owners to demand rectification of the breaches. However, the lot owners argued that there was no such lease breach. LandsD was in the process of pursuing lease enforcement in consultation with its legal advisors.

[Professor P.P. Ho left the meeting temporarily at this point.]

36. Upon a Member's enquiry on whether an 'existing use' would be tolerated under the Town Planning Ordinance, the Secretary said that an 'existing use' would not necessarily become a planned use under the OZP. While the 'existing use' would be tolerated under the Ordinance, any subsequent material change of such use or any other development should be permitted in terms of the Plan or in accordance with a planning permission granted by the Board. Members noted.

Protection of the SSSI and Special Area by conservation zones

37. The Chairman said that the comments and views of some representers for conservation zonings so as to offer protection to the natural scenic character and geological value of the Area were noted. However, the appropriateness of the zones and the exact boundaries could not be determined at this stage. Detailed land use zonings of the Area would be worked out at the OZP preparation stage. As such, the conservation zonings proposed by representers would be further studied in the course of preparation of the OZP. Members agreed.

Inclusion of all relevant land/water interfaces and public landing steps/ piers/jetties into the Plan

38. Members noted that the Planning Scheme Area Boundary of the DPA Plan was basically to follow the high water mark level and had included all the relevant land area. As regards the proposal to include landing steps/piers/jetties so that unauthorized structures after publication of the DPA Plan should be removed to protect the integrity of the coastlines, Members agreed that it should be considered during the preparation of OZP.

Opposing the “SSSI” zone

39. Members noted that the Yim Tin Tsai and Ma Shi Chau SSSI had been so designated since 24 September 1982. The “SSSI” zone on the DPA Plan was to reflect part of the land falling within the SSSI designation so as to provide planning guidance and development control and enable planning enforcement action to be taken against unauthorized developments. The Board would request AFCD to review the boundary of the Yim Tin Tsai and Ma Shi Chau SSSI as elaborated at paragraph 32. A Member said that as ‘Grave (within designated burial ground in “SSSI(1)” only)’ was included as a Column 1 use under the “SSS(1)” zone, the traditional right of indigenous villagers had been respected.

40. On the issue of public consultation, the Chairman said the gazetting of the DPA Plan was a statutory means for the public to express views on the Plan. On 2.9.2011, the DPA Plan was exhibited for public inspection for two months. Due to the confidential nature of the DPA Plan, the relevant DC and RC could not be consulted prior to the gazetting of the Plan. Subsequently, the DPA Plan was presented to the TPDC and TPRC at its meeting on 7.9.2011 and 10.9.2011 respectively. During the plan exhibition period, a total of 67 representations and 32 comments were received. All the representers and commenters had been invited to attend the hearing.

41. As regards the issue on Basic Law, Members noted that the zoning of “SSSI” was to pursue the legitimate aim of providing better planning control and did not appear disproportionate to this aim. The zoning of “SSSI” was not inconsistent with the protection of private property rights afforded by Basic Law 6 and Basic Law 105.

Rezoning of the areas under “R(D)” zone to “V” zone

42. The Chairman said that according to the latest information from the DLO/TP as set out in the TPB Paper, the “R(D)” zone might not be the most appropriate zoning for the Sam Mun Tsai New Village, Luen Yick Fishermen Village and the surrounding area. Nevertheless, given the fact that there was neither Indigenous Inhabitant Representative nor future Small House demand forecast for Sam Mun Tsai New Village, it would not be feasible to consider and, if appropriate, to delineate a suitable “V” zone for the village at this stage. However, to acknowledge the unique background of Sam Mun Tsai New Village, it was proposed that the land covering Sam Mun Tsai New Village, Luen Yick

Fishermen Village and the surrounding area be rezoned from “R(D)” to “Unspecified Use” area so that appropriate land use zonings could be worked out in the preparation of the OZP stage. Further background studies/assessment and consultation with relevant departments would be required. The stakeholders including the TPRC would also be consulted in due course. Members agreed.

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

Proposals not directly related to the DPA Plan

Inclusion of areas into ‘Hong Kong Global Geopark of China’

43. Members noted that the inclusion of areas into ‘Hong Kong Global Geopark of China’ was outside the purview of the Board.

Preparation of Development Permission Area plans for areas yet to be covered

44. The Chairman said that it had been the Government’s long-term target to prepare OZPs for all areas of Hong Kong except areas covered by Country Parks. Such task would be undertaken having regard to development pressure, priorities and resources availability. With regard to the protection of Country Park enclaves, the 2010-2011 Policy Address had also stated that the Government would either include the remaining ‘enclaves’ into Country Park, or determine their proper uses through statutory planning in order to meet conservation and social development needs. Members noted.

Resuming the preparation of village layout

45. Regarding the preparation of new village layout plans for villages covered by existing OZPs, the Chairman said that it would depend on a number of factors such as availability of resources for implementation, and manpower and priority of works within PlanD. For the new DPA Plans which had just been completed, OZPs with definite zonings should be prepared before layout plans could be contemplated. The need for preparation of new village layout plans for the “V” zones covered by these OZPs would be reviewed as appropriate. Members noted.

Suspension of processing of land grant for Small House applications

46. Members noted that the processing of land grant for Small House applications under New Territories Small House Policy was outside the purview of the Board.

Suggestions for preparation of the Outline Zoning Plan

47. A Member said that the concerned departments including PlanD should study how to improve the local infrastructure and facilities to meet the local needs. The Chairman replied that this would be done in the course of preparing OZP and the detailed land uses, and the relevant stakeholders, including the local community, green groups, TPDC, TPRC and government departments would be consulted.

Incorporation of 54 Country Park enclaves into statutory control should be terminated

48. The Chairman said that it had been the Government's long-term target to prepare OZPs for all areas of Hong Kong except areas covered by Country Parks. With regard to the protection of Country Park enclaves, the 2010-2011 Policy Address had also stated that the Government would either include the remaining 'enclaves' into Country Park, or determine their proper uses through statutory planning in order to meet conservation and social development needs.

49. A Member noted that some representers mentioned about the Notes of the DPA Plan in their representations. This Member suggested that a full set of the Notes of the DPA Plan be attached to the TPB Paper as reference material. The Secretary said that the District Planning Officers of PlanD would be informed of the request.

Representations No. 1 to 11

50. After further deliberation, the Board noted the support of R1 to R11 on the establishment of the DPA Plan and agreed to advise R1 to R11 of the following :

- a) the DPA Plan was an interim plan which would be replaced by an OZP within three years. Detailed land use zonings would be worked out during the OZP stage taking into account relevant assessments/studies on various aspects including traffic, environmental, sewerage, landscape, geological and geotechnical, etc. Within the three years, the PlanD would consult the relevant stakeholders including the green groups, the concerned government

departments, the TPDC and the TPRC in preparing an OZP for the area. In establishing the appropriate land uses, the PlanD would strive to achieve a proper balance between conservation and development; and

- b) ‘existing use’ means ‘a use of a building or land that was in existence immediately before the first publication in the Gazette of notice of the draft plan of the DPA’. Any claim for ‘existing use’ status should prove that the use was in existence immediately before the gazette of the Plan. Columbarium development in the Area required planning approval by the Board unless it was proved to be an ‘existing use’. Even if the ‘existing use’ status was established, it did not necessarily mean that such use would become a permitted use meeting all other relevant legislation and government requirements including the conditions of the lease concerned. Moreover, an ‘existing use’ would not necessarily become a planned use under the OZP, and appropriate land use zonings would be established pending detailed analysis and studies in the preparation of the OZP.

51. After deliberation, the Board also agreed to advise R1, R2, R4, R5, R6, R7, R10 and R11 on those proposals not directly related to the DPA Plan, as follows:

Inclusion of areas into ‘Hong Kong Global Geopark of China’ (R1, R2 and R10)

- a) the inclusion of areas into ‘Hong Kong Global Geopark of China’ was outside the purview of the Board;

Preparation of Development Permission Area plans for areas yet to be covered (R7)

- b) it had been the Government’s long-term target to prepare OZPs for all areas of Hong Kong except areas covered by Country Parks. Such task would be undertaken having regard to development pressure, priorities and resources availability. With regard to the protection of

Country Park enclaves, the 2010-2011 Policy Address had also stated that the Government would either include the remaining ‘enclaves’ into Country Park, or determine their proper uses through statutory planning in order to meet conservation and social development needs;

Resuming the preparation of village layout (R7)

- c) the preparation of new village layout plans for villages covered by existing OZPs would depend on a number of factors such as availability of resources for implementation, and manpower and priority of works within PlanD. For the new DPA Plans which had just been completed such as the Plan, OZPs with definite zonings should be prepared before layout plans could be contemplated. The need for preparation of new village layout plans for the “V” zones covered by these OZPs would then be reviewed as appropriate;

Suspension of processing of land grant for Small House applications (R7)

- d) the processing of land grant for Small House applications under NT Small House Policy was outside the purview of the Board; and

Suggestions for preparation of the Outline Zoning Plan (R4, R5, R6 and R11)

- e) in the course of preparing OZP and the detailed land uses, relevant stakeholders, including green groups, TPDC, TPRC and government departments would be consulted. Upon publication of the OZP, there would be a 2-month public consultation period in the plan-making process whereby public views could be collected and considered according to the Ordinance.

Representations No. 12 to 67

52. After further deliberation, the Board decided to partially uphold the representations of R12 to R67 by rezoning the land designated under “R(D)” zone to “Unspecified Use” area and deleting the Notes for the “R(D)” zone. Members agreed to the proposed amendments to the DPA Plan, its Notes and Explanatory Statement (ES) set out in Annexes IV, V and VI of the TPB Paper. Members also agreed that the

proposed amendments to the draft Yim Tin Tsai and Ma Shi Chau DPA Plan No. DPA/NE-YTT/1 as shown at Annexes IV and V of the Paper were suitable for publication for further representation under section 6(C)2 of the Ordinance, and the revised ES at Annex VI was suitable for publication together with the proposed amendments.

53. The Board also decided not to uphold the remaining part of the representations of R12 to R67. Members then went through the suggested reasons for not upholding the representations as detailed in paragraph 7.3 of the Paper and agreed that they were appropriate:

- a) the DPA Plan was an interim plan which would be replaced by an OZP within three years. Detailed land use zonings would be worked out during the OZP stage taking into account relevant assessments/studies on various aspects including traffic, environmental, sewerage, landscape, geological and geotechnical, etc. Within the three years, the PlanD would consult the relevant stakeholders including the green groups, the concerned government departments, the TPDC and the TPRC in preparing an OZP for the area. In establishing the appropriate land uses, the PlanD would strive to achieve a proper balance between conservation and development; and
- b) while the proposed “SSSI” zone on the Plan was to reflect the land falling within the Yim Tin Tsai and Ma Shi Chau SSSI designated since 1982, its zoning and boundaries would be further reviewed and defined during the preparation of OZP stage.

54. After deliberation, the Board also agreed to advise R12 on the proposal not directly related to the DPA Plan, as follow:

Incorporation of 54 Country Park ‘enclaves’ into statutory control should be terminated

- a) it had been the Government’s long-term target to prepare OZPs for all areas of Hong Kong except areas covered by Country Parks. With

regard to the protection of Country Park enclaves, the 2010-2011 Policy Address had also stated that the Government would either include the remaining ‘enclaves’ into Country Park, or determine their proper uses through statutory planning in order to meet conservation and social development needs.

[The meeting was adjourned for a short break.]

[Dr. Wilton W.T. Fok left the meeting at this point.]

Tsuen Wan and West Kowloon District

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/K2/201

Proposed Commercial Bathhouse/Massage Establishment in
“Residential (Group A)” Zone, Shop D1, G/F and Whole of 1/F, Kam Wah Building,
831A-831H and 831J to 831L Canton Road, 24, 26 and 26A Pitt Street, Kowloon
(TPB Paper 9064)

[The meeting was conducted in Cantonese.]

55. Mr. Dominic K.K. Lam declared interest in this item as his company had current business dealings with the consultants of the applicant. However, as Mr. Lam had not been involved in this planning application, Members agreed that the interest of Mr. Lam was not direct and he should be allowed to stay in the meeting.

56. Mr. C.K. Soh, District Planning Officer/Tsuen Wan and West Kowloon (DPO/TWK), was invited to the meeting at this point. The Chairman informed Members that the applicant had confirmed that he would not attend the meeting. He then invited DPO/TWK to brief Members on the review application.

57. With the aid of a Powerpoint presentation, Mr. C.K. Soh, DPO/TWK, presented the review application and covered the following main points as detailed in the Paper:

The Application

- a) on 20.10.2011, the applicant sought planning permission for the proposed commercial bathhouse and massage establishment at part of G/F and whole of 1/F of an existing 23-storey composite building (Kam Wah Building) at Canton Road, Kowloon (the Premises). The Site fell within an area zoned “Residential (Group A)” (“R(A)”) on the draft Yau Ma Tei Outline Zoning Plan (OZP) No. S/K2/21;

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

The Premises and Its Surrounding Area

- b) the premises was located on part of the G/F and the whole of 1/F of an existing composite building comprising two residential blocks above a podium. The G/F and 1/F were for non-domestic use whereas the upper floors were for domestic use;
- c) the premises were directly accessible from the main entrance at the shop front on G/F facing Canton Road with an internal staircase connecting to 1/F;
- d) the premises were located in a predominantly residential neighbourhood with the lower floors for local retail shop uses;

Decision of the RNTPC

- e) on 16.12.2011, the Metro Planning Committee (MPC) of the Board decided to reject the application and the reasons were:
 - i) the proposed commercial bathhouse and massage establishment was within a residential neighbourhood and considered incompatible with the residential use in the area; and

- ii) the approval of the application would set an undesirable precedent for similar applications in the vicinity;

Applicant's Justifications

- f) the applicant had not submitted any justification in support of the review application;

Town Planning Board Guidelines No. 14B

- g) the Town Planning Board Guidelines for “Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance” (TPB PG No. 14B) were relevant to the application. The relevant assessment criteria were summarised as follows:

- i) the proposed commercial bathhouse and massage establishment would normally not be permitted within a residential neighbourhood;
- ii) the proposed establishment should be located within a commercial building or the non-domestic portion of a composite commercial/residential building;
- iii) the proposed use should not be incompatible with other uses within the same building;
- iv) access (entrance) to the application premises should be separated from that of the domestic portion of the building by way of separate stairways and/or lifts/escalators exclusively serving the non-domestic portion of the building so as to avoid causing nuisance to the occupants in the same building;
- v) the views of local residents on the proposed establishment would be taken into account; and
- vi) the Fire Services Department and the Buildings Department

should be satisfied that the proposals complied with the fire safety requirements;

Departmental Comments

- h) the concerned government departments including the Lands Department, Buildings Department, Fire Services Department, Environmental Protection Department and Police had no objection or comment on the application. Their comments were detailed in paragraph 6 of the Paper;

Public Comment

- i) six public comments were received during the statutory public inspection period. Commenter No. C1 was submitted by the Incorporated Owners of the subject building (Kam Wah Building), whereas Commenter Nos. C2 to C5 came from the owners' incorporations of the adjoining buildings and Commenter No. C6 was from a District Councillor. There were also 143 public comments, including those from local stakeholders, objecting to the original planning application. The public comments objected to the application for reasons including the incompatibility of the proposed development with existing residential use, possible security issues, fire hazard, and nuisance to the residents;

Planning Considerations and Assessments

- j) the planning considerations and assessments were detailed in paragraph 8 of the Paper and the main points were:
 - i) on 16.12.2011, the MPC decided to reject the application on the grounds that the proposed commercial bathhouse and massage establishment was within a residential neighbourhood and considered incompatible with the residential use in the area, and that the approval of the application would set an undesirable precedent for similar applications in the vicinity. The applicant had not provided

any justification to support his review application;

- ii) since the consideration of the s.16 application, there was no change in planning circumstances concerning the premises and its surrounding areas. The premises was located at an inner street (i.e. junction of Canton Road and Pitt Street) away from the busy Nathan Road. The surrounding area was a predominantly residential area with the lower floors for local retail shop uses. There was no commercial bathhouse and/or massage establishment in the vicinity of the subject building;
- iii) there were previous approved planning applications for ‘Commercial Bathhouse/Massage Establishment’ uses within the “R(A)” zone in Yau Ma Tei. These applications, however, involved premises located either within pure commercial buildings or in the more busy areas of Yau Ma Tei along Portland Street, Temple Street and Jordan Road;
- iv) the proposed commercial bathhouse and massage establishment was not in line with TPB PG No. 14B for “Application for Commercial Bathhouse and Massage Establishment under Section 16 of the Town Planning Ordinance” in that the proposed commercial bathhouse and massage establishment would normally not be permitted within a residential neighbourhood. According to the said guidelines, the views of local residents on the proposed establishment would have to be taken into account. In this regard, it was noted that there were 143 and 6 public comments, including those from local stakeholders, objecting to the original planning application and the present review application respectively; and
- v) the approval of the application would set an undesirable precedent for similar commercial bathhouse and/or massage

establishments to intrude into the residential neighbourhood, the cumulative effect of which would adversely affect the general character of the area;

k) PlanD's view – not support the review application.

58. A Member enquired about the criteria set out in the TPB Guidelines No. 14B. This Member noted that the subject application premises were at part of G/F and 1/F which was the non-domestic portion of the composite building. The lower floors of the adjacent residential buildings were also used for retail shops and restaurants. In response, Mr. C.K. Soh said that the application was in line with one of the criteria set out in the TPB Guidelines No. 14B in that the proposed commercial bathhouse and massage establishment should be located within a commercial building or the non-domestic portion of a composite commercial/residential building. However, as the premises were located in a predominantly residential area, the application could not meet the assessment criteria of the TPB Guidelines 14B in that the application would not be permitted within a residential neighbourhood.

59. As Members had no further question, the Chairman informed Mr. C.K. Soh, DPO/TKW, that the hearing procedures for the review application had been completed. The Board would further deliberate on the review application in his absence. The Chairman thanked Mr. Soh for attending the meeting. He left the meeting at this point.

Deliberation

60. The Chairman said that no planning justification had been provided by the applicant to justify the review application. Members agreed that the decision of the MPC on the proposed commercial bathhouse and massage establishment should be followed and the review application should be rejected. Members then went through the reasons for rejecting the review in paragraph 9.1 of the Paper and considered that they were appropriate. The reasons were :

(a) the proposed commercial bathhouse and massage establishment was within a residential neighbourhood and considered incompatible with the residential use in the area; and

- (b) the approval of the application would set an undesirable precedent for similar applications in the vicinity.

Tuen Mun and Yuen Long District

Agenda Item 5

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-HT/747

Temporary Open Storage of Plastic Material for a Period of 1 Year in
“Residential (Group D)” Zone,

Lots No. 1322 (Part), 1323 (Part), 1324 (Part), 1325 (Part), 1326 (Part) and 1330 in D.D.
124 and Adjoining Government Land, Ha Tsuen, Yuen Long
(TPB Papers 9065)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

61. Mr. W.W. Chan, District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL) was invited to the meeting at this point. The Chairman informed Members that the applicant had confirmed that he would not attend the meeting. He then invited DPO/TMYL to brief Members on the review application.

62. With the aid of some plans, Mr. W.W. Chan, DPO/TMYL, presented the application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission to use the application site for temporary open storage of plastic material for a period of one year under s.16 of the Town Planning Ordinance (the Ordinance). The site fell within the “Residential (Group D)” (“R(D)”) zone of the approved Ha Tsuen Outline Zoning Plan (OZP) No. S/YL-HT/10 ;

- (b) on 19.8.2011, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) rejected the application and the reasons were:
- i) the development was not in line with the planning intention of the “R(D)” zone, which was for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into low-rise, low-density permanent residential buildings subject to planning permission from the Board. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - ii) the development was not in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous approval for open storage use had been granted for the site, there were adverse departmental comments on the environmental aspect and the development would generate adverse environmental impacts to the surrounding areas; and
 - iii) the approval of the application would set an undesirable precedent for similar applications within the “R(D)” zone. The cumulative impact of approving such applications would result in a general degradation of the environment of the area;
- (c) on 20.9.2011, the applicant applied for a review of the RNTPC’s decision to reject the application. The Applicant had submitted two written representations in support of the review application. The main justifications put forth by the applicant as summarised in section 3 of the Paper were:
- i) almost all the land along Ha Tsuen Road was zoned “Open Storage” (“OS”). The presence of sensitive receivers along Ha Tsuen Road was not a convincing reason for rejecting the

- application;
- ii) the application site was surrounded by open storage yards to the north, east and west. So, the actual impact of the development was minimal;
 - iii) the applicant proposed to set back the southeastern site boundary by 15m and plant additional trees within the setback area for visual enhancement, in order to provide more than 50m buffer distance to the closest sensitive receivers;
 - iv) the applicant was actively looking for a suitable site to relocate the current use and solicited the Board's sympathetic approval for an extremely short period of one year; and
 - v) previous approval was not a necessary condition for approving a planning application under the Board's Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E). This was supported by the planning permission given to a temporary warehouse for storage of animal feed in a Category 4 area under Application No. A/YL-LFS/223. The concerned warehouse was not a subject of any previous approval;
- (d) departmental comments - comments from relevant government departments as summarised in section 5 of the Paper were:
- i) Director of Environmental Protection (DEP) maintained her previous views of not supporting the application because there were sensitive users in the vicinity of the site (the closest being about 40m away) and along the access road (Ha Tsuen Road) and environmental nuisance was expected; and
 - ii) other government departments maintained their previous views

of having no adverse comment or no objection to the planning application;

- (e) public comments - during the publication of the review application, no public comment had been received. However, one public comment was received at the s.16 stage. The commenter objected to the application on the grounds that the applied use was not in line with the planning intention of the “R(D)” zone. Approval of the application would set a bad precedent and lead to further degradation of the rural environment;
- (f) PlanD’s view - PlanD did not support the review application based on the planning considerations and assessments set out in paragraph 7 of the Paper, which were summarised below:
 - i) the applied use was not in line with the planning intention of the “R(D)” zone which was to improve and upgrade existing temporary structures within the rural areas through redevelopment into low-rise, low-density permanent residential buildings. No strong justification had been provided by the applicant for a departure from the planning intention of the site, even on a temporary basis. Approval of the application would set an undesirable precedent and encourage other similar applications for open storage uses within the subject and other “R(D)” zones. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the whole New Territories;
 - ii) the applicant claimed that the development was compatible with the other open storage uses in the vicinity of the site. He further argued that since almost all the land along Ha Tsuen Road was zoned “OS”, the presence of sensitive receivers along the road was not a convincing reason for rejecting the application. It was noted that the other open

storage uses in the vicinity of the site were mostly suspected unauthorized developments subject to enforcement action. Moreover, there were residential dwellings in the vicinity of the site, the closest one being located about 40m to its east. The open storage of plastic material under application was incompatible with the surrounding residential dwellings, and DEP maintained her previous views of not supporting the application because there were sensitive uses in the vicinity of the site and along the access road and environmental nuisance was expected;

- iii) the application site fell within Category 3 areas under the TPB Guidelines No. TPB PG-No. 13E, within which ‘existing’ (i.e. with EU status) and approved open storage and port back-up uses were to be contained and further proliferation of such uses was not acceptable. Applications falling within Category 3 areas would not normally be favourably considered unless the applications were on sites with previous planning approvals. The application did not meet the guidelines since no previous approval for open storage use had been granted for the site, and there was no information in the submission to address the adverse comments from DEP and demonstrate that the applied use would not have adverse environmental impacts on the surrounding areas;
- iv) the applicant made reference to an recent approved planning application No. A/YL-LFS/223 for temporary warehouse for storage of animal feed in a Category 4 area and argued that previous approval was not a necessary condition for approving/rejecting planning applications under TPB PG-No. 13E. In this regard, it was noted that the subject application was for open storage use while Application No. A/YL-LFS/223 was for warehouse development and TPB

PG-No. 13E was not applicable; and

v) the applicant solicited the Board's sympathetic consideration for an one year approval to allow time for him to relocate the open storage use. In this regard, the applicant had not provided information on the site search over the 10-month period since he submitted the s.16 application on 30.6.2011. It was therefore considered that sufficient time had already been allowed for the applicant to relocate the current open storage use;

g) PlanD's view – not support the review application.

63. As Members had no question to raise, the Chairman thanked Mr. W.W. Chan, DPO/TMYL for attending the meeting. Mr. W.W. Chan left the meeting at this point.

Deliberation

64. The Chairman said that DEP maintained her previous views of not supporting the application because there were sensitive uses in the vicinity of the site and along the access road and environmental nuisance was expected. The Vice-Chairman said that as indicated in the photographs attached to the TPB Paper, the applied use had adverse environmental impacts on the surrounding areas, in particular the residential dwellings in the vicinity. As such, the review application should be rejected.

65. A Member said that the site was currently being used for the applied use, i.e. open storage of plastic recyclable materials, without a valid planning permission. This Member raised a concern that applicant had abused the planning application system. The Chairman replied that consideration of planning applications by the Board and undertaking of enforcement action by the Planning Authority were two separate statutory procedures under the Town Planning Ordinance. Any unauthorized development under the Town Planning Ordinance would be subject to the enforcement action of the Planning Authority. The Planning Authority would not withhold the enforcement action during the processing of the planning application for the concerned site. According to the TPB Paper, the site was subject to planning enforcement action undertaken by PlanD.

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

66. The Chairman concluded that the planning application was not in line with the planning intention of the “R(D)” zone and no strong justification had been provided by the applicant for a departure from the planning intention, even on a temporary basis. The applied development was not in line with the TPB Guidelines No. 13E in that no previous approval for open storage use had been granted for the site and there were adverse departmental comments on the application. The approval of the application would set an undesirable precedent for similar applications within the “R(D)” zone. Members agreed that the review application should be rejected. Members then went through the reasons for rejecting the review 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 “Residential (Group D)” (“R(D)”) zone, which was for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into low-rise, low-density permanent residential buildings subject to planning permission from the Board. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
- b) the development was not in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous approval for open storage use had been granted for the site, there were adverse departmental comments on the environmental aspect and the development would generate adverse environmental impacts to the surrounding areas; and
- c) the approval of the application would set an undesirable precedent for similar applications within the “R(D)” zone. The cumulative impact of approving such applications would result in a general degradation of the environment of the area.

Agenda Item 6

[Open Meeting]

Request for Deferral for Review of Application No. A/YL-TYST/545

Temporary Community Based Recyclable Collection Centre (including Plastics, Paper and Metals) for a Period of 3 Years in "Residential (Group D)" zone, Lots 955 S.B (Part), 961 (Part), 962 (Part), 963 (Part), 964 (Part), 965 (Part) and 969 (Part) in D.D. 121 and Adjoining Government Land, Shan Ha Tsuen, Yuen Long, New Territories
(TPB Paper 9066)

[The meeting was conducted in Cantonese]

67. Mr. Dominic K.K. Lam declared interest in this item as his company had current business dealings with the consultants of the applicant. However, as Mr. Lam had not been involved in this planning application, Members agreed that the interest of Mr. Lam was not direct and he should be allowed to stay in the meeting.

68. The Secretary said that on 13.3.2012, the applicant's representative requested the Board to defer consideration of the review application for a period of two months in order to allow more time for him to address the public and departmental comments.

69. Members noted that this was the first deferment request submitted by the applicant, the justifications for deferment met the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications made under the Town Planning Ordinance (TPB PG-No. 33) in that the applicant needed more time to address public and departmental comments, the deferment period was not indefinite, and that the deferment would not affect the interest of other relevant parties.

70. After deliberation, the Board agreed to defer consideration of the review application as requested by the applicant. The Board also agreed that the review application should be submitted for its consideration within three months upon receipt of further submission from the applicant. The applicant should be advised that the Board had allowed two months for preparation of submission of further information and no

further deferment would be granted unless under very special circumstances.

Agenda Items 7 to 9

[Confidential Items. Closed Meeting]

71. These items were recorded under confidential cover.

Procedural

Agenda Item 10

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations to the Draft Tsuen Wan West Outline Zoning Plan No. S/TWW/18
(TPB Paper 9067)

[The meeting was conducted in Cantonese]

72. The Secretary said that Professor P.P. Ho had declared an interest in this item as he was a staff of the Chinese University of Hong Kong (CUHK), and the School of Architecture of CUHK was the consultant of the AVA study for the Tsuen Wan West area. Members agreed that as Professor Ho was not involved in the AVA study, his interest on this item was indirect. Members noted that Professor Ho had already left the meeting.

73. The Secretary reported that on 9.12.2011, the draft Tsuen Wan West Outline Zoning Plan (OZP) No. S/TWW/18 (the Plan) was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). During the two-month exhibition period, 17 representations were received. On 17.2.2012, the representations were published for three weeks for public comments and no comment on the representations was received.

74. Since the amendments incorporated in the Plan were mainly related to the imposition of building height restrictions (BHRs), non-building areas and other development restrictions that had attracted wide public interest, it was considered more appropriate for the representations to be considered by the full Board without resorting to

the appointment of a Representation Hearing Committee. The hearing could be accommodated in the Board's regular meeting and a separate hearing session would not be necessary.

75. Members noted that R1, R2 and R3 submitted by individuals opposed the rezoning of Hong Kong Garden in Tsing Lung Tau and a site of four private lots and government land surrounded by Hong Kong Garden from "Residential (Group B)" ("R(B)") to "R(B)1" zone and the BHR for "R(B)1" zone. R2 and R3 also opposed rezoning of a site to the southeast of Hong Kong Garden from "Undetermined" to "R(B)" zone and the BHR for that "R(B)" zone. R4 opposed the BHRs imposed for Bellagio in Sham Tseng zoned as "Residential (Group A)3" ("R(A)3"). R5 submitted by the CLP Power Hong Kong Limited opposed the imposition of BHRs for two electricity sub-stations (ESSs) sites in Sham Tseng and Tsing Lung Tau zoned "G/IC". R6 to R17 opposed the rezoning of the temporary squatter area originally zoned as "Open Space" ("O") and "Green Belt" ("GB") into "R(D)" zone.

Grouping for Hearing

76. The Secretary said that the representations would be heard in three groups as follows:

Group 1: collective hearing of four representations (R1 to R4) regarding the rezoning of various sites in Tsing Lung Tau and Sham Tseng from "R(B)" and "U" to "R(B)1" and stipulation of BHRs for "R(B)", "R(B)1" and "R(A)3" ;

Group 2: hearing of one representation (R5) regarding the stipulation of BHRs for two ESSs under "G/IC" zone in Tsing Lung Tau and Sham Tseng;

Group 3: collective hearing of 12 representations (R6 to R17) regarding the rezoning of the squatter area in Sham Tseng San Tsuen from "O" and "GB" to "R(D)".

77. After deliberation, the Board agreed that the representations should be heard by the Board in the manner as proposed in paragraphs 2.4 and 2.5 of the Paper.

Agenda Item 11

[Open Meeting]

Submission of the Draft Fanling/Sheung Shui Outline Zoning Plan No. S/FSS/15A under Section 8 of the Town Planning Ordinance to the Chief Executive in Council for Approval (TPB Paper 9070)

[The meeting was conducted in Cantonese]

78. The Secretary briefly introduced the Paper. On 2.11.2010, the Chief Executive in Council (CE in C) referred the approved Fanling/Sheung Shui Outline Zoning Plan (OZP) No. S/FSS/14 to the Town Planning Board (the Board) for amendments under section 12(1)(b)(ii) of the Town Planning Ordinance (the Ordinance). On 30.6.2011, the draft OZP No. S/FSS/15 incorporating amendments to the Notes of the “Industrial” zone was exhibited for public inspection under section 5 of the Ordinance. During the two-month exhibition period, one representation was received. The representation which indicated support to the amendments to the Notes of the “Industrial” zone was noted by the Board on 3.2.2012.

79. Since the representation consideration process had been completed, the draft OZP was ready for submission to the CE in C for approval. For submission to the CE in C, the draft Fanling/Sheung Shui OZP No. S/FSS/15 had been renumbered as S/FSS/15A. Opportunity had been taken to update the Explanatory Statement (ES) to reflect the latest position of the OZP and the latest developments in the area.

80. After deliberation, the Board:

- (a) agreed that the draft Fanling/Sheung Shui OZP No. S/FSS/15A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Ordinance to the CE in C for approval;

- (b) endorsed the updated ES for the draft Fanling/Sheung Shui OZP No. S/FSS/15A 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 OZP 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 OZP.

Agenda Item 12

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

81. There being no other business, the meeting was closed at 12:20pm.