

**Minutes of 1044<sup>th</sup> Meeting of the  
Town Planning Board held on 1.11.2013**

**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

Mr Rock C.N. Chen

Mr Maurice W.M. Lee

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms Julia M.K. Lau

Mr Laurence L.J. Li

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Ms Bonnie J.Y. Chan

Mr H.W. Cheung

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Ms Christina M. Lee

Mr Stephen H.B. Yau

Mr F.C. Chan

Director of Lands  
Ms Bernadette Linn

Deputy Director of Environmental Protection  
Mr C.W. Tse

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

Principal Assistant Secretary (Transport)  
Transport and Housing Bureau  
Mr Rico W.K. Tsang

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

Secretary

**Absent with Apologies**

Dr C.P. Lau

Mr Clarence W.C. Leung

Dr W.K. Yau

Professor K.C. Chau

Dr Wilton W.T. Fok

Mr Ivan C.S. Fu

Mr Patrick H.T. Lau

Mr H.F. Leung

Director of Planning  
Mr K.K. Ling

**In Attendance**

Assistant Director of Planning/ Board  
Ms Brenda K.Y. Au

Chief Town Planner/Town Planning Board  
Mr Edward W.M. Lo

Senior Town Planner/Town Planning Board  
Mr J.J. Austin

**Agenda Item 1**

[Open Meeting]

**Confirmation of Minutes of the 1043<sup>rd</sup> Meeting held on 18.10.2013**

[The meeting was conducted in Cantonese.]

1. The minutes of the 1043<sup>rd</sup> meeting held on 18.10.2013 were confirmed without amendments.

**Agenda Item 2**

[Open Meeting]

**Matters Arising**

[The meeting was conducted in Cantonese.]

(i) [Closed Meeting]

2. This item was recorded under confidential cover.

(ii) [Closed Meeting]

3. This item was recorded under confidential cover.

(iii) Amendments to the Confirmed Minutes of the 1042<sup>nd</sup> Town Planning Board Meeting held on 4.10.2013

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4. The Secretary reported that the confirmed minutes of the 1042<sup>nd</sup> Town Planning Board meeting held on 4.10.2013 concerning the Preliminary Consideration of the Tin Fu Tsai Outline Zoning Plan No. S/TM-TFT/B had to be adjusted as the names of several representatives from Government departments who attended the meeting had been left out. The proposed amendments were tabled at the meeting for Members' consideration. Members agreed to the proposed amendments to the confirmed minutes.

(iv) Abandonment of Town Planning Appeal

Town Planning Appeal No. 2 of 2013 (2/13)

Proposed Rural Committee/Village Office in “Green Belt” Zone, Government Land in D.D. 15, Shan Liu Village, Tai Po

(Application No. A/NE-TK/382)

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5. The Secretary reported that an appeal had been abandoned by the appellant of his own accord. Town Planning Appeal No. 2/2013 was received by the Appeal Board Panel (Town Planning) on 14.3.2013 against the decision of the Town Planning Board on 4.1.2013 to reject on review an application (No. A/NE-TK/382) for a proposed Rural Committee/Village Office within the “Green Belt” zone on the Ting Kok Outline Zoning Plan (OZP). It was abandoned by the appellant on 23.10.2013. On 25.10.2013, the Appeal Board Panel (Town Planning) formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations.

Appeal Statistics

6. The Secretary reported that as at 1.11.2013, 15 cases were yet to be heard by the Appeal Board Panel (Town Planning). Details of the appeal statistics were as follows:

Allowed	:	30
Dismissed	:	130
Abandoned/Withdrawn/Invalid	:	172
Yet to be Heard	:	15
Decision Outstanding	:	3
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Total	:	350

**Agenda Item 3**

[Open Meeting (Presentation and Question Session only)]

Consideration of Representation related to the Draft Ho Chung Outline Zoning Plan No. S/SK-HC/10

**(TPB Paper No. 9471)**

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[The hearing was conducted in Cantonese.]

**Presentation and Question Session**

7. The Chairman said that reasonable notice had been given to the representer to invite him to attend the hearing. However, the representer indicated that he was unable to attend the meeting. Members agreed to proceed with the hearing in the absence of the representer.

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

Mr Ivan M.K. Chung	District Planning Officer/Sai Kung & Islands (DPO/SKIs)
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9. The Chairman extended a welcome and explained the procedure of the hearing. He then invited DPO/SKIs to brief Members on the representation.

10. With the aid of a Powerpoint presentation, Mr Ivan Chung made the following main points as detailed in the Paper:

**Background**

- (a) on 10.5.2013, the draft Ho Chung Outline Zoning Plan No. S/SK-HC/10 (the OZP), incorporating amendments relating to the rezoning of a site at Nam Pin Wai Road from “Residential (Group C)1” (“R(C)1”) to “Village Type Development” (“V”) and the addition of two symbols on the Plan linking three sites zoned “V” at Wo Mei was exhibited for public

inspection under section 5 of the Town Planning Ordinance (the Ordinance);

- (b) the rezoning of the site of about 1,022m<sup>2</sup> at Nam Pin Wai Road was to reflect a s.12A planning application (No. Y/SK-HC/3) agreed by the Rural and New Town Planning Committee (RNTPC) on 5.8.2011. The site fell within the village ‘environs’ (‘VE’) of Ho Chung Village and the s.12A application was submitted by an indigenous villager (one of the landowners of the site) who would like to develop a Small House (i.e. with a roofed-over area of 65.03m<sup>2</sup> and up to 3 storeys (8.23m) in height) which would exceed the development restrictions permitted under the “R(C)1” zone (i.e. a maximum plot ratio of 0.75, a maximum site coverage of 37.5% and a maximum building height of 9m with 2 storeys over one storey of carport or a maximum plot ratio of 0.75, a maximum site coverage of 25% and a maximum building height of 12m with 3 storeys over one storey of carport);
- (c) upon expiry of the two-month exhibition period on 10.7.2013, one representation was received. On 19.7.2013, the representation was published for comments and no comment was received in the first 3 weeks of the publication period;

#### The Representation

- (d) R1 was submitted by Mr Paul Zimmerman (CEO, Designing Hong Kong Limited) objecting to the rezoning of the site at Nam Pin Wai Road from “R(C)1” to “V”;
- (e) the grounds of representation were summarized as follows:
  - (i) objected to the proposal to replace land zoned for orderly residential development with the disorderly village type development. The current administration of the Small House Policy by the Lands Department (LandsD) did not cater for issues regarding fire safety,

road access, parking, sewerage as well as other infrastructure services. In this regard, it could not safeguard the health, well-being and safety of the residents; and

- (ii) the rezoning from “R(C)1” to “V” would set an undesirable precedent resulting in unsightly village house developments without proper layout;
- (f) the representer did not submit any proposal in the representation;

#### PlanD’s Responses to the Grounds of Representation

- (g) the Government’s responses to the grounds of representation were summarized as follows:
  - (i) the planning intention of the “V” zone was to reflect existing recognised and other villages, and to provide land considered suitable for village expansion. It was also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services;
  - (ii) Small House applications were processed by LandsD in accordance with established procedures, and departmental views would be sought in the processing of such applications to ensure that issues including fire safety, drainage, sewerage and water supplies, tree preservation, etc were duly addressed. Moreover, Government departments’ requirements would be incorporated into the land grant conditions as appropriate;
  - (iii) under the Small House Policy, while recognising the housing need of the indigenous villagers, LandsD would not approve Small House applications unconditionally and unscrupulously;

- (iv) PlanD had prepared a number of village layout plans covering various recognized villages in the territory and would continue to monitor the situation and update the existing layout plans, if required. The preparation of new village layout plans for villages covered by existing OZPs would depend on a number of factors including the availability of resources for implementation and work priority within PlanD;
- (v) the proposed amendment was to reflect a s.12A application agreed by RNTPC after having considered all relevant planning considerations. The application was submitted by an indigenous villager to facilitate Small House development which could not, otherwise, be approved under the “R(C)1” zone; and
- (vi) the proposed Small House development was considered not incompatible with the surrounding development and would help to alleviate the general shortage of land for Small House development in Ho Chung Village. The zoning amendment would not set an undesirable precedent as each case would be considered on its individual merits.

11. As Members had no question to raise, the Chairman said that the hearing procedure had been completed and the Board would deliberate on the representation. The Chairman thanked DPO/SKIs for attending the hearing. He left the meeting at this point.

#### Deliberation Session

12. The Chairman said that the planning intention of the proposed “V” zone was to reflect the existing recognized village and to provide land considered suitable for village expansion. The proposed Small House development was considered not incompatible with the surrounding development and would help to alleviate the general shortage of land for Small House development in Ho Chung Village. Moreover, the proposed zoning amendment was to reflect a s.12A application that was agreed by RNTPC after having considered all relevant planning considerations. Members agreed.

13. Members decided not to uphold the representation. Members then went through the suggested reasons for not upholding the representation as detailed in paragraph 6 of the Paper and considered that they were appropriate.

Representation No. R1

14. After deliberation, the Board decided not to uphold representation R1 and that the Plan should not be amended to meet the representation for the following reasons:

- “(a) the planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Small House applications within the “V” zone are processed according to established Government procedures, which would ensure no adverse impacts on the environment; and
- (b) the rezoning is to reflect a s.12A application previously agreed by RNTPC after having considered all relevant planning considerations. It would not set an undesirable precedent as each case would be considered on its individual merits.”

**Agenda Item 4**

[Open Meeting]

Planning and Engineering Study on Development of Lok Ma Chau Loop

**(TPB Paper No. 9427)**

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[The meeting was conducted in Cantonese]

Presentation Session

15. The following government representatives and members of the consultant team were invited to the meeting at this point:

- Mr David C.M. Lam - Chief Town Planner/Strategic Planning, Planning Department (PlanD)
- Mr Chan Kin Shun - Senior Engineer/9, New Territories North and West Development Office, Civil Engineering and Development Department (CEDD)
- Miss Theresa Yeung )
- Mr Peter Chan ) Ove Arup & Partners Hong Kong Limited
- Miss Clare Healy ) (ARUP)

16. The Chairman extended a welcome and invited the Study Team to brief Members on the Paper.

17. With the aid of a Powerpoint presentation, Mr David Lam made the following main points:

Background

- (a) the Planning and Engineering Study on Development of Lok Ma Chau (LMC) Loop (the Study) was commissioned in 2009, jointly by the governments of Hong Kong and Shenzhen, to formulate proposals to develop the LMC Loop. The LMC Loop, which was formerly within the administrative boundary of Shenzhen, was currently within the administrative boundary of the Hong Kong Special Administrative Region upon the re-alignment of Shenzhen River in 1997;
- (b) prior to the commencement of the Study, the two governments had concurrently undertaken public consultation on the possible future land uses for the LMC Loop and considered that the LMC Loop should be developed with higher education as the leading land use, complemented by high-tech research and development (R&D) and cultural and creative (C&C) industries;
- (c) the Board was consulted on 22.6.2012 regarding the draft Recommended Outline Development Plan (RODP) in the Stage 2 Public Engagement

(PE2). Members expressed views mainly on issues in respect of the land use arrangement, provision of supporting facilities for higher education use, the internal and external linkages, impacts on the ecology and the provision of green infrastructure;

### Major Public Views Received in PE2

(d) in PE2, a total of 36 written comments were received. The major comments and suggestions received in PE2 were largely similar to those received in PE1 but were more focused on the details of the development proposals. The key public comments received were summarised below:

#### *Land Use Arrangement and Planning Layout*

(i) the public generally agreed to the three proposed land uses of higher education, high-tech R&D and C&C industries. Some members of the public raised comments on land use flexibility, details of the planning layout and green measures;

#### *Environmental Concerns, Development Intensity and Building Height*

(ii) some environmental concern groups raised concerns on the environmental and ecological impacts, including impact on the birds' flight path, and suggested further reduction in the development intensity and building height;

#### *Impacts on the Surrounding Areas*

(iii) while supportive of the LMC Loop development, some locals were worried about freezing the development potential of the surrounding areas and raised concerns on road capacity and safety, flooding, disturbance and compensation;

#### *External Connectivity and Internal Transport*

- (iv) some members of the public suggested adopting a rail-based transport mode for the Direct Link between the LMC Loop and the Mass Transit Railway (MTR) LMC Station while some others suggested relocating the transport interchanges (TIs) outside the LMC Loop; and

*Implementation Mechanism*

- (v) different stakeholders raised concerns on the mode of development, land ownership, implementation arrangements, etc.;
- (e) the Government's responses to the key public comments were as follows:

*Land Use Arrangement and Planning Layout*

- (i) the RODP had allowed for interaction among the three land uses to achieve synergy effect and interchange between the high-tech R&D and C&C uses. In this regard, consideration might be given to allowing appropriate flexibility in the permitted uses for the three major land uses to foster interaction as well as to meet the existing and future operational needs of such land uses. The detailed layout and provision of various green measures could be further studied in the detailed design stage;

*Environmental Concerns, Development Intensity and Building Height*

- (ii) the Environmental Impact Assessment (EIA), including an Ecological Impact Assessment prepared under the EIA Ordinance, had concluded that the LMC Loop development would not result in unacceptable environmental impacts on the LMC Loop and the surrounding areas;
- (iii) an "Ecological Area" with a low-rise buffer zone had been earmarked to minimize any impact on the birds' flight path and terrestrial animal passageway;

- (iv) the proposed development intensity and building height had struck a reasonable balance amongst various factors;

*Impacts on the Surrounding Areas*

- (v) the development potential of the surrounding areas, particularly the areas along Lok Ma Chau Road, was currently constrained by insufficient infrastructure capacity. It would be further examined under the New Territories North Study in which the provision of additional strategic infrastructure for the wider area would be studied in a comprehensive manner;
- (vi) endeavours would be made to avoid/minimize encroachment upon private land and existing settlements, and the rights of locals and landowners would be duly respected;
- (vii) the technical assessments indicated that the LMC Loop development would not aggravate the flood risk nor cause unacceptable traffic impact;

*External Connectivity and Internal Transport*

- (viii) a comprehensive transport network was proposed to link the LMC Loop with the surrounding areas, including San Tin Highway, the proposed Kwu Tung North New Development Area and the MTR LMC Station;
- (ix) the TIs would be located within the LMC Loop in order to avoid land resumption and to reduce impacts on the environment; and

*Implementation Mechanism*

- (x) the two governments would continue discussion on the mode of

development for the LMC Loop;

The RODP

- (f) taking into account the comments and suggestions received in PE2, no significant changes to the draft RODP were made. Some minor refinements mainly in respect of the road alignment and the configuration of a site reserved for an electricity sub-station had been made;
  
- (g) the RODP was prepared on the basis of higher education as the leading land use, complemented by high-tech R&D and C&C industries. It provided a flexible planning framework which would allow for interactive exchange among the major land uses to achieve synergy effect. The LMC Loop could be divided into 5 functional zones, as follows:
  - (i) the “Education Zone” located in the middle part of the LMC Loop would provide teaching and research facilities and other ancillary facilities for higher education;
  
  - (ii) the “Innovation Zone” located along the waterfront in the eastern and western parts of the LMC Loop would be a hub for high-tech R&D and C&C industries providing offices, research, lecture and exhibition facilities, etc;
  
  - (iii) the “Interaction Zone” located in the central core would be an open-air public space to facilitate interaction among users in the LMC Loop;
  
  - (iv) the “Ecological Zone” in the south would be a landmark of the LMC Loop preserving the biodiversity of the area and providing a buffer between the surrounding rural landscape and the LMC Loop; and
  
  - (v) the 2 km-long “Riverside Promenade Zone” would provide a pleasant waterfront environment for the three uses and echo with the

future riverside area across Shenzhen River;

*Major Development Parameters*

- (h) out of a total site area of 87.7 ha, about 22.8 ha of land would be for higher education use, 8.6 ha would be for high-tech R&D and C&C industries and 1.2 ha would be for commercial use. Open spaces, amenity areas/activity corridors and the Ecological Area would take up about 39 ha of land and the remaining land would be taken up by Government facilities, transport facilities and roads;
- (i) the maximum total gross floor area (GFA) recommended in the RODP was about 1,200,000m<sup>2</sup>, including mainly 720,000m<sup>2</sup> GFA for higher education use, 411,000m<sup>2</sup> GFA for high-tech R&D and C&C use, and 60,000m<sup>2</sup> for commercial use. The gross plot ratio was 1.37;

*Urban Design*

- (j) the flexible layout design of the LMC Loop could support an array of building types for different functions and activities. Together with different types of open space and landscape components, the LMC Loop would be a vibrant area for higher education, high-tech R&D and C&C uses;
- (k) a low-rise building height profile was proposed with building heights ranging from 2 storeys to 12 storeys. The proposed building heights would descend towards Shenzhen River and the Ecological Area to allow better visual permeability and integration with the surrounding setting;
- (l) the LMC Loop would provide multi-functional open spaces for public enjoyment including a Pedestrian Boulevard that would serve as the prime activity corridor, Ribbon Parks that would serve as a green buffer for the development clusters, Courtyard Spaces that would serve as intimate outdoor and semi-outdoor green environment, and a Riverside Promenade

Zone that would provide a green waterfront for leisure and passive recreational purposes;

*Low-Carbon and Green Community*

- (m) sufficient areas would be designated as wind corridors to provide a comfortable wind environment for pedestrians. The use of green transportation modes and cycling would be encouraged;
- (n) roof-top and vertical greening would be adopted to help thermal insulation of buildings and enhance energy efficiency. Green building design would effectively achieve energy-saving and reduce greenhouse gas emissions;
- (o) the re-use of treated sewage effluent for non-potable purposes such as irrigation and flushing would help conserve water and reduce pollution;

*Technical Assessments*

- (p) the detailed technical assessments and the EIA concluded that the proposals under the RODP were technically feasible and environmentally acceptable;

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

Next Steps

- (q) the study findings and recommendations were promulgated on 18.7.2013. The results of PE2, the RODP and the final recommendations of the Study had been publicised in Hong Kong and Shenzhen through the PE2 Report and the Information Digest;
- (r) the LMC Loop development was a designated project (DP) listed in Schedule 3 of the EIA Ordinance, and it included a number of

infrastructure projects which were DPs listed in Schedule 2 of the EIA Ordinance. The EIA Report had been exhibited for public inspection from 5.7.2013 to 3.8.2013 and was approved with conditions under the EIA Ordinance on 25.10.2013; and

- (s) the draft OZP for the LMC Loop would be submitted to the Board for consideration in due course.

### Discussion Session

18. Members had the following questions and comments:

- (a) whether any assessment had been conducted on soil contamination, whether the soil would be decontaminated before development took place, and whether this issue had been taken into consideration in the land use planning and disposition;
- (b) whether the proposed building height should be increased to complement the existing taller buildings in Shenzhen opposite to the LMC Loop and whether the development intensity of the LMC Loop should be increased; and
- (c) as the current proposal seemed to be geared towards R&D rather than conventional higher educational institutions, whether the views of the Education Bureau had been sought on the composition of higher educational use that should be developed in the LMC Loop;

[Miss Bonnie J.Y. Chan arrived to join the meeting at this point.]

19. In response to Members' questions and comments raised above, Mr David C.M. Lam made the following points:

- (a) site investigation works carried out in the LMC Loop indicated that the soil was contaminated with arsenic. To address the problem, land

decontamination before development by solidification/stabilization method would be adopted and the treated soil would be backfilled in the Loop. After the land decontamination, there would no longer be land contamination impacts on the future land users in the Loop and its surroundings;

- (b) the existing buildings in the area on Shenzhen side opposite to the LMC Loop (Area C) currently comprised low-rise buildings accommodating the cross-boundary facilities and in future, this part of Shenzhen was expected to be developed into medium-rise buildings. In this regard, the building height profile proposed in the RODP with building heights stepping down towards the river was considered generally compatible with the building height profile in Shenzhen. Moreover, the development intensity proposed in the RODP was already optimal taking account of the environmental and infrastructural constraints of the area; and
- (c) some public comments received from PE2 did suggest that the higher educational use at LMC Loop should not be developed along the direction of a traditional teaching university but should have a much stronger emphasis on R&D. However, the implementation details for the proposed higher educational use had not yet been decided and further discussion between the education departments of the two governments would be necessary.

20. The Chairman supplemented that the extent of the soil contamination problem in the LMC Loop was revealed during site investigation to be much less serious than originally anticipated and that the problem could be satisfactorily resolved before development. Regarding the nature of higher educational use to be developed in the LMC Loop, the Chairman said that a working group had been set up between the Education Bureau and their counterparts in Shenzhen to consider the higher educational use in detail.

21. The Chairman concluded the discussion and requested the Study Team to take note of Members' views. He thanked the Government representatives and the study consultants for attending the meeting. They left the meeting at this point.

[Ms Bernadette Linn arrived to join the meeting at this point.]

**Agenda Item 5**

[Closed Meeting]

22. This item was recorded under confidential cover.

23. As the attendees for Agenda Items 6 and 8 had not yet arrived, the Chairman suggested and Members agreed to consider the other Agenda Items first.

**Agenda Item 7**

[Open Meeting]

Request for Deferment of Review of Application No. A/NE-LT/471

Proposed 3 Houses (New Territories Exempted Houses – Small Houses) in “Agriculture” Zone, Lots 742 S.E, 742 S.G and 742 S.H in D.D.10, Ng Tung Chai, Tai Po

**(TPB Paper No. 9452)**

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[The meeting was conducted in Cantonese.]

24. The Secretary reported that on 14.6.2013, upon the request of the applicants, the Board had deferred making a decision on the review application for two months in order to allow time for the preparation of a landscape plan to address departmental concerns.

25. On 9.10.2013, the applicants wrote to the Secretary of the Town Planning Board (the Board) requesting the Board to defer making a decision on the review application for a further period of two months in order to allow time for the applicants to clarify issues raised by the Lands Department and Drainage Services Department regarding the further information submitted by the applicant in August 2013. This was the second request for deferral by the applicants for the review application.

26. Members noted that 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 (TPB PG-No. 33) in that the applicants needed more time to prepare documentation for the review, the deferment period was not indefinite and the deferment would not affect the interests of other relevant parties.

27. After deliberation, the Board agreed to defer a decision on the review application as requested by the applicants pending the submission of further information by the applicants. The Board also agreed that the review application should be submitted for its consideration within three months upon receipt of the further submission from the applicants. The Board also agreed to advise the applicants that the Board had allowed a period of two months for preparation of the submission of further information and that a total of four months had already been allowed. No further deferment would be granted unless under very special circumstances.

#### **Agenda Item 9**

[Closed Meeting]

28. This item was recorded under confidential cover.

#### **Agenda Item 10**

[Open Meeting]

Submission of the Draft Clear Water Bay Peninsula North Outline Zoning Plan No. S/SK-CWBN/5A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance

**(TPB Paper No. 9478)**

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[The meeting was conducted in Cantonese.]

29. The Secretary briefly introduced the Paper. On 10.5.2013, the draft Clear Water Bay Peninsula North Outline Zoning Plan (OZP) No. S/SK-CWBN/5 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the

2-month exhibition period, 2 representations were received. On 19.7.2013, the representations were published for public comments and in the first three weeks of the publication period, no public comment was received.

30. On 18.10.2013, after giving consideration to the representations, the Board decided to note the views of representation R1 and not to uphold representation R2. As the representation consideration process had been completed, the draft Clear Water Bay Peninsula North OZP was ready for submission to the CE in C for approval.

31. After deliberation, the Board agreed:

- (a) that the draft Clear Water Bay Peninsula North OZP No. S/SK-CWBN/5A together with its Notes at Annex A and Annex B of the Paper were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft Clear Water Bay Peninsula North OZP No. S/SK-CWBN/5A at Annex C of the Paper as an expression of the planning intention and objectives of the Board for various land-use zones on the draft OZP and issued under the name of the Board; and
- (c) that the updated ES for the draft Clear Water Bay Peninsula North OZP No. S/SK-CWBN/5A was suitable for submission to CE in C together with the draft OZP.

### **Agenda Item 11**

[Open Meeting]

Submission of the Draft Cheung Sha Wan Outline Zoning Plan No. S/K5/34A to the Chief Executive in Council for Approval under Section 8 of the Town Planning Ordinance

**(TPB Paper No. 9492)**

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[The meeting was conducted in Cantonese.]

32. The Secretary briefly introduced the Paper. On 19.4.2013, the draft Cheung Sha Wan Outline Zoning Plan (OZP) No. S/K5/34 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the 2-month exhibition period, 698 representations were received. On 5.7.2013, the representations were published for public comments and in the first three weeks of the publication period, 170 public comments were received.

33. On 4.10.2013, after giving consideration to the representations and comments, the Board decided not to propose any amendment to the draft OZP. As the representation consideration process had been completed, the draft Cheung Sha Wan OZP was ready for submission to the CE in C for approval.

34. After deliberation, the Board agreed:

- (a) that the draft Cheung Sha Wan OZP No. S/K5/34A together with its Notes at Annex I and Annex II of the Paper were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft Cheung Sha Wan OZP No. S/K5/34A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for various land-use zones on the draft OZP and issued under the name of the Board; and
- (c) that the updated ES for the draft Cheung Sha Wan OZP No. S/K5/34A was suitable for submission to CE in C together with the draft OZP.

#### **Agenda Item 6**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-KTS/338

Proposed Filling of Land (about 0.2m to 1.2m in depth) for Agricultural Use and Two On-Farm Domestic Structures in “Green Belt” Zone, Lot 624 in D.D. 98, Tin Sum Tsuen,

Kwu Tung South, Sheung Shui

**(TPB Paper No. 9451)**

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[The hearing was conducted in Cantonese.]

Presentation and Question Session

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

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| Mr C.K. Soh      | - | District Planning Officer/Sha Tin, Tai Po and North (DPO/STN), PlanD |
| Mr Kwok Kam Chiu | - | Applicant  |

36. The Secretary reported that after TPB Paper No. 9451 was issued on 28.10.2013, the applicant submitted further information (FI) to the Board, mainly providing further responses to the departmental comments and public comments as set out in the TPB paper. On 30.10.2013, the applicant further wrote to the Secretary of the Board and requested the Board to defer making a decision on the review application for one month in order to allow time to respond to the departmental comments and to await replies from concerned Government departments. The deferral request and the FI submitted by the applicant had been tabled for Members' reference.

37. The Secretary said that as the request for deferment was received after the issue of the agenda for the Board's meeting, the applicant was invited to attend the meeting and explain to the Board the reasons for his deferral request.

38. On the invitation of the Chairman, Mr Kwok made the following main points on his deferral request:

- (a) more time would be required to set up meetings with the relevant Government departments including the Agriculture, Fisheries and Conservation Department (AFCD) and Transport Department (TD) to discuss their concerns and to find solutions to the issues raised;

- (b) there was a misunderstanding amongst the relevant Government departments on the purpose of the land filling works that had been carried out on the site. The land filling works were done mainly for agricultural purposes; and
- (c) the top soil of the site had been dug up and the land had been grassed to meet the reinstatement requirements of the Central Enforcement and Prosecution Section (CEPS) of PlanD.

39. As Members had no question to raise, the Chairman informed the applicant that the Board would deliberate on the request for deferment in his absence. The applicant and DPO/STN left the meeting temporarily at this point.

#### Deliberation Session

40. The Secretary said that this was the second deferment request submitted by the applicant. She noted that the content and information in the FI received by the Board on 28.10.2013 were similar to the justifications/information previously submitted by the applicant. The information had already been covered in the TPB Paper and the comments of concerned departments had also been included in the paper. PlanD had circulated the latest FI (dated 28.10.2013) to the relevant departments for comments including the District Lands Officer/Yuen Long (DLO/YL), the Commissioner for Transport (C for T), the Director for Agriculture, Fisheries and Conservation (DAFC) and the Chief Town Planner/Urban Design and Landscape (CTP/UD&L) and they indicated that they had no new additional comment on the FI and their previous comments on the review application remained valid.

41. The Secretary continued to say that the site was a “Destroy First, Build Later” case involving extensive vegetation clearance and land filling/excavation works. As the application was submitted on 8.1.2013, it had been dragged on for almost one year. Moreover, the application was subject to adverse public comments on the grounds of land use incompatibility, adverse traffic, environmental and drainage impacts, as well as the adoption of the “destruction first” approach to facilitate approval of application.

42. Members considered that the deferment request should not be acceded to as the planning application had been dragged on for almost one year and the latest FI submitted by the applicant did not provide any new grounds or justifications.

43. After deliberation, the Board decided not to agree to the request for deferral and to proceed to consider the review application at the meeting as scheduled.

#### Presentation and Question Session

44. The applicant and DPO/STN were invited back to the meeting at this point.

45. The Chairman informed the applicant that the Board had decided not to agree to the applicant's request for deferment and would proceed to consider the review application at the meeting as scheduled. He then explained the procedure of the hearing and invited DPO/STN to brief Members on the background to the application.

46. With the aid of a Powerpoint presentation, Mr C.K. Soh made the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for proposed filling of land (about 0.2m to 1.2m in depth) for agricultural use and two on-farm domestic structures at the application site which fell within an area zoned "Green Belt" ("GB") on the Kwu Tung South Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 22.5.2013 and the reasons were:
  - (i) the proposed development was not in line with the Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) in that there was a general presumption against development in a "GB" zone, and land filling would only be considered in exceptional circumstances and had to be justified with very strong planning grounds. There was insufficient information

in the submission to demonstrate that the proposed land filling was for genuine agricultural purpose;

- (ii) extensive clearance of existing natural vegetation and land filling had been involved at the application site and affected the existing natural landscape. The applicant had failed to demonstrate that the proposed development would not cause adverse traffic and landscape impacts on the surrounding areas; and
  - (iii) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such application would result in general degradation of the environment of the area, and adverse traffic and landscape impacts on the surrounding areas;
- (c) the current application was a “Destroy First, Build Later” case. Based on the aerial photo taken in September 2012, the application site was originally a green area covered by natural vegetation. However, extensive vegetation clearance and land filling/excavation works at the application site and its adjacent areas had been carried out. Upon posting of a warning letter on site on 31.1.2013, the excavation works had discontinued. The Chief Town Planner/Central Enforcement and Prosecution (CTP/CEP), PlanD advised that according to the latest site inspection on 8.7.2013, the site had been reinstated and was covered by vegetation. No further enforcement action was required at this stage and the site condition would continue to be monitored;
- (d) the application site was currently vacant, fenced and covered by wild grass with a container-converted structure in the northern part of the site. The application site was accessible via a narrow footpath but with no direct vehicular access;
- (e) the further justifications in support of the review application were summarized as follows:

- (i) the applicant intended to build two greenhouses in the southern part of the application site for organic farming, growing upmarket crops and two on-farm domestic structures. The on-farm domestic structures would only occupy about 12.26 % of the site area and would not cause any adverse landscape and visual impacts on the surrounding areas;
- (ii) the application site had been used for raising ducks and fishes, and farming. The wild grass found on the site was removed to facilitate agricultural rehabilitation. This was in line with the Government's recent announcement of reserving about 34 hectares of land at Kwu Tung South for agricultural rehabilitation;
- (iii) the applicant claimed that AFCD staff had advised him that the soil at the application site was not suitable for farming and excavation of land was required; upon completion of the excavation works, AFCD staff would help examine whether the remaining soil was suitable for farming; and there was a need to build two on-farm domestic structures on the site. If AFCD considered that the soil at the application site was not suitable for agricultural use, he would fill the application site with agricultural soil from the 3-pile system;
- (iv) the existing soil found at the application site was not fill material. No land filling had been undertaken and the soil currently found at the application site was the soil excavated on site. However, as the soil was not suitable for crop growing, he proposed to fill a layer of environmentally-friendly compost soil for agricultural use at the application site;
- (v) the proposed on-farm domestic structures would be constructed by concrete grout. A temporary pump would be installed at Kwu Tung South Road in the vicinity of the application site and the concrete would be transported to the application site via a pipe. It

would take about 10 vehicle trips per day using 5.5-tonne light goods vehicles or light vans to transport the fill material (about 120m<sup>3</sup> to 140m<sup>3</sup>) to the site. The construction works would not cause any adverse environmental and traffic impacts;

- (vi) the application site was only a few minutes' walk from the nearest parking space. The applicant would use a shorter and closer footpath leading to the application site from Kwu Tung South Road;
  - (vii) WSD maintained the existing road/path/track in the vicinity of the application site and had no objection to the application;
  - (viii) many public comments were against the proposed development at Kwu Tung North, but not the subject application at Kwu Tung South. The Sheung Shui District Rural Committee and the Kwu Tung Village Committee Office supported the application;
  - (ix) the proposed development would not involve tree felling and no adverse landscape impact would be caused by the proposed development; and
  - (x) approval had been granted for over 20 on-farm domestic structures of various sizes in the vicinity. There were similar approved applications for development within the "GB" zone (Applications No. A/NE-KTS/44 and A/NE-KTS/299) in the vicinity of the application site;
- (f) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper and set out as follows:
- (i) DAFC considered that there was insufficient information to demonstrate that the proposed development was a genuine farming project. Considering the fill material found on site which contained a lot of stones that would damage farming machines/tools,

DAFC considered that the application site was not filled for agricultural purposes. There was also no information to demonstrate that the proposed filling of land was necessary for crop cultivation on the application site. Contrary to the applicant's claim, DAFC said that they had not given advice to the applicant to excavate the topsoil which should not be removed from the perspective of crop farming as it contained more nutrients and active micro-organisms which were essential for crop growth. Moreover, DAFC had serious doubt on the applicant's claim that the current soil found on site was the original soil profile as the soil profile of farmland would not normally contain so many stones;

- (ii) CTP/UD&L had reservation on the application from the landscape planning point of view. Based on the site photos taken in May 2013, the exposed soil found on the site was composed of excavated soil and debris which was not suitable for crop farming. The filled area extended beyond the application site, causing adverse landscape impact on the surrounding area. Due to the lack of information on the proposed pipe to be used to transport the concrete for the construction of the proposed on-farm domestic structures, the precautionary measures against the potential leakage of the pipe, the construction works and the disposal of construction waste, the landscape impact of the application on its surroundings could not be ascertained;
- (iii) C for T did not support the application as the applicant would rely heavily on the existing narrow village track (Kwu Tung South Road), with a width of 2.3m to 5m, for transportation of the fill material. The applicant had not provided information to demonstrate that the transportation of the fill material via the narrow village track would not cause adverse traffic impact on the surrounding area. Besides, some parcels of Government land would be occupied by the applicant for parking and loading/unloading and might cause obstruction to the entrance of nearby houses; and

- (iv) DLO/YL advised that he would consider the application for the construction of ‘on-farm domestic structures’ if the applicant was applying for agricultural resite and was eligible for the resite when the applicant’s existing domestic structure was affected by a Government project and required to be cleared. For agricultural resite applications, DLO/YL would rely on the expert advice of AFCD to determine whether the applicant was a genuine farmer and whether the concerned farming re-establishment proposal was viable. Contrary to the applicant’s claim, DLO/YL advised that no application for on-farm domestic structures had been approved in the vicinity of the application site (within 200m);
- (g) public comments – 32 public comments were received during the statutory publication period from a North District Council (NDC) member, World Wide Fund for Nature Hong Kong, Kadoorie Farm & Botanical Garden Corporation (KFBG), Designing Hong Kong Limited, a Village Representative (VR) of Kwu Tung (South), a villager of Kwu Tung Village and individuals. One commenter supported the application while two commenters indicated no comments on the application. The remaining 29 commenters objected to the application on the grounds that the proposed development was incompatible with the planning intention of the “GB” zone and the character of the area; vegetation clearance, land filling, site formation works and suspected tree felling activities had been undertaken; the applicant had been adopting a “destruction first” approach to facilitate the approval of the application; the proposed development was not a genuine farming project and the proposed filling of land would cause flooding and mud flow to the adjacent low-lying areas; the narrow Kwu Tung South Road was substandard and daily travelling of heavy vehicles would cause danger to local villagers; and the applicant had used illegal means to obtain the land from one of the commenter and a judicial review application had been submitted to the High Court regarding adverse possession; and

- (h) PlanD's views – PlanD did not support the application based on the assessments as stated in paragraph 7 of the Paper, which were summarized below:
- (i) site inspection on 15.4.2013 and 3.7.2013 carried out by AFCD revealed that the application site and its adjoining area had been filled by stones and yellow soil. It was believed that the concerned land filling was not conducted from the perspective of cultivation as the fill material contained a lot of stones which would damage farming machines/tools. Contrary to the applicant's claim, DAFC said that they had not given advice to the applicant to excavate the topsoil which should not be removed from the perspective of crop farming as it contained more nutrients and active micro-organisms which were essential for crop growth;
  - (ii) DAFC had serious doubt on the applicant's claim that the current soil found on site was the original soil profile. The applicant had not demonstrated that the proposed filling of land was necessary for crop cultivation on the site;
  - (iii) C for T did not support the application as the applicant would rely heavily on the existing narrow village track (Kwu Tung South Road) to transport fill material to the site. The applicant had not demonstrated that such activity would not cause adverse traffic impact on the surrounding areas. Besides, some parcels of Government land would be occupied by the applicant for parking and loading/unloading and might cause obstruction to the entrance of nearby houses;
  - (iv) while CTP/UD&L, PlanD had no strong view on the visual impact of the two proposed 2-storey on-farm domestic structures, she had reservation on the application from the landscape planning point of view as the likely impact of the construction of the on-farm

domestic structures could not be ascertained. There was no detail on the proposed pipe to be used to transport the concrete for the construction of the proposed on-farm domestic structures nor precaution measures against the potential leakage of the pipe. Besides, there was no information on the construction works and disposal of construction waste;

- (v) contrary to the applicant's claim that approval had been granted for over 20 on-farm domestic structures of various sizes in the vicinity of the application site, DLO/YL advised that no application had been approved by his office for on-farm domestic structures in the vicinity (within 200m) of the application site; and
- (vi) regarding the similar application (A/NE-KTS/44) mentioned by the applicant, the application was for a residential development which was approved with conditions by RNTPC on 20.9.1996 on the grounds that the proposed house development formed part of the adjoining residential development scheme known as Valais, which was approved with conditions under Applications No. A/NE-KTS/11, 217 and 228; and it was an infill development forming part of the adjoining approved residential scheme. The current application was not comparable to this approved application as the nature of the applied use was different. The other similar application (A/NE-KTS/299) mentioned by the applicant was for a temporary public vehicle park which was approved with conditions on 14.1.2011 on a temporary basis on consideration that the application site was at a peripheral location within a large "GB" zone and was not covered with mature trees and natural vegetation.

47. The Chairman then invited the applicant to elaborate on the application. Mr Kwok Kam Chiu made the following main points:

- (a) since planning permission was granted to the temporary public vehicle

park proposal (application No. A/NE-KTS/299) which required the felling of trees, the clearance of vegetation and the filling of land by tar, the subject application should also be approved as it would have less adverse impact on its surroundings than that proposal;

- (b) while the staff of AFCD's Tai Lung Experimental Station advised that the site would not be certified as a farm by AFCD unless it was under active cultivation, CTP/CEP, PlanD advised that the site should not be cultivated and should only be grassed;
- (c) different Government departments had conflicting requirements, e.g. while DLO/YL required the soil to be excavated from an adjacent culvert, CTP/CEP, PlanD required the culvert to be back-filled with soil;
- (d) the site was proposed for agricultural use which was in line with the requirements of the lease and was a permitted use under the OZP;
- (e) the existing soil was filled with stones because the topsoil had been removed as required by CTP/CEP, PlanD;
- (f) given the small size of the site (only 607m<sup>2</sup>) and the small amount of fill material required (about 120m<sup>3</sup> to 140m<sup>3</sup>), there was no need for heavy trucks to transport the fill material. The applicant would only use a truck that was even smaller than a van for transportation of the fill. As the site did not have direct vehicular access, the fill material would be carried by labour to the site in small bags. The land filling operation would take 6 to 9 months with a few vehicle trips per day;
- (g) there were four domestic structures in the vicinity of the site, which were on-farm domestic structures, even though they were not mentioned by DLO/YL;
- (h) obtaining planning permission for the filling of land was only the first step as he would still need to obtain a certificate from DAFC to certify the

status of the site as a farm before he could apply to DLO/YL for the construction of the proposed on-farm domestic structures;

- (i) as the site did not have direct vehicular access, it was impossible to dump construction wastes at the site. In this regard, the fill material found on the site was actually excavated from the land in the vicinity. The original topsoil, which was required to be removed by CTP/CEP, PlanD, comprised of mud taken from the surrounding fish ponds to facilitate farming;
- (j) the site was in a low-lying area which was subject to flooding. The area would be flooded once the adjacent culvert was filled with soil;
- (k) not being an indigenous villager, he understood from the village representative that the site was not occupied by anybody, even though the site had been used as a fish pond for raising ducks in the past;
- (l) there was a water gate near the site which proved that the site used to be a pond filled with water; and
- (m) in view of the site's location, it could not be put to uses other than agriculture.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

#### *Genuine Agricultural Use*

48. Noting the applicant's proposal to build two greenhouses and two on-farm domestic structures on the site, the Chairman asked about the size of the remaining site that would be available for cultivation. In response, Mr Kwok said that he did not apply for the development of two greenhouses at the site. As for the on-farm domestic structures, they would only take up about 12% of the total site area as each on-farm domestic structure was only 400ft<sup>2</sup> in terms of built-over area. He added that AFCD agreed that there was a need for the proposed on-farm domestic structures to support farming activities.

49. The Chairman raised concern about the soil on the site which was considered by AFCD as unsuitable for cultivation. In response, Mr Kwok said that the existing soil on the site was mainly taken from the area nearby. The topsoil on the application site originally comprised mud from the adjacent fish ponds which was fertile soil. However, in order to meet CTP/CEP's reinstatement requirements, the original topsoil had been removed.

50. In response to the Chairman's further enquiry, Mr Kwok said that the site used to be a fish pond for raising ducks. As the site was low-lying and subject to flooding, there was a need to raise the level of the site before cultivation could take place. The existing site was only raised to the same level as the bund of the previous fish pond. Hence, the works carried out mainly involved raising the level of the land to prevent flooding. Besides, he needed to use the fertile mud from the adjacent fish pond as topsoil.

51. A Member enquired what information should be submitted to prove that the site was being put to agricultural use. In response, Mr C.K. Soh said that the Government would take the expert advice of AFCD who would examine *inter alia* the quality of the soil at the site. For the subject site, AFCD considered that the soil on the site was sandy and filled with gravels, which was unsuitable for cultivation. The site would need to be filled with a layer of topsoil that was suitable for cultivation. In this regard, the applicant failed to convince AFCD that the site was for genuine agricultural use. In response to the same question, Mr Kwok said that he did not know how to prove that the site was for genuine agricultural use. While AFCD had advised him that he should cultivate the land and demonstrate that the site was being put to agricultural use, PlanD would only allow him to grass the site. As the existing soil could not support any crops other than ginger, he would probably need to grow ginger on the site to demonstrate that the site was for genuine agricultural use.

52. In response a Member's enquiry, Mr C.K. Soh said that the applicant could re-submit a planning application for filling of land after obtaining AFCD's confirmation that the site was for genuine agricultural use. However, the applicant would also need to address the concerns of TD and the objections raised by the public commenters.

53. The Chairman noted a discrepancy in the information provided by the applicant in that while he claimed that AFCD supported the proposed on-farm domestic structures on the site, the written comments of AFCD indicated that there was insufficient information to demonstrate that the proposed development was for genuine agricultural use, and AFCD would not normally support an application for on-farm domestic structure for such cases. In response, Mr Kwok said that AFCD would issue a letter to confirm the agricultural status of the farm if the site was under active cultivation. Even though the existing soil was not suitable for cultivation, he could still farm the land and request AFCD to test the soil and provide advice on how to improve the soil. Moreover, the farm had to be a business operation as opposed to a leisure farm. Once the agricultural status of the farm was confirmed, he could then submit an application for the construction of on-farm domestic structures and green houses.

#### *Unauthorized Filling of Land*

54. In response to the Chairman's enquiry, Mr C.K. Soh said that the aerial photos showed that the site was vegetated in 2012 and that excavation works were carried out at the site in early 2013. Without direct vehicular access, the site was not easily accessible. It was suspected that the fill material found on the application site was taken from the area nearby. The existing soil in the area was mainly sand and gravel. Upon investigation, staff from CEPS, PlanD found evidence of unauthorized land filling works having been carried out and required the reinstatement of the site. In this regard, the owner of the site was required to remove the unauthorized fill material from the site and to grass the reinstated land.

55. In response to a Member's enquiry on the time sequence of the unauthorized development, Mr C.K. Soh said that the aerial photo in Plan R-3a showed the original state of the site in September 2012. The aerial photo in Plan R-3b showed the unauthorized land filling works carried out on the site and the excavation works carried out in the adjacent site in January 2013 while the site photos in Plan R-4b showed the existing state of the site after reinstatement.

#### *Similar Application*

56. A Member enquired about the similar application No. A/NE-KTS/299 mentioned by the applicant. In response, Mr C.K. Soh said that the application mentioned was for a temporary public vehicle park at a site adjacent to the existing Kwu Tung Market Shopping Centre. The site was located at a peripheral location within a large “GB” zone abutting an existing road. The application was approved on the consideration that there was a lack of parking facilities in the vicinity; the site was only covered by overgrowth and some common ornamental and fruit plants; and the proposed use was not incompatible with the surrounding land uses which were characterized by a few domestic structures, open storage yards, temporary structures, market, clinic and rural residential developments. In this regard, the characteristics of that site were completely different from the application site and was not comparable. Mr Kwok, however, disagreed that the two sites were not comparable as the site that was developed into a temporary public vehicle park was covered with trees.

#### *On-Farm Domestic Structures*

57. A Member enquired about the proposed on-farm domestic structures. In response, Mr Kwok said that the two on-farm domestic structures would be located at the north-eastern end of the two proposed greenhouses shown in Drawing R-1 of the TPB Paper.

58. The same Member enquired about the uses that were always permitted at the application site. In response, Mr C.K. Soh said that ‘Agricultural Use’ and ‘On-Farm Domestic Structure’ were Column 1 uses under the “GB” zone and were always permitted at the application site.

59. Ms Bernadette Linn, the Director of Lands, said that the applicant would need to apply to DLO/YL for the construction of an on-farm domestic structure and such permission would only be granted to genuine farmers. Moreover, the current policy of LandsD was to grant a licence for an on-farm domestic structure only for re-site farmers whose existing domestic structure was affected by a Government project and required to be cleared. In this regard, she enquired whether the applicant would continue to use the site for agricultural purposes if DLO/YL would not grant licences for on-farm domestic structures at the site. In response, Mr Kwok said that the current application was only for the filling of

land. He would apply separately to AFCD and DLO/YL for the licences for the proposed on-farm domestic structures at a later stage. Mr Kwok confirmed that he would continue to use the site for agricultural purposes even if his application for on-farm domestic structures were rejected by LandsD. He understood that even if the planning application for filling of land was approved by the Board, this was only the first step and he would need to seek approval from other departments for the proposed on-farm domestic structures.

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

#### Deliberation Session

61. The Chairman said that whether the applicant's intention in filling the land was for the construction of on-farm domestic structures or for genuine agricultural use was not clearly indicated by the applicant. Notwithstanding this, the filling of land might be necessary to prevent flooding at the application site and that even if planning permission was granted for the filling of land, the applicant would still need to obtain approval from other departments before any on-farm domestic structures could be built. Noting that the application was only for the filling of land and given that the existing soil at the site was not suitable for farming, there might be a need for the applicant to fill the land with soil which was suitable for farming purposes.

62. A Member considered that as the filling of land at the site had not caused a serious adverse impact on the surrounding area and the applicant had reinstated the site, sympathetic consideration could be given to the application as it would only be the starting point for the applicant. The applicant would still need to apply to concerned authorities for the construction of greenhouses and on-farm domestic structures.

63. A Member, however, disagreed with this view as the applicant had made contradictory statements and failed to clarify what use the site would be put to after the land was filled. In this regard, there was no reason to support the application for the filling of

land. This view was echoed by another Member who considered that the applicant should first obtain confirmation from AFCD that the site was being used for agricultural purposes before submitting the planning application to the Board.

64. A Member considered that as the application was a ‘Destroy First, Build Later’ case, the Board should assess the application along the established practice for such cases. This Member considered that the applicant should have sought planning permission for the intended use before filling the land.

65. Noting the applicant’s failure to prove that he was a genuine farmer, the Vice-Chairman considered that the applicant had likely filled the land illegally and, upon receiving CTP/CEP’s warning of possible enforcement action, decided to pursue the possibility of using the land for agricultural purposes. In this regard, the application for land filling should not be approved. The Secretary supplemented that even though agricultural use and on-farm domestic structure were uses that were always permitted under the “GB” zone, the Board should ascertain the proposed use of the site before granting permission for the filling of land.

66. The Secretary continued to say that there were two points considered by RNTPC which were not yet addressed by the applicant. The first point was AFCD’s concern that the soil was unsuitable for cultivation. The second point was TD’s concern that the filling of land at the application site would generate traffic from heavy vehicles (10 vehicle trips per day) along the narrow village track, causing adverse traffic impact.

67. After further deliberation, the Chairman concluded the discussion and said that the application for filling of land should not be supported as the applicant failed to demonstrate that the proposed filling of land was for genuine agricultural purposes. Members agreed.

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

“(a) the proposed development is not in line with the Town Planning Board

Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) in that there is a general presumption against development in a “Green Belt” (“GB”) zone, and land filling would only be considered in exceptional circumstances and had to be justified with very strong planning grounds. There is insufficient information in the submission to demonstrate that the proposed land filling is for genuine agricultural purpose;

- (b) extensive clearance of existing natural vegetation and land filling has been involved at the application site and affected the existing natural landscape. The applicant has failed to demonstrate that the proposed development would not cause adverse traffic and landscape impacts on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such application would result in general degradation of the environment of the area and adverse traffic and landscape impacts on the surrounding areas.”

[Mr Eric K.S. Hui, Mr Lincoln L.H. Huang and Ms Christina M. Lee left the meeting at this point.]

### **Agenda Item 8**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-SK/180

Temporary Open Storage of Waste Plastic for a Period of 3 Years in “Agriculture” Zone, Lots 987 (Part) and 988 (Part) in D.D. 106, Shek Kong, Yuen Long

**(TPB Paper No. 9453)**

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[The hearing was conducted in Cantonese.]

Presentation and Question Session



the planning intention, even on a temporary basis;

- (ii) the development under application did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E) in that no previous planning approval had been granted to the application site and there were adverse departmental comments and local objections against the application;
  - (iii) the development was not compatible with the surrounding land uses which were predominantly rural in character with a mixture of cultivated and fallow agricultural land, vacant land and scattered residential structures. The applicant had failed to demonstrate that the development under application would have no adverse environmental, drainage and landscape impacts on the surrounding areas; and
  - (iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area;
- (c) the site was subject to enforcement action as the storage use currently found on site was an unauthorized development (UD). Enforcement Notice (EN) was issued on 5.2.2013 to the concerned parties requiring the discontinuance of UD. Since the UD had only been partially discontinued upon the expiry of the statutory notice on 5.4.2013, the concerned parties were subject to prosecution action;
- (d) the written representations submitted by the applicant on 28.10.2013 did not provide any new or additional justification in support of the application;
- (e) departmental comments – the departmental comments were summarized

in paragraph 4 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application from the agricultural point of view as the site was within the “AGR” zone, agricultural life in the vicinity was very active and the potential for agricultural rehabilitation of the site was high. The Director of Environmental Protection (DEP) did not support the application as there were sensitive receivers of residential uses in the vicinity of the site and environmental nuisance was expected. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L) had reservation on the application as open storage use was incompatible with the surrounding rural landscape character and the proposed development would set an undesirable precedent encouraging similar uses within the “AGR” zone. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) had no in-principle objection to the application provided that there was no adverse drainage impact on the adjacent areas;

- (f) public comments – four public comments raising objection to the application were received. Three comments submitted by individuals objected mainly on environmental (including noise, air and contamination of soil and water sources), traffic, fire safety, environmental hygiene, and personal health/well-being grounds. They also queried whether the development complied with the existing legislation. A comment submitted by Designing Hong Kong Limited supported the RNTPC’s decision to reject the application and considered that it would be difficult to revert the site to agricultural use once approval for open storage use was granted. Two public comments submitted by individuals were received at the s.16 application stage. The commenters raised objection for reasons that the site was zoned for agricultural use and the applied use would create environmental and health impacts on the surrounding areas. One of the commenters also mentioned that statutory public inspection period of the application should be extended and alleged the operation at the site to be UD; and
- (g) PlanD’s views – PlanD did not support the application based on the

assessments as stated in paragraph 6 of the Paper, which were summarized below:

- (i) the proposed development was not in line with the planning intention of the “AGR” zone. DAFC did not support the application from the agricultural point of view as the potential for agricultural rehabilitation of the site was high and agricultural life in vicinity of the site was very active. No strong planning justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis;
- (ii) the site fell within Category 3 areas under TPB PG-No. 13E where existing and approved open storage uses should be contained and further proliferation was not acceptable. In this regard, the application did not comply with TPB PG-No. 13E in that there was no previous approval granted at the site for open storage use and there were adverse comments from the relevant departments and local objections against the application;
- (iii) CTP/UD&L of PlanD had reservation on the application as the proposed use was incompatible with the surrounding rural landscape character and the approval of the application would set an undesirable precedent encouraging similar uses within the “AGR” zone in the area. DEP did not support the application as there were sensitive receivers of residential uses in the vicinity of the site and environmental nuisance was expected. As the site had been paved and might have drainage impact on the site and the adjacent areas, a drainage proposal for the development was required. In this regard, the applicant failed to demonstrate that the proposed use would not generate adverse environmental, drainage and landscape impacts on the surrounding areas; and
- (iv) while the applicant claimed that the proposed use was ancillary to the adjoining plastic recycling factory which had been in operation

since 1984, the proposed development was not compatible with the surrounding land uses which were predominantly rural in character with a mixture of cultivated and fallow agricultural land, vacant land and scattered residential structures. Besides, the storage uses and workshops in the vicinity of the site were mostly suspected UDs subject to enforcement action being taken by the Planning Authority. In this regard, the application did not warrant sympathetic consideration; and

- (v) approval of the application would set an undesirable precedent as no similar application had been approved in the same “AGR” zone on the OZP.

72. The Chairman then invited the applicant to elaborate on the application. Mr Cheung Hing Lung made the following main points:

- (a) the site had been used as a plastic recovery factory since 1984;
- (b) in 1997, PlanD advised that the use of the site was UD and required all operations on the site to cease. Upon clarification with PlanD, part of the site was confirmed as an ‘existing use’ and the plastic recovery factory was allowed to continue operation. It had continued operating at the site since then;
- (c) since 1997, the plastic recovery factory had been paying rates to the Government;
- (d) a few months ago, the Central Enforcement and Prosecution Section (CEPS) of PlanD visited the site and again claimed that the existing operation on the site was UD as only part of the site was confirmed as an ‘existing use’. An EN was then posted at the site requiring the site to be cleared by 5.4.2013.

73. At this point, the Chairman requested Mr Cheung to focus his presentation on the planning application which was for the temporary open storage of waste plastic at the

site zoned “AGR”. He explained that the Board did not have the authority to determine the ‘existing use’ status of the site as that was a matter of planning enforcement which would need to be decided by the Court. He requested Mr Cheung to explain to the Board the justifications in support of the planning application.

[Mr Stanley Y.F. Wong left the meeting at this point.]

74. Mr Cheung continued with his presentation and made the following main points:

- (a) it was unreasonable to carve the existing plastic recycling factory into two portions, with one portion to be considered as an ‘existing use’ while the other portion was UD;
- (b) as shown in Photos 2 and 3 of Plan R-4a, the open yard formed part and parcel of the plastic recycling factory for the last 29 years. In this regard, it was incorrect for PlanD to say that the application site was adjacent to the existing plastic recycling factory;
- (c) it was unreasonable for PlanD to identify the building structure shown in Photo 8 of Plan R-4b as UD. In fact, that building structure was given a licence number and was considered as an ‘existing use’;
- (d) as the plastic recycling factory had been paying rates to the Government, it was unreasonable to claim that part of the factory as UD;
- (e) the application site, which was an open yard, had been used by the plastic recycling factory for the open storage of plastic materials for the last 29 years;
- (f) the plastic materials were not waste materials but were the unused, left-over bits of plastic collected from two plastic production factories. The recycling process involved reheating the plastic material at 200<sup>0</sup>C so as to soften and re-cast the plastic bits into raw material that could be re-used;

- (g) the recycling process would not cause any pollution to the environment. Besides, the plastic recycling factory had never received any complaint of environmental nuisance from its neighbours;
- (h) the planning application was only for open storage and no building structures would be developed on the site. The site was in fact annotated as open storage on the survey sheets; and
- (i) according to the aerial photo taken on 5.10.1990, the building for the plastic recycling factory was clearly shown.

75. At this juncture, the Chairman reminded Mr Cheung again that the application under consideration by the Board was not about determining whether the use was the 'existing use'. He requested Mr Cheung to focus on the current planning application.

76. Mr Cheung continued with his presentation and made the following main points:

- (a) the application was only for open storage of plastic materials and no operational activity would be carried out on the application site;
- (b) the open storage yard was essential for the continued operation of the plastic recycling factory; and
- (c) the recycled plastic material was polystyrene, which was a clean material. The production of the material would not cause any air pollution.

77. Ms Cheung Siu Yin made the following main points:

- (a) the application should be considered independently of other applications and the precedent effect should not be considered;
- (b) the application was only for open storage use of the site which had been used for the said purpose since many years ago. In this regard, the

objection raised in the public comments on the grounds of adverse traffic, environmental and landscape impacts were unsubstantiated;

- (c) the proposed operation hours of the open storage yard would be 9:00am to 6:00pm on weekdays only;
- (d) the applicant only received an English version of the TPB Paper on 25.10.2013. There was not enough time to study the contents in detail, particularly given the large amount of technical terms used in the Paper; and
- (e) the background information provided in the TPB Paper was presented from PlanD's perspective which was biased. The applicant did not agree with the information which was incorrect.

78. Noting that the applicant had submitted two previous applications to the Board in 1995 and 1998, a Member enquired whether it was already established at that time that the yard for open storage was not an 'existing use'. In response, Mr W.S. Lau said that based on the aerial photo taken on 5.10.1990, it could be confirmed that the plastic recycling factory building was an 'existing use' while the yard for open storage adjacent to the factory building was not an 'existing use' as it was being used for agricultural purposes on 5.10.1990 when the Interim Development Permission Area Plan covering the Area was first published. The application site was only formed and paved afterwards. Mr Lau added that the application site comprised two lots, viz. Lot 987 and Lot 988. According to the records of the Land Registry, Lot 987 was bought by the applicant in 1991 while Lot 988 was bought in 2011. In this regard, it was likely that the open storage use at the application site commenced in 1991.

79. Mr Cheung, however, disagreed and said that he had rented the land from the previous owner for more than 10 years before he decided to buy Lot 987 in 1991. Besides Lot 987, he had also rented Lots 988, 989 and 1019 from various owners.

80. Mr Szeto Tak Lok supplemented that it was incorrect to conclude from the aerial photo in 1990 that the site was not used for open storage purposes. As the vegetation on the application site was very tall, it basically covered the plastic materials that

were stored on the site such that the open storage use could not be seen from the aerial photo.

81. In response to a Member's enquiry, Mr Cheung confirmed that the application site had been used for open storage purpose since 1990. In response to the same Member's enquiry, Mr W.S. Lau said that as an EN was issued to the applicant in early 2013 against the open storage use of the site, the applicant decided to submit an application to seek planning permission for open storage use.

82. As the applicant claimed that the open storage use at the application site was an 'existing use', a Member asked the applicant the reason for submitting the two previous planning applications. In response, Mr Cheung said that he submitted the planning applications mainly based on the advice of PlanD as he had not employed any consultants at that time.

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

#### Deliberation Session

84. The Chairman said that the application being considered by the Board was not about determining whether the open storage use at the application site was an 'existing use' which was a matter of planning enforcement for PlanD and, depending on the circumstances, a matter to be decided by the Court.

85. Members noted that the proposed open storage use was not in line with the planning intention of the "AGR" zone. Moreover, the application did not comply with TPB PG-No. 13E in that there was no previous approval granted at the site for open storage use and there were adverse comments from the relevant Government departments as well as local objections.

86. After deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- “(a) the development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the development under application does not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E) in that no previous planning approval has been granted to the application site and there are adverse departmental comments and local objections against the application;
- (c) the development is not compatible with the surrounding land uses which are predominantly rural in character with a mixture of cultivated and fallow agricultural land, vacant land and scattered residential structures. The applicant has failed to demonstrate that the development under application would have no adverse environmental, drainage and landscape impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.”

**Agenda Item 12**

A.O.B.

[The meeting was conducted in Cantonese.]

87.           There being no other business, the meeting closed at 1:15 p.m.