

**Minutes of 849th Meeting of the
Town Planning Board held at 9:00am on 2.12.2005**

Present

Permanent Secretary for Housing, Planning and Lands (Planning and Lands)
Mrs. Rita Lau

Chairperson

Dr. Rebecca L.H. Chiu

Dr. Peter K.K. Wong

Mr. Michael K.C. Lai

Professor K.C. Ho

Mr. Alex C.W. Lui

Mr. Francis Y.T. Lui

Dr. Greg C.Y. Wong

Mr. C.K. Wong

Mr. Erwin A. Hardy

Mr. Nelson W.Y. Chan

Mr. David W.M. Chan

Mr. Leslie H.C. Chen

Professor David Dudgeon

Professor Peter R. Hills

Mr. Tony C.N. Kan

Mr. Edmund K.H. Leung

Professor N.K. Leung

Dr. C.N. Ng

Mr. Alfred Donald Yap

Ms. Sylvia S.F. Yau

Assistant Director(2), Home Affairs Department
Ms. Margaret Hsia

Deputy Director of Environmental Protection
Dr. Michael Chiu

Director of Lands
Mr. Patrick L.C. Lau

Director of Planning
Mr. Bosco Fung

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

Secretary

Absent with Apologies

Dr. Alex S.K. Chan

Hon. Patrick S.S. Lau

Mrs. Angelina P.L. Lee

Mr. K.G. McKinnell

Mr. S.L. Ng

Ms. Carmen K.M. Chan

Professor Nora F.Y. Tam

Mr. Tony W.C. Tse

Dr. Lily Chiang

Professor Bernard Vincent W.F. Lim

Mr. Daniel B.M. To

Mr. Stanley Y.F. Wong

Principal Assistant Secretary (Transport)
Environment, Transport and Works Bureau
Ms. Ava Chiu

In Attendance

Assistant Director of Planning/Board
Mr. P.Y. Tam

Chief Town Planner/Town Planning Board
Mr. C.T. Ling

Town Planner/Town Planning Board
Ms. Irene W.S. Lai

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 847th and 848th Meeting held on 9.11.2005 and 18.11.2005

1. The minutes of the 847th meeting held on 9.11.2005 were confirmed without amendments. The minutes of the 848th meeting held on 18.11.2005 were confirmed subject to incorporation of the amendment proposed by Mr. Patrick L.C. Lau that “fine” in paragraph 68 of the draft minutes be revised to “premium”.

Agenda Item 2

[Open Meeting]

Matters Arising

2. There were no matters arising from last meeting.

Agenda Item 3

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/NE-LT/343

Proposed New Territories Exempted House (Small House) in “Village Type Development” and “Agriculture” zones, Lot 109A in DD 18, Tai Om Village, Lam Tsuen, Tai Po

(TPB Paper No. 7464)

[The hearing was conducted in English.]

Presentation and Question Session

[Mr. David W.M. Chan, Dr. C.N. Ng, Professor David Dudgeon, Ms. Sylvia S.F. Yau and Mr. Nelson W.Y. Chan arrived to join the meeting during the presentation and question session.]

3. Mr. W.K. Hui, District Planning Officer/Tai Po and North of Planning

Department (PlanD) and the following applicant/applicant's representative were invited to the meeting:

Mr. Cheung Tse-hang, Victor - Applicant
Mr. John Barrett - Applicant's representative

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

5. With the aid of plans shown at the meeting, Mr. W.K. Hui covered the following main aspects as detailed in the Paper:

- (a) the reasons of the Rural and New Town Planning Committee to reject the proposed New Territories Exempted House (NTEH) (Small House) at the application site on 12.8.2005;
- (b) the justifications put forth by the applicant in support of the review application;
- (c) departmental comments – The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application as the site had high potential for agricultural rehabilitation. The District Lands Officer/Tai Po (DLO/TP) maintained his objection to the application since only 40% of the proposed Small House footprint fell within the village “environs” (‘VE’) of Ping Long and Tai Om;
- (d) a Tai Po District Council member, the Indigenous Inhabitant Representatives and Resident Representative of Tai Om Village had no adverse comment on the s.16 application. No public comment or new local comment was received on the review application; and

- (e) PlanD's view – not supporting the application as it was not in line with the planning intention of the “Agriculture” (“AGR”) zone, and the proposed development did not meet the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories (Interim Criteria) as the majority of the application site (65%) fell outside the ‘VE’ of Ping Long and Tai Om and only 0.34% of the footprint of the Small House fell within the “V” zone.

6. The Chairperson then invited the applicant/applicant's representative to elaborate on the application.

7. Mr. John Barrett made the following main points:

- (a) the Lam Tsuen Outline Zoning Plan (OZP) was a 1:7,500 scale map. However, the percentages of the site area and the proposed Small House footprint within “V” zone and ‘VE’ were measured to 2 decimal places based on a map enlarged to a 1:1,000. The accuracy was doubtful. However, he was prepared not to pursue this point further as more than 50% of the proposed Small House footprint would probably be outside the “V” zone;
- (b) although DLO/TP had advised that his office would retain the applicant's original priority of Small House application if an alternative site could be identified within a grace period, the so called “priority” was meaningless as the Small House application was submitted to the Lands Department (LandsD) 8½ years ago. Besides, it was difficult to find an alternative site as the supply of “V” land (200 Small House sites) was unable to meet the Small House demand (312 Small House sites);
- (c) DAFC objected to the proposed development mainly because of the “AGR” zoning of the site. However, it appeared that there was no basis for the present delineation of the zoning boundary. It was unreasonable to exclude the site from the “V” zone but included the plant nurseries and other agricultural land in the “V” zone. Approval of the application would not affect the agricultural development in the area; and

- (d) the area was rather urbanised with many houses around. A new road would be constructed by the applicant if the application was approved. No undesirable precedent would be set.

8. Members sought clarifications from Mr. W.K. Hui on the following:

- (a) when the first Lam Tsuen OZP was prepared; whether the OZP was prepared by reducing the scale of some larger scale maps;
- (b) the percentage of the proposed Small House footprint falling outside the “V” zone; and
- (c) the location of the septic tank and the comments of the Environmental Protection Department and (EPD) and Water Supplies Department (WSD).

9. Mr. W.K. Hui replied as follows:

- (a) the site was zoned “V” since the publication of the first Lam Tsuen OZP No. S/NE-LT/1 in 1994. In the preparation of the OZP, survey was first carried out using 1:1,000 scale maps. After all surveyed data had been compiled on 1:1,000 scale maps, the data were transposed onto 1:7,500 scale maps to produce the OZP. The zoning boundary on Plan A-2 was prepared by enlarging the zoning boundary on the OZP, which was originally based on 1:1,000 scale survey maps. The “V” zone boundary basically followed the stream course;
- (b) the proposed Small House footprint fell almost entirely outside the “V” zone, and over half of the site were outside the ‘VE’. The development did not comply with the Board’s Interim Criteria; and
- (c) the proposed septic tank was located within the “V” zone. Since the application site could be connected to the planned sewerage system in the area, EPD and WSD had no objection to the application.

10. Mr. John Barrett asked Mr. W.K. Hui to confirm that the plant nurseries were

zoned “V” rather than “AGR”. Mr. Hui replied in the affirmative.

11. A Member asked whether it was possible for the applicant to swap his land with the nearby plant nursery. Mr. John Barrett said that the nearby plant nursery was under different ownership and negotiation for swapping the land titles was very difficult. He also considered the application site not suitable for agricultural development.

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

Deliberation Session

[Dr. Peter K.K. Wong, Mr. Leslie H.C. Chen and Mr. Alex C.W. Lui arrived to join the meeting during the deliberation session.]

13. The Chairperson said that the most contentious issue in Lam Tsuen area was the impact of development on water gathering grounds (WGGs). In the subject case, both EPD and WSD had no objection to the proposed development as it could be connected to the planned public sewerage system in the area.

14. Some Members had reservation on the application. They had the following views:

- (a) while the potential for agricultural development along the stream course was not sure, approval of the application would set an undesirable precedent for other villagers to submit similar applications for Small House development along the stream;
- (b) only a small part of the site and a tiny portion of the proposed Small House footprint were located within the “V” zone. Unless there were circumstances which warranted special consideration, approval of the

application would set an undesirable precedent. Besides, the site was an agricultural lot without building right; and

- (c) the draft Lam Tsuen OZP was first published in 1994. The “V” zoning was already in place when the applicant submitted the Small House application under the Small House Policy to LandsD in 1997.

15. Some Members considered that sympathetic consideration could be given to the application. They had the following views:

- (a) it appeared that the zoning boundary was drawn up arbitrarily. The configuration of the “AGR” zone was rather odd;
- (b) there were many houses around the site and some were erected in the downstream area. The site would unlikely be used for agricultural development; and
- (c) although there might be concern on setting undesirable precedent for development along the stream, it did not appear that the stream was of very high ecological value. Sympathetic consideration could be given.

16. The Chairperson said that LandsD would normally not approve the Small House application if majority of the Small House site fell outside ‘VE’. She asked if LandsD would be ready to issue the Small House Grant if the Board approved this application.

17. Mr. Patrick L.C. Lau responded as follows:

- (a) a large number of Small House applications were received by LandsD in 1997 when there was rumours about possible termination of the Small House Policy after reunification. This had led to a huge influx and therefore backlog of Small House applications;

- (b) since Lam Tsuen was within WGGs, WSD had raised grave reservation on Small House developments in the area in the absence of proper sewerage connections. The processing of Small House applications had been held in abeyance pending the provision of public sewers which was subject to availability of funding; and
- (c) apart from the site being only 40% within the 'VE', there could be other factors affecting the progress of the processing of the application. If the relevant departments had no objection, there stood a good prospect for DLO/TP to approve the Small House application.

18. Mr. Bosco C.K. Fung made the following points:

- (a) the stream course was excluded from the "V" zone when the OZP was first prepared in 1994. It was zoned "AGR" with the intention to preserve the stream course and discourage development along it;
- (b) under the Interim Criteria, favourable consideration should only be given to Small House with over 50% of its footprint falling within the "V" zone. This 50% rule was fully deliberated by the Board when the Interim Criteria was revised in 2003. Any deviation from the 50% rule should be well justified; and
- (c) for the few planning appeal cases for Small House development allowed by the Town Planning Appeal Board (TPAB), each had its own special circumstances.

19. The Secretary made the following points:

- (a) LandsD would normally not approve a Small House application if less than 50% of the Small House site fell within the 'VE'. DLO/TP had raised objection to the subject application;

- (b) the relevant similar case recently allowed by TPAB (Town Planning Appeal No. 24 of 2003) involved a site partly zoned “Green Belt” (“GB”) and partly zoned “V” in Sai Kung. In allowing the appeal, TPAB was of the view of that the approval would not set an undesirable precedent because of the special features of the case. TPAB had taken into consideration that the boundary between the “GB” and “V” zones was drawn up arbitrarily not following the road or the topographical contour of the area, and that the Appellant had made his application to LandsD for building licence before the publication of the respective Development Permission Area Plan. Although there was sufficient “V” land and less than 50% of the appeal site was within the “V” zone, the propose development met some other requirements under the Interim Criteria; and

- (c) in the subject case, the zoning boundary generally followed a stream course. The Small House application was submitted to LandsD after the first publication of the Lam Tsuen OZP in 1994. Although it was made before the introduction of the 50% rule under Interim Criteria in 2003, the s.16 planning application was only submitted to the Board in 2005.

20. Given the distinctly different circumstances of the Town Planning Appeal Case No. 24 of 2003, the Chairperson remarked that the subject application could not be considered as well justified. Members generally considered that the application should not be approved.

21. A Member said that the discrepancies between the “V” zone and ‘VE’ boundaries could cause confusion to the public. Efforts should be made to align the two boundaries as far as practicable. Another Member commented that land use zones in rural areas were usually broad brush covering a large area. The thickness of the zoning boundary line might substantially affect the percentage of the site area within the “V” zone.

22. A Member said that in the past, the stream should be of high ecological value which warranted protection under the “AGR” zoning. However, many natural streams in Lam Tsuen area had already been transformed by subsequent drainage projects. If the stream did not have much ecological value now, consideration could be given to rezoning the area to “V”.

23. In response, Mr. Bosco C.K. Fung made the following points:

- (a) apart from protecting the stream, the “AGR” zoning would serve to discourage Small House developments right next to the stream. Moreover, the Lam Tsuen area fell within WGGs;
- (b) the ‘VE’ was defined purely by the area measured 300 feet from the last village house built in 1972 under the Small House Policy. The odd shape of the ‘VE’ for Ping Long and Tai Om (Plan R-2 of the Paper) was a case in point. While effort was made to align the “V” zone boundary with the ‘VE’ as far as possible, the topography, natural features, Small House demand and many other planning factors would need to be considered in drawing up the “V” zone boundary. The zoning boundary would also be gazetted for public inspection and subject to planning objections. It was unlikely that the “V” zone boundary and ‘VE’ could tally with each other entirely in all cases; and
- (c) all OZPs had been digitised. Enlargement/reduction of the map scale for presentation purpose and calculation of site area were all done by computers to avoid human bias or error.

24. Mr. Patrick L.C. Lau said that ensuring accuracy in the map production process was a technical issue, which he would follow up with the Survey and Mapping Office. The ‘VE’ arrangement had a long history which was well understood by the villagers and Heung Yee Kuk. Mr. Lau concurred with Mr. Bosco C.K. Fung that it would be difficult for the Administration to align the ‘VE’ boundaries which were measured from the location of the last village house built in 1972 with the “V” zone boundaries on OZPs which were published in 1990s based on planning considerations.

25. The subject case being left outstanding for such a long time, the Chairperson asked if LandsD could give it priority. A Member asked whether DLO/TP could offer assistance to the applicant should his Small House application be rejected. The Secretary said that according to DLO/TP’s comments as stated in the Paper, the applicant’s original priority of Small House application would be retained if the applicant could identify an alternative

site within a grace period. Mr. Patrick L.C. Lau pointed out that it was inappropriate for LandsD to assist an applicant in identifying an alternative site.

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

- (a) the application was not in line with the planning intention of the “Agriculture” zone, which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justifications had been provided in the submission for a departure from the planning intention; and
- (b) the application did not fully meet the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories since over 50% of the footprint of the proposed Small House was located outside the “V” zone and majority of the application site fell outside the ‘VE’ of a recognized village. Favourable consideration could not be given.

[Post-meeting Notes : Mr. Patrick L.C. Lau clarified on 2.12.2005 that the Small House application was submitted to LandsD in May 1997. The applicant was interviewed in 2001, but he only submitted the proposed location of the Small House in September 2003. In May 2004, LandsD informed the applicant in writing that the proposed location was outside ‘VE’ and planning permission from the Board was required. However, LandsD’s letter was returned by the Post Office. A reminder sent to the applicant in September 2004 was also returned by the Post Office. In October 2004, the applicant’s lawyer approached LandsD for copies of letters. The applicant had subsequently appealed to the District Lands Office. A meeting was held with the applicant in November 2004 and the District Lands Office had explained the situation to the applicant. The applicant had filed a complaint to The Ombudsman for the delay in processing his Small House application, but the complaint was considered not substantiated by The Ombudsman.]

Agenda Item 8

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations in Respect of the Draft Urban Renewal Authority Lai Chi Kok Road/Kweilin Street and Yee Kuk Street Development Scheme Plan No. S/K5/URA1/1
(TPB Paper No. 7472)

43. The following Members had declared interested in this item:

Mr. Bosco C.K Fung as the Director of Planning	Being a non-executive director of the Urban Renewal Authority (URA)
Mr. Patrick L.C. Lau as the Director of Lands	Being a non-executive director of (URA)
Ms. Margaret Hsia as the Assistance Director (2) of the Home Affairs Department	Being a co-opt member of the Planning, Development and Conservation Committee of URA
Dr. Alex S.K. Chan	Being a co-opt member of the Review Committee of URA
Mrs. Angelina P.L. Lee	Having current business dealings with URA
Mr. Greg C.Y. Wong	Having current business dealings with URA
Mr. Michael K.C. Lai	Being a former non-executive director of URA
Mr. Tony W.C. Tse	Being a former director of URA

Dr. Chan, Mrs. Lee and Mr. Tse had tendered their apologies for being unable to attend the meeting while Ms. Margaret Hsia had left the meeting earlier. Since the hearing arrangement for the consideration of the representations and comment in respect of the draft Urban Renewal Authority Lai Chi Kok Road/Kweilin Street and Yee Kuk Street Development Scheme Plan No. S/K5/URA1/1 was only a procedural matter, Messrs. Fung, Lau and Lai were allowed to stay and participate in this item.

44. The Secretary briefly introduced the Paper (a replacement page 1 of the Paper was tabled at the meeting).

45. After deliberation, the Board agreed that the representations and comment should be considered in the manner as proposed in paragraph 2.2 of the Paper.

Agenda Item 9

[Open Meeting]

Draft Ma Wan Outline Zoning Plan No. S/I-MWI/11A

Submission of Draft Plan to the Chief Executive in Council for Approval

(TPB Paper No. 7473)

46. The Secretary briefly introduced the Paper.

47. After deliberation, the Board:

- (a) agreed that the draft Ma Wan Outline Zoning Plan (OZP) No. S/I-MWI/11A and its Notes at Annexes I and II of the Paper respectively were suitable for submission under section 8 of the Town Planning Ordinance to the Chief Executive in Council (CE in C) for approval;
- (b) endorsed the updated ES for the draft Ma Wan OZP No. S/I-MWI/11A at Annex III of the Paper as an expression of the planning intention and objectives of the Board for the various land-use zones 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

50. There being no other business, the meeting was closed at 1:25 p.m..

(CHAIRPERSON)
TOWN PLANNING BOARD

