

**Minutes of 1026th Meeting of the
Town Planning Board held on 4.1.2013**

Present

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

Chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Dr. Wilton W.T. Fok

Mr. Ivan C.S. Fu

Mr. Sunny L.K. Ho

Professor P.P. Ho

Mr. Lincoln L.H. Huang

Professor Eddie C.M. Hui

Ms. Janice W.M. Lai

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Ms. Julia M.K. Lau

Ms. Christina M. Lee

Mr. Maurice W.M. Lee

Mr. H.F. Leung

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Mr. Stephen H.B. Yau

Dr. W.K. Yau

Deputy Director of Environmental Protection
Mr. C.W. Tse

Director of Lands
Ms. Bernadette H.H. Linn (from 11:25 a.m. onwards)

Deputy Director of Lands (General)
Mr. Jeff Y.T. Lam (from 9:00 a.m. to 11.25 a.m.)

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Miss Winnie M.W. Wong

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

Director of Planning
Mr. K.K. Ling

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

Secretary

Absent with Apologies

Mr. Stanley Y.F. Wong

Vice-chairman

Professor K.C. Chau

Mr. Patrick H.T. Lau

Dr. W.K. Lo

In Attendance

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

Chief Town Planner/Town Planning Board
Mr. Edward W.M. Lo (a.m.)
Ms. Donna Y.P. Tam (p.m.)

Senior Town Planner/Town Planning Board
Mr. Raymond H.F. Au (a.m.)
Ms. Doris S.Y. Ting (p.m.)

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 1025st Meeting held on 14.12.2012

[The meeting was conducted in Cantonese.]

1. The minutes of the 1025th meeting held on 14.12.2012 were confirmed without amendments.

Agenda Item 2

Matters Arising

[The meeting was conducted in Cantonese.]

(i) [Closed Meeting]

2. This item was recorded under confidential cover.

(ii) Town Planning Appeal Decision Received

Town Planning Appeal No. 4/10

Temporary Vehicle Repair Workshop for a Period of 3 Years

Lots 2429 (Part), 2431 RP (Part), 2440 RP (Part)

and Adjoining Government Land in D.D. 130, Lam Tei, Tuen Mun

(Application No. A/TM-LTYYY/189)

[Open Meeting]

[Mr. Ivan C.S. Fu, Mr. Dominic K.K. Lam and Ms. Janice W.M. Lai returned to join the meeting at this point.]

3. The Secretary reported that the subject appeal was against the Town Planning Board (the Board)'s decision to reject on review an application (No. A/TM-LTYYY/189) for a temporary vehicle repair workshop for a period of three years in the "Green Belt" ("GB") zone on the approved Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTYYY/6 (the OZP). The appeal was heard by the Appeal Board Panel (Town

Planning) (TPAB) on 26.4.2012 and 29.6.2012. On 21.12.2012, the TPAB dismissed the appeal based on the following main considerations:

- (a) the vehicle repair workshop was not in line with the planning intention of the “GB” zone, and this was the paramount consideration and major reason for refusal;
- (b) the Appellant had the right pursuant to section 12A of the Town Planning Ordinance to apply for rezoning of the site if she was aggrieved by the “GB” zoning of the area. However, she had not submitted any application for rezoning. For the purpose of the appeal, the TPAB had to accept that the zoning of the area under concern as “GB” was appropriate and justified, and to construe the planning intention according to the zoning stipulated in the OZP. The OZP had gone through the due process in plan making and approved by the Chief Executive in Council. It would not be right for the TPAB to question the appropriateness of the zoning/planning intention of the site;
- (c) the presence of a number of land uses in the “GB” zone non-conforming with the planning intention would not per se render the zone not green. It was understandable and logical that the Planning Department would require some time to investigate and take enforcement actions against those users who were in breach of the planned use. Further, the parties establishing “existing use” would also be allowed to continue with their use even though their use contravened the “GB” zoning;
- (d) there was no strong justification or special circumstances advanced by the Appellant to show why there should be a deviation from the planning intention of the “GB” zone even though the planning permission was of temporary nature. Some areas in the zone which were being used for purposes other than “GB” did not justify a departure from the planning intention of the “GB” zone;

- (e) the TPAB, having assessed the evidence, found that there was no promise or agreement made by an officer of the Lands Department that the “automatic planning permission” had been transferred to the new business location. Even had there been such a promise or an agreement, there was no reliance on the said agreement/promise by the Appellant;
- (f) the TPAB found that the absence of complaints by the existing occupants did not mean that there would be no objection in the future. Although there were no adverse public comments received by the Board in processing the application, it could not preclude objection from the future occupants; and
- (g) on the Appellant’s claim of existing use on the part of the site, the TPAB found that it was outside the jurisdiction of both the Board and the TPAB to determine a claim that the use of part of the Appeal Site by the Appellant was an existing use.

4. A copy of the Summary of Appeal and the TPAB’s decision had been sent to Members for reference.

Appeal Statistics

5. The Secretary reported that as at 4.1.2013, 23 appeal cases were yet to be heard by the Appeal Board Panel (Town Planning). Details of the appeal statistics were as follows:

Allowed	: 29
Dismissed	: 125
Abandoned/Withdrawn/Invalid	: 162
Yet to be Heard	: 23
<u>Decision Outstanding</u>	<u>: 3</u>
Total	: 342

- (ii) Reference of the Approved Clear Water Bay Peninsula North
Outline Zoning Plan for Amendment
[Open Meeting]

6. The Secretary reported that on 4.12.2012, the Chief Executive in Council referred the approved Clear Water Bay Peninsula North Outline Zoning Plan (OZP) No. S/SK-CWBN/4 to the Board for amendment under section 12(1)(b)(ii) of the Town Planning Ordinance. The reference back of the OZP was notified in the Gazette on 14.12.2012.

7. Noting that the applicant and his representatives, and the representatives of representers and commenter who would attend the review hearing and representation hearing under Agenda Items 7 and 8 respectively had already arrived, the Chairman suggested that Agenda Items 7 and 8 should be discussed first. Members agreed.

Sha Tin, Tai Po and North District

Agenda Item 7

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-LK/74

Proposed House (New Territories Exempted House (NTEH) - Small House)

Lot 879 S.A in D.D. 39, Sheung Wo Hang Village, Luk Keng, New Territories

(TPB Paper No. 9258)

[The meeting was conducted in English and Cantonese.]

Presentation and Question Session

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

Ms. Jacinta Woo	- District Planning Officer/Shu Tin, Tai Po & North (DPO/STN), PlanD
Mr. Lee Keith Alexander	- Applicant
Mr. Chan Tat Choi]
Mr. Lee Wah Sang] Applicant's Representatives
Mr. Daniel Wei]
Mr. Lee Ho Ching, Adrian]

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

10. With the aid of a Powerpoint presentation, Ms. Jacinta Woo presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for development of a proposed house (New Territories Exempted House (NTEH) - Small House) at the site zoned "Agriculture" ("AGR") on the approved Luk Keng and Wo Hang Outline Zoning Plan (OZP) No. S/NE-LK/11 at the time of s.16 application and currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 20.7.2012 for the reasons that the proposed development was not in line with the planning intention of the "AGR" zone for the area; land was still available within the "Village Type Development" ("V") zone of Sheung Wo Hang Village for Small House development; and setting of an undesirable precedent for other similar applications in the area;
- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper and highlighted as follows:
 - (i) the proposed Small House development met the general criteria of

the recommendations of the 'Review of Rural Land Uses in Northern New Territories' undertaken by PlanD in 2001 in that it was low-rise and low-density and located in close proximity to Sha Tau Kok Road;

- (ii) the application site had been left idle for some years and the planning intention of the existing "AGR" zoning could no longer be fulfilled. The proposed development could utilise abandoned agricultural land for alternative use. Given the small site area which was less than 0.1% of the entire "AGR" zone, the loss of agricultural land would not be significant;
 - (iii) there was insufficient land in the "V" zone to meet the potential demand of Small House. Part of the land in the "V" zone of Sheung Wo Hang Village identified by PlanD as available for Small House development was occupied by slopes, mature trees, access road, or village facilities. The applicant found it difficult to purchase land within the "V" zone for Small House development;
 - (iv) the application site was suitable for Small House development. It was located in a relatively flat area and was compatible with the local rural setting. The application site and its adjacent area within the village 'environs' ('VE') of Sheung Wo Hang Village would serve as a new village expansion area to meet the Small House development; and
 - (v) approval of the application would unlikely set an undesirable precedent for similar applications and the cumulative impact from approving the current application would not be significant. Each planning application should be considered by the Board on its own merits;
- (d) the application site, with an area of about 183.7m², was located within

the 'VE' of Sheung Wo Hang Village. It was vacant, overgrown with shrubs, and accessible via an existing footpath about 170m from the village access leading to Sha Tau Kok Road – Wo Hang. There was a stream running approximately 27m to its north;

- (e) there was no previous planning application for Small House development on the application site. Two similar applications (No. A/NE-LK/39 and 40) for Small House development within the same "AGR" zone on the OZP were rejected by the Board on review on 12.12.2003 mainly on the grounds of non-compliance with the Interim Criteria for assessing planning applications for NTEH/Small House development prevailing at that time as the land available within the "V" zone of Sheung Wo Hang could meet the Small House demand, the use under application was not in line with the planning intention of "AGR" zone and the approval of the application would set an undesirable precedent for other similar applications;

- (f) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application as the application site was vegetated and marshy, and its vicinity was of high potential for rehabilitation of agricultural activities. The proposed development might pose adverse impact on the natural habitats including the natural stream nearby. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD maintained his reservation on the application from the landscape planning point of view as there was no guarantee from the applicant's submission that all existing trees within the site would be retained, the required access and site formation of the proposed development would have impact on the natural landscape, and approval of the application might set an undesirable precedent of spreading village development outside the "V" zone. Other government departments consulted had no adverse comment on or no objection to the review application. The District Lands Officer/North, Lands Department (DLO/N, LandsD) advised that a Small House application in respective

of the application site was received by his office on 21.8.2012 and that the latest number of outstanding Small House applications and the number of 10-year (2011 – 2020) Small House demand for Sheung Wo Hang were 34 and 1,500 respectively, with the latter provided by the relevant Indigenous Inhabitant Representative without any supporting evidence and was not verified;

- (g) public comments – three public comments were received during the review stage. The same commenters, i.e. a North District Council (NDC) member, Kadoorie Farm & Botanic Garden Corporation (KFBGC) and World Wide Fund (WWF), reiterated their comments made under the section 16 application. The NDC member supported the application. KFBGC and WWF objected to the application mainly on the grounds of ecological degradation of the nearby stream due to channelisation to prevent flood risk; reduction of agricultural land; sewerage problem, ground water pollution and flooding risk resulting from additional houses near the stream; adverse landscape impact on the area; and the proposed development was not in line with the planning intention of the “AGR” zone; and
- (h) PlanD’s views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper, which were summarised below:
 - (i) the application site and its adjacent area were part and partial of a major “AGR” zone in Wo Hang area and were not recommended for rezoning under the Rural Land Use Review undertaken by PlanD in 2001;
 - (ii) the proposed development was not in line with the planning intention of the “AGR” zone. DAFC did not support the application from an agricultural development point of view as the site formed part of the larger agricultural land in Wo Hang area, which had high potential of rehabilitation. There was no strong

justification to merit a departure from the planning intention;

- (iii) although the land available within the “V” zone of Sheung Wo Hang Village (about 2.51 hectares which was equivalent to about 100 Small House sites) could not fully meet the future Small House demand in Sheung Wo Hang Village (i.e. about 38.35 hectares of land which was equivalent to about 1,534 Small House sites), it was noted that there had been a drastic increase in Small House demand forecast from 30 in 2003 to 1,500 in 2012 while the outstanding Small House applications for the same period remained quite steady from 16 in 2003 to 34 in 2012. DLO/N, LandsD advised that the figure about the 10-year Small House demand was provided by the relevant Indigenous Inhabitant Representative of the village without any supporting evidence and was not verified;
- (iv) the land available within the “V” zone for Small House development had excluded land occupied by slopes and mature trees, stream, roads and village facilities. It was considered more appropriate to concentrate the proposed Small House close to the existing village cluster within the “V” zone for orderly development pattern, efficient use of land and provision of infrastructures and services. Expansion of the village to the periphery of ‘VE’ could be deferred to a later stage when the “V” zone of Sheung Wo Hang had been exhausted;
- (v) the proposed development would have adverse impacts on the natural landscape/habitats. Although the applicant had revised the layout of the proposed Small House to minimise the impacts on the nearby stream and retain the existing trees, CTP/UD&L, PlanD maintained his reservation on the proposed development as the required access and site formation for the proposed Small House would have impact on the natural landscape around the application site. DAFC commented that the proposed development might

pose adverse impact on the marshy habitat of the application site and its vicinity. Approval of the application might attract more similar uses into the area such that the natural habitats would be further deteriorated and the intactness of the “AGR” zone would be undermined by the unrestrained spreading of village houses onto the farmland;

- (vi) no similar applications within the same “AGR” zone had been approved by the RNTPC. Approval of the application would set an undesirable precedent for similar applications, and the cumulative effect of approving these applications would result in further loss of agricultural land, adverse traffic and landscape impact on the surrounding area and adverse impact on the surrounding natural habitats including the nearby stream;
- (vii) the approved similar applications quoted by the applicant were all located in the “AGR” zone in Ma Tseuk Leng and Shek Kiu Tau area further north of Sha Tau Kok Road – Wo Hang. The concerned application sites were close to the village houses of the village proper and these applications were approved by the RNTPC mainly on the ground of compliance with the Interim Criteria for assessing planning applications for NTEH/Small House development prevailing at that time. They were not comparable to the current application where the application site was located further away from the village cluster and amidst a large “AGR” zone; and
- (viii) public objections against the application were received. The commenters objected to the review application on the grounds of adverse ecological impact and potential pollution to the nearby stream, flooding risk resulting from cumulative impacts of septic tank and soakaway system of potential additional houses near the stream, and setting of undesirable precedent for similar applications in the “AGR” zone.

11. The Chairman then invited the applicant and his representatives to elaborate on the review application. With the aid of a visualiser, Mr. Chan Tat Choi, the applicant's representative, made the following main points:

- (a) although the Government had advocated the rehabilitation of abandoned agricultural land for over 20 years, not much agricultural land had been successfully rehabilitated for agricultural purpose. It was probably less than 10 hectares every year. As there were over 1,000 hectares of abandoned agricultural land in Hong Kong, it would take a very long time to rehabilitate all the agricultural land;
- (b) the rehabilitation of agricultural land was not in line with the aspiration of the society to provide more housing land to meet the community's housing need;
- (c) many land within the 'VE' of Sheung Wo Heung had not been included in the "V" zone, thus restraining the development of the village;
- (d) not all the 2.5 hectares of land in the "V" zone of Sheung Wo Hang Village identified by PlanD was available for Small House development. It was mainly because some of the land was in proximity to an existing stream, some was already occupied by village facilities and some was under tso tong ownership. Moreover, as those villagers who owned private land within the "V" zone had reserved the land for their decedents to build Small Houses, the applicant had found it extremely difficult to purchase land within the "V" zone for Small House development;
- (e) according to the applicant, there had been no new Small Houses built in Sheung Wo Hang Village during the past 10 years; and
- (f) the Board had approved planning applications for Small House development within the "AGR" zone in Ma Tseuk Leng, and the sites

involved in these approved applications were similar to the site of the subject application in that they were all located within 'VE' and close to the existing village clusters. Hence, approval of the subject application would not set an undesirable precedent for similar applications.

12. With the aid of a visualiser, Mr. Keith Alexander Lee, the applicant, made the following main points:

- (a) the reasons given by the RNTPC for rejecting his application were wrong, flawed and misconceived mainly due to the misinterpretation of facts by PlanD in assessing the application against the 'Interim Criteria for Consideration of Application for NTEH/Small House in New Territories' (Interim Criteria);

Land available for Small House development

- (b) in respect of point (a) of the Interim Criteria, the application site fell entirely within the 'VE' of Sheung Wo Hang Village and there was a general shortage of land within the "V" zone to meet the villagers' demand for Small House development;
- (c) according to the advice of DLO/N, LandsD, as stated in paragraph 7.3 of the TPB Paper, the outstanding Small House applications in Sheung Wo Hang Village for 2003 and 2012 were 16 and 34 respectively. The figures showed that no Small House application had been approved in Sheung Wo Hang Village during the past 10 years. This was because there was no land available within the "V" zone for Small House development;
- (d) the demand for land for Small House development in Sheung Wo Hang Village in the past years had far exceeded the available supply. It was noted that there was only a small difference between the 10-year Small House demand forecast of 30 in 2003 and the outstanding Small House applications of 34 in 2012. Given the accuracy of past trend figures,

the 10-year Small House demand forecast of 1,500 in 2012 would also be a reliable figure;

- (e) PlanD's estimation on the land available within the "V" zone for Small House development had not taken in account the 'fung shui' implications on the availability of private land in Sheung Wo Hang Village for development;
- (f) according to a chapter titled 'Sheung Wo Hang Village, Hong Kong – A Village Shaped by Fengshui' written by Dr. Patrick Hase and Mr. Lee Man Yip in a book, the Sheung Wo Hang Village was found in 1688 and had been developed and evolved based on 'fung shui' principles. However, in assessing the application, PlanD had not taken into consideration the 'fung shui' factor in estimating the land available for Small House development. Most of the land identified by PlanD as suitable for Small House development could not be built upon for 'fung shui' reasons. This was well documented in the quoted academic publication;
- (g) as recorded in the minutes of the RNTPC meeting, an officer of PlanD admitted that she had no information on any 'fung shui' woodland in the vicinity of the application site. However, it should be noted that the entire Sheung Wo Hang Village was surrounded by 'fung shui' woodlands;

Undesirable precedent

- (h) the application site was the only available site for Small House development in Sheung Wo Hang Village on 'fung shui' consideration. No other piece of land was available for the applicant's Small House development;
- (i) approval of the application would not open a floodgate for other similar applications since each application had to be considered on its own

merits. The majority of land in Sheung Wo Hang Village was prohibited from Small House development on 'fung shui' ground. Moreover, there was no available land in the village for Small House development because the majority of the land within the "V" zone and the "VE" were owned by tso tongs;

Planning intention

- (j) in respect of point (f) of the Interim Criteria, given the small area of the site (183.7m²) which was less than 0.1% of the entire "AGR" zone (109 hectares), the loss of agricultural land for Small House development would not be significant. Therefore, approval of the subject application would have no implication on the planning intention of the "AGR" zone;
- (k) the footprint of the proposed Small House (about 65m²) was only slightly bigger than that of an on-farm domestic structure (about 37.2m²), which was always permitted within the "AGR" zone;
- (l) the farmland in Sheung Wo Hang Village had been left idle for about 40 years and the planning intention of the existing "AGR" zoning could no longer be fulfilled in reality;

Compatibility

- (m) in respect of point (g) of the Interim Criteria, according to paragraph 5.2.4 of the TPB Paper, CTP/UD&L, PlanD was of the view that the proposed Small House was not incompatible with the rural landscape;

Impacts of the proposed Small House development

- (n) in respect of point (h) of the Interim Criteria, the traffic, environmental and drainage impacts of the proposed Small House development had been adequately addressed and the concerned government departments had no adverse comments on the application;

Public Comments

- (o) in respect of the ground of public objections on potential impact on a stream in Sheung Wo Hang, the applicant site was located quite far away from the stream. Compared to the sewerage impact due to the public latrine which was sitting directly over the stream, the impact of the proposed Small House on the stream would be insignificant; and
- (p) in conclusion, there was no justification for rejecting the application. The rejection of the application would deprive the development right of the applicant.

13. As the presentation from the representative of PlanD and the applicant and his representatives had been completed, the Chairman invited questions from Members.

14. In response to the Chairman's question regarding any pollution on the stream due to the public latrine and the proposed Small House development, Ms. Jacinta Woo, DPO/STN, replied that the Director of Environmental Protection had no objection to the application as the proposed Small House development alone would unlikely cause major pollution. However, DAFC considered that the proposed Small House development might adversely affect the natural habitats in the surrounding area including the natural stream.

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

Deliberation Session

16. A Member said that in the current application, as in many other similar

applications for Small House development outside the “V” zone, land was physically available within the “V” zone but the applicant had difficulty in acquiring land for various reasons. This Member asked whether the difficulty in acquiring land would be a relevant planning consideration in considering such planning applications. While it was generally noted that landownership was not a relevant planning consideration, there might be situations that some local villagers, who originally owned land in the “V” zone, had sold their land and then applied to build their Small Houses outside the “V” zone or even outside the ‘VE’. Under such circumstances, the problem of a lack of land for Small House development within the “V” zone or even the ‘VE’ might arise. The Chairman remarked that the principle for delineating the ‘VE’ in the recognised village, i.e. a 300-foot distance from the last village house built before the introduction of the Small House Policy, to meet Small House demand was well established as an administrative arrangement and the construction of Small Houses was in general restricted to land within the ‘VE’ under the Small House Policy.

17. A Member said that acquiring land within the “V” zone for Small House development was market-driven and there were many reasons behind the difficulty in acquiring land which should not be interpreted as a general shortage of land. It was noted that there was still land available in the “V” zone of Sheung Wo Hang Village for Small House development.

18. In respect of the applicant’s claim that no Small House application had been approved by LandsD in Sheung Wo Hang Village during the past 10 years, Mr. Jeff Y.T. Lam, Deputy Director of Lands (General), said that the number of outstanding Small House applications provided in the TPB Paper was only a snapshot figure for a particular year. Usually, there were applications approved and new applications received over the years. DLO/N, LandsD could check the number of Small House applications in Sheung Wo Hang Village approved since 2003.

19. The Secretary said that although the proposed Small House development was not in line with the planning intention of the “AGR” zone, according to the Interim Criteria, sympathetic consideration might be given to an application if more than 50% of the proposed Small House footprint fell within the ‘VE’ of a recognised village and there was a shortage of land in meeting the demand for Small House development in the “V” zone of

the village. For the current case, land available within the “V” zone for Small House development, after discounting the slopes, streams and roads etc., was about 2.51 hectares (equivalent to about 100 Small House sites), while the outstanding Small House applications and the 10-year demand forecast (from 2011 to 2020) for Sheung Wo Hang Village were 34 and 1,500 respectively. Hence, it appeared that the land available in the “V” zone (i.e. 2.51 hectares) could not fully meet the future Small House demand. However, according to the previous records, the outstanding Small House applications and 10-year Small House demand forecast for the same village provided by DLO/N, LandsD in 2003 were only 16 and 30 respectively. Members noted and considered that the drastic increase in 10-year Small House demand forecast of the village from 30 in 2003 to 1,500 in 2012 was not convincing and unrealistic, bearing in mind that the outstanding Small House applications for the same period remained quite steady from 16 in 2003 to 34 in 2012.

20. Members generally noted that the 10-year Small House demand forecast of Sheung Wo Hang Village was provided by the relevant Indigenous Inhabitant Representative of the village without any supporting evidence and no verification could be carried out by government departments. The figure would be very difficult to verify even against the pedigree of the clan since some of the clan decedents might not be residing in Hong Kong. The drastic increase in the 10-year Small House demand forecast of the village from 30 in 2003 to 1,500 in 2012 was dubious and could not be verified. A Member said that under such circumstances, sympathetic consideration under the Interim Criteria should not be given to the current application. If there was such strong demand for Small House development in the village, the concerned villagers could make an effort to resolve the land supply problem such as by requesting for the carving out some of the tso tong land for Small House development. Other Members agreed.

21. Noting that the applicant had drawn similarities between Small Houses and on-farm domestic structures to justify the application, a Member said that on-farm domestic structures were of different purpose as compared to Small Houses. The fact that on-farm domestic structures were always permitted within the “AGR” zone should not be regarded as a valid ground to justify the proposed Small House development. The Chairman remarked that on-farm domestic structure was for genuine farmers with a maximum roofed-over area of 400 square feet on agricultural land for habitation of the

farmer working on the farm, and was not comparable to the current application concerning a Small House development. In any case, that was not the subject of the current application.

22. A Member said that no new planning grounds had been put forward by the applicant to support the application and ‘fung shui’ reason should not be a material consideration for planning applications.

23. The Chairman concluded that the proposed Small House was not in line with the planning intention of the “AGR” zone; land was still available within the “V” zone of Sheung Wo Hang Village for Small House development and approval of the application would set an undesirable precedent for similar applications within the same “AGR” zone. There was no change in planning circumstances after rejection of the planning application, and the applicant had not put forward any further valid grounds to support a departure from the previous decision of the RNTPC.

24. 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 was not in line with the planning intention of “Agriculture” zone which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong justification to merit a departure from the planning intention;
- (b) land was still available within the “Village Type Development” zone of Sheung Wo Hang Village where land was primarily intended for Small House development. It was considered more appropriate to concentrate the proposed Small House development close to the existing village cluster for orderly development pattern, efficient use of land and provision of infrastructures and services; and

- (c) the approval of the application would set an undesirable precedent for other similar applications in the area. The cumulative impact of which would lead to further loss of agricultural land and landscape impact on the surrounding area and adverse impact on the natural habitats including the nearby stream.

[The meeting was adjourned for a short break of 5 minutes.]

[Mr. Maurice W.M. Lee arrived to join the meeting, Ms. Julia M.K. Lau left the meeting and Mr. Clarence W.C. Leung left the meeting temporarily at this point.]

Agenda Item 8

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments to the Draft Yung Shue O
Development Permission Area Plan No. DPA/NE-YSO/1
(TPB Paper No. 9255)

[The meeting was conducted in English and Cantonese.]

Presentation and Question Session

25. The following representatives from the Planning Department, the representers and commenter were invited to the meeting at this point:

Planning Department (PlanD)

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|-----------------|---|--|
| Ms. Jacinta Woo | - | District Planning Officer/Shu Tin, Tai Po & North (DPO/STN) |
| Mr. David Ng | - | Senior Town Planner/New Plans (STP/NP),
Sha Tin, Tai Po & North |

R4 (Kadoorie Farm & Botanic Garden Corporation (KFBGC))

- | | | |
|--------------------|---|-------------------------------|
| Mr. Tony Nip |) | Representer's representatives |
| Ms. Woo Ming Chuan |) | |

R5 (Designing Hong Kong Ltd.)

Mr. Paul Zimmerman - Representers' representative

R6 (Sai Kung North Rural Committee (SKNRC))

Mr. Mo Ka Hung, Joseph)
Mr. Li Yiu Ban)
Mr. Fong Mo Yau)
Mr. Shing Yau Sang)
Mr. Fong Ming)
Mr. Fong Kwai Man, Alan) Representers' representatives
Mr. Fong Po Law)
Mr. Fong So Tai)
Mr. Fong Yuen Ming)
Ms. Ho Lin Kiu)
Ms. Lee Pui Ching)

R35 and C1 (Trueprofit Company Ltd. represented by Vision Planning Consultants Ltd.)

Mr. Kim Chan) Representers' and Commenters'
Ms. Kerry Lee) representatives
Ms. Bessy Ho)

26. The Chairman extended a welcome. He said that sufficient notice had been given to invite the representers and commenters to attend the hearing, but other than those who were present at the meeting, the rest had either indicated not to attend the hearing or made no reply. As reasonable notice had been given to the representers and commenters, Members agreed to proceed with the hearing in their absence. The Chairman then invited the representatives of PlanD to brief Members on the representations and comments.

27. With the aid of a Powerpoint presentation, Mr. David Ng, STP/NP, made the following main points as detailed in the Paper:

Background

- (a) on 14.7.2011, under the power delegated by the Chief Executive, the Secretary for Development directed the Board, under section 3(1)(b) of the Town Planning Ordinance (the Ordinance), to prepare a draft plan designating Yung Shue O (the Area) as a Development Permission Area (DPA). The preparation of the DPA Plan provided a stopgap measure to effect planning control over the Area;
- (b) owing to the urgency of preparing the DPA Plan, except for about 2.87 hectares of land mainly occupied by the existing indigenous village zoned “Village Type Development” (“V”) on the draft DPA Plan, the remaining majority area (30.85 hectares) had been designated as “Unspecified Use” pending detailed analysis and studies to establish the appropriate land use zonings in the course of preparation of the outline zoning plan (OZP) for the Area;
- (c) on 4.5.2012, the draft Yung Shue O DPA Plan No. DPA/NE-YSO/1 (the DPA Plan), was exhibited for public inspection under section 5 of the Ordinance;
- (d) during the two-month exhibition period, a total of 35 representations were received. On 27.7.2012, the representations were published for three weeks for public comment. A total of two comments were received;
- (e) on 16.11.2012, the Board decided to consider all the representations collectively in one group by the full Board;

The Representations

- (f) the representations were submitted by WWF-Hong Kong (R2), KFBGC (R4), Designing Hong Kong Ltd. (R5), SKNRC (R6), Village Representatives (VRs) of Yung Shue O (R7), 27 individual villagers of Yung Shue O (R8 to R34), Trueprofit Company Ltd. (R35) and other members of the public (R1 and R3);

- (g) there were four supportive representations (R1, R2, R4 and R5), one representation (R3) offering views and proposals, and 30 adverse representations (R6 to R35);

Grounds of Representations

Supporting representations and representation offering views and proposals (R1 to R5)

- (h) the main grounds of the supporting representations and representation offering views and proposals were summarised as follows:
 - (i) R1 did not provide any grounds of representation; and
 - (ii) R2 to R5 supported the planning intention of the DPA Plan mainly on ecological grounds as Yung Shue O was one of the Priority Sites for Enhanced Conservation under the New Nature Conservation Policy (NNCP). There were an Ecologically Important Stream (EIS) in the southern part of the Area and a healthy mangrove community fronting Three Fathoms Cove. The Area supported a high biodiversity and various species of ecological value;

Adverse Representations (R6 to R35)

- (i) the main grounds of the adverse representations were summarised as follows:

Inadequate Area of the "V" zone (R6 to R35)

- (i) the population of Yung Shue O as adopted in the DPA Plan was about 200 persons. This was severely underestimated as the actual population was about 700 persons;

- (ii) the planned “V” zone only occupied about 8.51% of the Area and could not meet the needs of the villagers (R6 to R34) and the Small House demand for the next 10 years (R35);

No provision of burial ground (R8)

- (iii) the DPA Plan had not provided for burial ground. The villagers were worried about the issue of burial of those who had passed away;

Undesirable Schedule of Uses for the “V” zone (R35)

- (iv) uses such as ‘School’, ‘Public Clinic’ and ‘Public Transport Terminus or Station’ should be deleted from Column 2 of the “V” zone as they took up a lot of land. ‘Burial ground’ should also be deleted as it would affect the natural beauty and slope stability;

Inappropriate “Unspecified Use” designation (R35)

- (v) the area outside the “V” zone should not be designated as “Unspecified Use” as its planning intention was unclear and had defeated the purpose of providing planning guidance for Yung Shue O given the area had been identified as one of the twelve Priority Sites for Enhanced Conservation under the NNCP, contained a Site of Archaeological Interest, had high conservation and landscape value, and had a rural setting surrounded by Country Park; and
- (vi) whilst ‘Agricultural Use’ was a Column 1 use within the “Unspecified Use” area, the location and accessibility of the Area could not sustain modern agricultural activities which might not be environmentally friendly and would contradict the planning intention of nature conservation;

[Ms. Bernadette H.H. Linn arrived to join the meeting, and Mr. Jeff Y.T. Lam left the meeting at this point.]

Representers' Proposals

- (j) the following proposals were made by the supportive representations and representation offering views and proposals:

Proposed conservation zonings (R2 to R5)

- (i) Yung Shue O should be protected by conservation zonings, in particular the EIS and its riparian zone and other sensitive habitats, including woodland and stream; (R2)
- (ii) to zone the abandoned farmland and seasonally wet grassland as "Conservation Area" ("CA") in the future to protect such valuable habitats effectively, and the area bordering the mangrove as "Green Belt" ("GB") or "Coastal Protection Area" ("CPA") to protect the mangrove community; (R3)
- (iii) to zone the other areas around the existing village, which were valuable habitats of high sensitivity, as "CA" or "CPA"; (R4)
- (iv) the "Unspecified Use" area should be limited to conservation uses in order to reflect and protect the valuable ecological importance of the site, especially the EIS and its associated coastal regions; (R5)

Incorporating the Area into Country Park (R2 and R4)

- (v) the Yung Shue O area or all ecologically sensitive parts of the area should be incorporated into the Sai Kung West Country Park to better conserve the integrity of the natural settings of the area and to provide the best protection for these valuable species and habitats;

Inappropriate "V" zoning for the tributary of the EIS and the adjoining areas (R4)

- (vi) it was inappropriate to zone the area abutting the tributary draining into the EIS as "V". As the New Territories Exempted Houses

(NTEHs) were close to the stream, the tributary was at risk of flooding and the residents would request the relevant departments to carry out channelisation of the tributary, which would lead to irreversible ecological degradation. The “V” zone should be strictly limited to the area covered by existing village houses;

Amending the Notes of the “Unspecified Use” designation (R2)

(vii) the Remarks of the “Unspecified Use” area concerning the exemption of any diversion of streams, filling of land/pond or excavation of land for public works co-ordinated or implemented by the Government should be amended before the conservation zonings were in place to prevent those sensitive areas from being negatively affected. Planning permission should be required for these works; and

(viii) recent pollution incidents of natural streams occurred in May 2012 at Hang Mei, Tai O and Tsiu Keng, Sheung Shui had revealed that the ‘minor works’ implemented by Government might cause degradation of water quality and the natural settings;

(k) the following proposals were made by the adverse representations:

Expanding the “V” zone (R6 to R34)

(i) the population of Yung Shue O should be re-estimated. In accordance with the demand of the villagers, the “V” zone should be expanded to a reasonable size. R8 proposed two specific areas for “V” zone extension, namely an area to the immediate north-east of the existing village cluster and another area at the south-west fronting Three Fathoms Cove;

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

Planning for burial ground (R6)

(ii) there should be early planning for the burial ground so that the

villagers could make preparations for the burial of those who passed away; and

Proposed “Other Specified Uses” zoning (R35)

- (iii) the area outside the “V” zone should be zoned as “Other Specified Uses” (“OU”) annotated “Comprehensive Development to include Enhanced Conservation” with ‘House’, ‘Flat’, ‘Hotel’, ‘Nature Reserve’ and ‘Theme Park’ in Column 2 in order to protect and safeguard the rural character of Yung Shue O under a private-public participation approach;
- (l) the following proposals put forth by R5 were not directly related to the DPA Plan:
 - (i) the Board should proceed with the preparation of DPA Plans urgently for areas yet to be covered;
 - (ii) the preparation of village layout plans (VLPs) for all village zones and areas where Small House developments were permitted should be resumed immediately. The process of preparing and enforcing detailed layout plans should be determined to ensure a sustainable layout; and
 - (iii) the Board should request the Lands Department (LandsD) to suspend the processing of land grant applications under the NTEH policy to avoid adding more development pressure and increased demand for compensation;

The Comments

- (m) the two comments were submitted by Trueprofit Company Limited (C1) which had also submitted a representation (R35), and Hong Kong Bird Watching Society (C2). C1 objected to R2 to R4 and re-iterated its own proposed “OU” annotated “Comprehensive Development to include

Enhanced Conservation” zoning on the same/similar grounds submitted in its representation (R35). C2 supported the general planning intention of the DPA Plan and the views of R2, R4 and R5, and its views were similar to the grounds/proposals of R2, R4 and R5;

Consultation with Tai Po District Council (TPDC) and SKNRC

- (n) due to the confidential nature of the DPA Plan, there was no public consultation prior to its publication. During the two-month exhibition period, the DPA Plan was presented to TPDC and SKNRC by PlanD on 16.5.2012 and 18.6.2012 respectively. Their major views and comments on the DPA Plan were summarised as follows:
 - (i) TPDC - the DPA Plan had violated the Basic Law as it deprived the development rights of landowners without compensation; the “V” zone should be expanded to tally with the village ‘environs’ (‘VE’); local consultation should be conducted in particular for SKNRC; the development rights of landowners should be respected in tandem with environmental conservation; the DPA Plan might have impacts on the existing burial grounds; and the DPA Plan should be revised and re-submitted for TPDC’s consideration after consultation with SKNRC, the relevant VRs as well as DC members; and
 - (ii) SKNRC - sufficient land should be reserved for Small House development and the Government should provide adequate supporting infrastructure facilities, including transport connection. There was no provision for burial ground for the locals on the DPA Plan;
- (o) subsequently, SKNRC (R6), the VRs of Yung Shue O (R7) and 27 individual villagers of Yung Shue O (R8 to R34) submitted representations opposing the DPA Plan;

Planning Considerations and Assessments

The Representation sites and their surrounding areas

- (p) the Area, covering an area of 33.72 ha, was located at the western end of the Sai Kung Peninsula, with the Sai Kung West Country Park surrounding it on the north, east and south, and Three Fathoms Cove lying to its west. It was accessible mainly by a paved single-lane access road branching off from Sai Sha Road and by the hiking trails leading from Cheung Sheung, Pak Tam Chung and Sham Chung. The access road was a restricted road within the Sai Kung West Country Park;
- (q) within the DPA, there was one recognised village, namely Yung Shue O Village, located at the eastern part of the Area, which was well populated. The central part of the Area consisted of large tracts of fallow agricultural land overgrown with vegetation. At the western-most part of the Area, estuarine, mangroves and marshes were found along the coastal area. An EIS flowing from an east to west direction lied in the southern part of the Area;
- (r) the Area was one of the Priority Sites for Enhanced Conservation under the NNCP. The natural habitats, including the woodland and the streams, provided a good habitat for butterflies and the Area was a recognised butterfly hotspot with over half of the local butterfly species recorded. Protected plant species and vulnerable dragonfly species had also been recorded in the Area; and
- (s) the Area was rural and natural in character comprising mainly woodlands, shrublands, grasslands, wetlands, mangroves, streams, fallow agricultural land, inhabited village and abandoned houses. The Area was of high scenic value and had vehicular access. There was an urgent need to better protect the natural and landscape character of the Area so as to avoid disturbance to the natural environment;

Planning intention

- (t) the general planning intention of the Area was to protect its high conservation and landscape value and the rural settings, which complemented the overall naturalness and the landscape beauty of the surrounding country park. The planning intention was also to reflect the existing recognised village of Yung Shue O;
- (u) except for land zoned “V” on the DPA Plan, the remaining majority area was designated as “Unspecified Use” pending detailed analysis and studies to establish the appropriate land use zonings in the course of preparation of the OZP; and
- (v) the planning intention of the “V” zone was to reflect the existing recognised village. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. 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 infrastructure and services;

Government’s Responses to the Representations and Representers’ Proposals

Supporting representations and representation offering views and proposals (R1 to R5)

- (w) the Government’s responses to the grounds and proposals of the supportive representations and representation offering views and proposals were summarised as follows:
 - (i) the supportive views of R1, R2, R4 and R5 on the DPA Plan were noted;

Ecological value of the Area (R2 to R5)

- (ii) the information to substantiate the ecological value of Yung Shue

O was noted. The Director of Agriculture, Fisheries and Conservation (DAFC) had no particular comment on the ecological information provided by the representers as it was based on previous records. Such information would be taken into account and would serve as reference for the preparation of OZP for the Area;

Proposed conservation zonings (R2 to R5)

- (iii) although conservation zonings for the ecologically sensitive areas were generally supported by DAFC, the detailed zoning boundaries and restrictions had yet to be worked out. The DPA Plan was an interim plan which would be replaced by an OZP within three years. Detailed land use zonings would be worked out during the OZP stage, taking into account relevant assessments/studies on various aspects including ecology, archaeological interest, and traffic, sewerage, landscape and geotechnical aspects;
- (iv) the District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) raised concerns over R4's proposal to zone the areas around the existing village as "CA" or "CPA" since it would reduce land available for village house developments;

Incorporating the Area into Country Park (R2 and R4)

- (v) designation of the Area as Country Park was under the jurisdiction of the Country and Marine Parks Authority governed by the Country Parks Ordinance, which was outside the purview of the Board;
- (vi) DAFC commented that whether a site was suitable for designation as a Country Park should be assessed against the established principles and criteria including conservation value, landscape and aesthetic value, recreation potential, size, proximity to existing Country Parks, land status and existing land use. Advice of the Country and Marine Parks Board would be sought on the

appropriate measure to protect Yung Shue O and other Country Park enclaves as well as whether there would be justifications for incorporating them as part of Country Parks;

Inappropriate “V” zoning for the tributary of EIS and the adjoining areas

(R4)

- (vii) boundaries of the “V” zone were broad-brush and drawn up provisionally around existing village cluster having regard to existing building structures, approved Small House applications and existing site conditions. In general, areas of difficult terrain, dense and mature vegetation, and ecologically sensitive areas were not included;
- (viii) as the tributary passed through the existing village cluster and flowed along a village access road, there would be practical difficulty to exclude the tributary and its adjoining areas from the “V” zone boundaries;
- (ix) although ‘House (NTEH only)’ was always permitted within the “V” zone, it had yet to conform to other relevant legislation, the lease conditions and other government requirements. There were administrative mechanisms to ensure that any adverse impacts on natural streams would be properly addressed;
- (x) the District Lands Officer/Tai Po (DLO/TP), LandsD would consult concerned government departments and impose appropriate conditions during land grant to avoid adverse impacts on the tributary of the EIS. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) indicated that Yung Shue O was not a flooding black spot and DO/TP, HAD was unaware of receiving requests for channelisation of the tributary to reduce flooding risk. DAFC advised that the impact arising from any proposed works within or near natural streams would be subject to

the scope of works and mitigation measures involved;

Amending the Notes of the “Unspecified Use” designation (R2)

- (xi) the Remarks of the “Unspecified Use” area was intended to allow flexibility for public works co-ordinated or implemented by the Government generally necessary for benefits of the public, emergency repairs and/or environmental improvement. It was impractical to require government departments to obtain prior planning approval before undertaking these works;

- (xii) the Chief Engineer/Development (2), Water Supplies Department (CE/D(2), WSD) advised that for daily operation and routine maintenance of water supply network, and in the event of bursts or leaks, emergency repairs would have to be undertaken, which might involve excavation and backfilling of pipe trenches. It would be impractical to require WSD to obtain planning approvals before undertaking daily and emergency operations. CE/MN, DSD supplemented that relevant government departments would be consulted to avoid adverse environmental impacts;

- (xiii) according to HAD, the District Offices (DOs) might carry out small-scale improvement works in rural areas, in which HAD or DO staff were required to carefully consider the environmental implications in accordance with relevant legislation and guidelines as well as the comments of concerned departments; and

- (xiv) as regards the local public works at Hang Mei, Tai O and Tsiu Keng, Sheung Shui quoted by the representer, the works did not involve any permanent diversion of streams, filling of land/pond or excavation of land. Preventive measures were taken to ensure that the impact on the nearby environment would be kept to a minimum;

Adverse representations (R6 to R35)

- (x) the Government's responses to the grounds and proposals of the adverse representations were summarised as follows:

Wrong Estimated Population (R6 and R8 to R34)

- (i) the estimated existing population figure of 200 persons in the Explanatory Statement (ES) of the DPA Plan was based on the then latest population data from the 2006 By-census. According to the latest population data from the 2011 Census, the existing population of the Area was estimated to be about 320 persons. The ES of the DPA Plan would be updated accordingly when opportunity arose;

Inadequate area of the "V" zone (R6 to R35)

- (ii) the boundaries of the "V" zone were drawn up provisionally around existing village cluster having regard to existing building structures, approved Small House applications and existing site conditions;

Expanding the "V" zone (R6 to R34)

- (iii) the Director of Environmental Protection (DEP) commented that the existing sewerage system, i.e. soakaway trenches, had only sufficient capacity for the Small Houses within the "V" zone. There was no surplus capacity for new houses outside the "V" zone and therefore, further expansion of the proposed "V" zone was not supported. To protect the water body in particular the EIS, the area of the proposed "V" zone should be kept minimal as far as possible and wastewater generated from the existing and future Small Houses should be conveyed to the communal sewerage system at Yung Shue O Village for proper treatment and disposal;
- (iv) the two specific areas for "V" zone extension proposed by R8 were generally natural hillslopes covered by natural vegetation, which

fell partly or entirely outside the DPA boundary and encroached upon the Sai Kung West Country Park. Both areas were also mainly outside the 'VE' and partly occupied by the existing permitted burial grounds. Concerned departments, namely DAFC and Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD, did not support the proposal from the country parks point of view and landscape planning perspective respectively. Head of Geotechnical Engineering Office, Civil and Engineering Development Department (H(GEO), CEDD) raised concerns over the potential development below steep slopes;

- (v) notwithstanding the departmental concerns over the proposed "V" zone extension, the boundaries of the "V" zone would be further reviewed and defined during the preparation of OZP to take account of the results of relevant assessments/studies on various aspects, including Small House demand and developments, conservation value, the environmental and infrastructural constraints and landscape character;

No provision of burial ground and Planning for burial ground (R6 and R8)

- (vi) there were existing permitted burial grounds for indigenous villagers located to the immediate north-east of the village cluster, which was partly designated as "Unspecified Use" on the DPA Plan and partly beyond the DPA Plan boundary;
- (vii) according to the covering Notes of the DPA Plan, provision, maintenance or repair of a grave of an indigenous New Territories villager or a locally based fisherman and his family members for which permission had been obtained from the Government were always permitted on land falling within the boundaries of the DPA Plan;

Undesirable Schedule of Uses for the “V” zone (R35)

- (viii) the purpose of Column 2 uses was mainly to provide flexibility for developments which were not incompatible with the planning intention of the relevant zone and there might be a need for such developments in the area to cater for the changing circumstances. Concerned government departments would be consulted on such planning applications and appropriate approval conditions could be imposed by the Board to ensure that no significant adverse impacts on the surrounding areas would be envisaged;

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

- (ix) the Schedule of Uses for the “V” zone of the DPA Plan primarily followed the Master Schedule of Notes to Statutory Plans (MSN). There was no strong justification to merit a departure from the MSN;
- (x) the Secretary of Education and DO/TP, HAD raised concerns over the representer’s proposal to delete ‘School’ and ‘Burial ground’ from Column 2 uses of the “V” zone as there might be a need to provide school or expand the burial ground. H(GEO), CEDD supplemented that excavation/site formation works would be subject to the control of Land (Miscellaneous Provisions) Ordinance and Buildings Ordinance;

Inappropriate “Unspecified Use” designation (R35)

- (xi) owing to the urgency to establish planning control under the DPA Plan, the Area, except land within the “V” zone, had been designated as “Unspecified Use” pending detailed analysis and studies to establish the appropriate land uses in the course of preparation of the OZP;
- (xii) regarding concerns over potential adverse environmental impact arising from permitted agricultural activities, DAFC commented

that modern agriculture could be environmentally friendly. Many non-chemical methods were also widely used to solve pest problem and enrich the soil. In recent years, organic farming had become popular that organic farmers did not use chemical pesticides and fertilizers at all, which was even more environmentally friendly;

- (xiii) the “Unspecified Use” area primarily covered private agricultural lots held under Block Government Lease under which agricultural use was permitted as of right. The inclusion of ‘Agricultural Use’ as a permitted use was appropriate;

Proposed “Other Specified Uses” zoning (R35)

- (xiv) the representer’s proposal to zone the “Unspecified Use” area as “OU” annotated “Comprehensive Development to include Enhanced Conservation” with ‘House’, ‘Flat’, ‘Hotel’, ‘Nature Reserve’ and ‘Theme Park’ in Column 2 was not in line with the general planning intention of the area to protect its high conservation and landscape value, and the rural settings which complemented the overall naturalness and the landscape beauty of the surrounding country park. The proposal was also incompatible with the natural settings and high landscape value of the area;
- (xv) DAFC commented that the Column 2 uses of the “OU” zone as proposed by R35 were of conflicting nature (e.g. ‘hotel’ versus ‘nature reserve’). The Antiquities and Monuments Office, Leisure and Cultural Services Department (AMO, LCSD) had reservation on the proposal as the Yung Shue O Site of Archaeological Interest was likely to be adversely affected by the proposed “OU” zoning. H(GEO), CEDD raised concerns over the potential natural terrain hazards, especially the areas near the DPA boundary, which was below steep natural hillside with long history of instability; and

- (xvi) the “Unspecified Use” area was an interim designation which would be reviewed and detailed zonings for the area would be defined during the preparation of OZP, taking account of the results of relevant assessments/studies on various aspects such as conservation value, the environmental and infrastructural constraints and landscape character;

Proposals not directly related to the DPA Plan

- (y) the Government’s responses to the proposals not directly related to the DPA Plan were summarised as follows:
 - (i) it had been the Government’s long-term target to prepare statutory plans for all areas of Hong Kong except areas covered/to be covered by Country Park. Such task would be undertaken having regard to development pressure, priorities and resources availability;
 - (ii) the preparation of new VLPs for villages covered by existing OZPs depended on a number of factors such as implementation prospect of the VLPs, manpower and priority of works within PlanD. For the new DPA Plans which had just been published/completed such as this DPA Plan, OZPs with specific land use zonings should be prepared before LP could be contemplated. As the boundary of the “V” zone would be further reviewed and defined at the preparation of OZP stage, the need for preparation of new VLP for the “V” zone to be covered by the OZP would then be reviewed as appropriate; and
 - (iii) processing of land grant applications in accordance with the New Territories Small House Policy was under the jurisdiction of LandsD outside the purview of the Board;

- (z) the views of C2 in support of the DPA Plan and the information to substantiate the ecological value of the Area were noted. The adverse views of C1 and the remaining views of C2 were similar to the grounds/proposals of the representations. Responses to these comments had been elaborated in the responses to the relevant grounds and proposals of the representations above;

PlanD's Views

- (aa) the supportive views of Representations No. R1, R2, R4 and R5 on the DPA Plan as well as the information to substantiate the ecological value of the Area provided by Representations No. R2 to R5 were noted; and
- (bb) PlanD did not support Representations No. R2 to R35 and no amendment should be made to the DPA Plan to meet these representations for the reasons given in paragraphs 7.2 and 7.3 of the TPB Paper.

28. The Chairman then invited the representatives of the representers and commenter to elaborate on the representations.

R4 - KFBGC

29. Mr. Tony Nip made the following main points:

- (a) the DPA Plan for Yung Shue O was supported;
- (b) Yung Shue O was identified as one of the twelve Priority Sites for Enhanced Conservation under the NNCP, the ecological value of the area was undisputed;

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

- (c) it was inappropriate to zone the area abutting the tributary of the EIS as

“V”, for the following reasons,

- (i) the tributary was located upstream of the EIS. Any pollution or undesirable runoff into the tributary would have adverse ecological impact on the EIS and the mangroves downstream which had recently been incorporated as part of country park;
 - (ii) as land along the tributary was largely government land, it would be technically feasible to exclude these land from the “V” zone. To compensate for the reduction of land zoned “V”, land with lower ecological value within the “Unspecified Use” area could be zoned “V”;
 - (iii) although the Government claimed that there were existing control mechanisms to protect the tributary from pollution, it would be difficult to ensure satisfactory implementation of the protective measures; and
 - (iv) Small Houses should not be built close to the tributary. Otherwise, in order to minimise the risk of flooding, the villagers might request the relevant departments to carry out channelisation of the tributary. This would lead to irreversible ecological degradation;
- (d) the distribution of streams in the Area was complex. It should be carefully studied and considered by PlanD during the preparation of the OZP. In particular, areas of high conservation value should be covered by conservation zonings and development should only be limited to areas of low ecological value;
- (e) the then Chief Executive in his 2010-11 Policy Address stated that to regulate land use in the vicinity of country park enclaves to forestall human damage, such areas should be designated as country park as appropriate. The incorporation of all ecologically sensitive parts of

Yung Shue O into country park would be in line with this policy objective;

- (f) Yung Shue O had been included in a coastal conservation plan known as ‘Ting Kok Plus’ recently announced by the Environment Bureau. This was a new plan to protect the ecology of the whole Ting Kok area, Tolo Harbour and Tolo Channel in the long term; and
- (g) according to the Convention on Biological Diversity of which the HKSAR was a signatory, the HKSAR Government had the responsibility to implement practices for the conservation and sustainable use of biodiversity.

R5 – Designing Hong Kong Ltd.

30. Mr. Paul Zimmerman made the following main points:

- (a) the DPA Plan for Yung Shue O was supported since the area was one of the twelve Priority Sites for Enhanced Conservation under the NNCP. It was also a country park enclave and the Government had the responsibility to protect its landscape and ecology. The Yung Shue O area also fell within the ‘Ting Kok Plus’ programme, the objective of which was to ensure that the entire Tolo Harbour area could be developed in a sustainable manner providing social, ecological, recreational and landscape resources for the community;
- (b) he shared the views of R4 in that there should be further protection of the stream currently zoned “V” on the DPA Plan given that it was a tributary of an EIS. Noting that there was some private land along the tributary which might be available for Small House development, a detailed VLP should be prepared by PlanD to guide future development within the “V” zone to avoid possible pollution of the tributary. VLPs should be prepared prior to the designation of broad land use zoning on the OZP so that the ecological value of the area could be recognised and protected under the OZP;

- (c) he shared the views of R2 in that planning permission should be required for public works co-ordinated or implemented by the Government. He said that R5 regularly received reports on destruction of natural resources in other areas zoned “V”, “GB” and “CA” caused by government contractors of public works such as the construction of pavilions and footpaths. It was noted these small-scale public works were usually awarded to contractors at the lowest price without paying due consideration to the natural environment. However, as there was no effective mechanism to monitor the performance of these contractors, planning permission should be required for these works undertaken by government contractors; and

- (d) the extension of “V” zone as proposed by R6 to R34 was objected. The development of Small Houses in the absence of detailed VLPs would result in haphazard and chaotic village developments, probably without appropriate supporting infrastructures and facilities. The processing of Small House applications should not be outside the purview of PlanD and the Board as the demand forecast of Small House had been taken into account in the delineation of the “V” zones. The Board should request LandsD to suspend the processing of Small House applications before detailed VLPs were prepared.

R6 – SKNRC

31. Mr. Shing Yau Sang made the following main points:

- (a) he was one of the VRs of Yung Shue O Village;

- (b) the two areas for “V” zone extension proposed by R8 in the north-east and south-west of Yung Shue O were appropriate given that they were only sparsely vegetated and there were large tracts of flat land available for Small House development; and

- (c) he learnt from a Mainland archaeologist, who stayed in Yung Shue O for

three months to study the archaeological value of the area, that no valuable archaeological relics were found in Yung Shue O. The archaeological value of Yung Shue O as claimed by AMO was questionable.

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

32. Mr. Mo Ka Hung, Joseph, made the following main points:

- (a) he was the Vice-chairman of the SKNRC;
- (b) SKNRC objected to the DPA Plan;
- (c) the population of Yung Shue O of about 320 persons as provided in the 2011 Census was underestimated. The actual population was about 1,000 persons;
- (d) the “V” zone was drawn around the existing village clusters and only occupied about 8.5% of the area. It could not meet the Small House demand from the villagers of Yung Shue O;
- (e) the Government should respect the request of the villagers and consider postponing the preparation of statutory plans for country park enclaves;
- (f) development and conservation were equally important and a balance would need to be struck. However, the planning intention of the DPA Plan was biased towards nature conservation without giving due attention to the development opportunity for and the rights of the villagers. The Government had restrained development in Yung Shue O unfairly and unilaterally through the plan-making system and had neglected the sustainability and development needs of the village on the ground of environmental protection;
- (g) it was a wrong impression of the green groups that the villagers would

cause damages to the natural environment. Instead, the villagers would not fell trees and were keen to conserve the environment. As a result, Yung Shue O had a diverse habitats including grassland, scrubland, woodland, streamcourses, wetland and mangroves;

- (h) given the extensive urbanisation in the urban areas such as the Central District and Tsim Sha Tsui, it was not justified for the Government to selectively restrain development in Yung Shue O and deprived the development rights and needs of the villagers; and
- (i) the Board was requested to overrule or abstain from approval of the DPA Plan in order not to rubber stamp the planning proposals of the Government.

33. Mr. Lee Yiu Ban, made the following main points:

- (a) he was an executive member of SKNRC;
- (b) he was authorised by the villagers to express views on the DPA Plan;
- (c) he understood that the chance for the Board to support their objection and counter proposals to the DPA Plan would be slim. However, he hoped that the Board would take account of their views expressed at the representation hearing for the preparation of the OZP;
- (d) the DPA Plan for Yung Shue O had shown some improvement over other DPA Plans in that the area of the “V” zone was larger. Yet, the “V” zone was still inadequate to meet the Small House demand of local villagers;
- (e) the villagers shared the views of the environmentalists in that they supported the protection of sensitive habitats including coastline, mangroves and streams in Yung Shue O;

- (f) the suggested rezoning of the tributary was irrelevant given that there were existing houses along the tributary and building of new Small Houses in areas within 30m from the tributary would not be allowed;
- (g) the area within the “V” zone was inadequate to meet the Small House demand and development needs of the villagers of Yung Shue O. Expansion of the “V” zone was necessary;
- (h) it was necessary to expand the “V” zone to sustain the continual growth of the clans and population increase of villagers. Such expansion should not be perceived by government departments and the general public as special treatments to indigenous villagers. He had prepared some booklets which had been distributed to Members to facilitate their understanding on the issue;
- (i) the proposed village extension area in the south-west of Yung Shue O was appropriate as there was already a village house. However, the area fell within the Sai Kung West Country Park which was outside the purview of the Board;
- (j) the river training works in Wai Ha, Tai Po was an example showing that government works had not been environmentally friendly and could damage the natural environment; and
- (k) it was the common goal of the villagers to strike a balance between conservation and development so as to achieve a more effective planning for Yung Shue O.

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

R35 – Trueprofit Company Limited

34. With the aid of a Powerpoint presentation, Mr. Kim Chan made the following main points:

- (a) R35 objected to the DPA Plan for Yung Shue O;
- (b) over half of the private land in Yung Shue O was owned by R35 and most of its landholding fell within the “Unspecified Use” area on the DPA Plan. Only a minor portion of R35’s landholding fell within the “V” zone;

[Ms. Bonnie J.Y. Chan left the meeting at this point.]

- (c) R35 was confused by the planning content of the DPA Plan. R35 did not understand why it took more than nine months for PlanD to prepare the DPA Plan with only two zonings within the planning scheme boundary. With a comprehensive database comprising detailed information on land status, geographical features and village boundaries, the Government should be able to conduct a more in-depth planning study for Yung Shue O at the DPA Plan stage. It should not merely freeze the use of land in the area for a further three years before a clear planning intention was derived at the OZP stage;
- (d) Yung Shue O had been identified as one of the twelve Priority Sites for Enhanced Conservation under the NNCP, which was formulated “to regulate, protect and manage natural resources that were important for the conservation of biological diversity of Hong Kong in a sustainable manner, taking into account social and economic considerations, for the benefit and enjoyment of the present and future generations of the community”;
- (e) the NNCP also advocated measures such as Management Agreements and Public–Private Partnership to enhance the conservation of Priority Sites for Enhanced Conservation. With agreement by the Government, project proponents would be allowed to develop in the ecologically less vulnerable parts of the area and to take up the responsibility of management and conservation of the more vulnerable parts of the area in the long term. The NNCP aimed at meeting the development needs of

the community while at the same time enhancing and facilitating the conservation of local ecology in an effective and sustainable manner. The Government should have already thoroughly deliberated the NNCP;

- (f) given that Yung Shue O was designated as one of the Priority Sites for Enhanced Conservation in 2004 and a public consultation exercise was conducted in 2011 to enhance the implementation of the NNCP measures, the preferred development approach for Yung Shue O should have been established. However, such development approach had not been reflected in the planning intention of the DPA Plan and the relevant guidelines;
- (g) unless the Government had a plan to resume all private land in the area and to devise a comprehensive agricultural policy, agricultural development alone would not achieve the conservation objectives or be regarded as an appropriate means to enhance the conservation of Yung Shue O;
- (h) it was worth noting that there was a war game centre currently occupying the south-western corner of the “V” zone with war game activities spreading over the Yung Shue O area. It had adverse impacts on the natural environment;

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

- (i) the sustainable development of Yung Shue O had been affected by a number of problems. They included an outdated sewage treatment system relying on soakaway trenches, soil erosion caused by inadequate drainage facilities, public safety problem arising from slope instability, a high proportion of flat land under private ownership, the need to rehabilitate and enhance the deteriorated ecological system and the environmentally unfriendly human and war game activities. Such problems could only be resolved through a holistic, comprehensive and sustainable planning proposal. In the light of this, R35 proposed to

rezone the “Unspecified Use” areas to “OU” annotated “Comprehensive Development to include Enhanced Conservation” with ‘House’, ‘Flat’, ‘Hotel’ (low-rise type), ‘Nature Reserve’ and ‘Theme Park’ as Column 2 uses in order to provide flexibility for the planning proposal; and

- (j) the Board should accept R35’s proposal to reflect the Government’s policy objectives for Yung Shue O on the DPA Plan so that R35 could be given clear planning intent and guidance for preparation of a comprehensive conservation and development proposal for the area.

35. As the representatives of representers and commenter had finished their presentation, the Chairman invited questions from Members.

Estimated Population in Yung Shue O

36. Noting that there was a discrepancy between existing population figures of Yung Shue O provided by PlanD (i.e. 320 persons) and those provided by R6 (i.e. about 1,000 person), some Members asked the reason of this discrepancy and whether there were any means to verify the figures. In response, Ms. Jacinta Woo, DPO/STN, replied that the existing population of 320 persons was based on the latest population data in Census 2011 which should be the number of villagers living in Yung Shue O.

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

37. Mr. Shing Yau Sang, representative of R6, said that at present, there were about 104 three-storey village houses within Yung Shue O Village. Assuming that a house would accommodate nine persons, i.e. three families each with three members, there would be a population of about 900 persons. Moreover, in accordance with the information provided by the Hong Kong Police Force, there were 108 vehicles registered for using the restricted access to Yung Shue O in 2011. Based on the above information, Mr. Shing estimated that the total population of Yung Shue O was about 1,000. Mr. Lee Yiu Ban, representative of R6, said that the population estimates provided by villagers was the estimated number of indigenous villagers eligible for Small House in Yung Shue O including those living in urban area or overseas. Mr. Fong Mo Yau, representative of R6

and another VR of Yung Shue O Village, said that according to the clan pedigree of Fongs, there were about 500 indigenous villagers under the Fong's clan in Yung Shue O. The total population of Yung Shue O was at least 1,000 persons.

38. A Member enquired about the population split between indigenous villagers and non-indigenous villagers living in Yung Shue O. In response, Mr. Shing Yau Sang said that the split was about half and half.

Proposed "V" Zone Extension Areas

39. As regards the proposed "V" zone extension areas by R8, Ms. Jacinta Woo said that they encroached upon the Sai Kung West Country Park and were therefore not supported by PlanD. Mr. Fong Mo Yau said that there was a strong demand for land for Small House development in Yung Shue O and more than 300 indigenous villagers in his clan were eligible for Small House. Mr. Fong said that there were only a few Small House applications approved in Yung Shue O Village during the past years given that the 'VE' of the village was very restrictive. Mr. Fong urged the Board to expand the "V" zone on the DPA Plan to facilitate Small House development by indigenous villagers.

Exclusion of Tributary from "V" Zone

40. A Member asked the representatives of R6 for their views on R4's proposal to exclude the tributary of the EIS from the "V" zone, and as compensation, to incorporate land of lower ecological value around the village into the "V" zone. Mr. Shing Yau Sang said that the tributary remained dry for most of the time unless during rainy seasons. Mr. Shing was of the view that this tributary was not a natural habitat that would perform a significant ecological function.

41. Mr. Lee Yiu Ban said that the tributary was running in parallel to a track and footpath and was no longer an active natural stream. He said that the proposed exclusion of this tributary from the "V" zone would not be necessary, given that the village and the tributary had co-existed for years without causing any problems. Mr. Fong Mo Yau said that Small House development might not necessarily be located along the tributary. The villagers would however be willing to accept compensation areas around the "V" zone for

Small House development if the tributary and adjoining area were excluded from the “V” zone. Mr. Fong also said that the conservation of mangroves and woodlands was well supported by the villagers.

42. Mr. Tony Nip, representative of R4, said that it was common that water levels of natural streams were subject to seasonal fluctuation. Given the relatively high mountains in the surrounding area, the water-flow along the tributary of the EIS would be strong during rainy seasons. Mr. Nip said that apart from ecological considerations, there were safety concerns on those houses built along the tributary as they would be susceptible to flooding. The Board should therefore consider whether such potential problem would be amplified by including the tributary in the “V” zone. Mr. Nip further said that the tributary was still a natural stream such that any pollution or undesirable runoff into it would result in adverse ecological impacts on the EIS and mangroves downstream. Since the planning control in “V” zone was less stringent than that in “GB” and “CA” zones, there might be a possibility that construction works including excavation activities permitted under the “V” zone would cause pollution to the EIS and mangroves downstream.

43. Mr. Tony Nip proposed to exclude the tributary and the adjoining vacant government land from the “V” zone in order to protect the ecologically important areas downstream and to avoid giving an impression to villagers that these areas were available and feasible for Small House developments. Such proposal could also resolve the potential environmental problem. Mr. Nip said that since it would not be practicable to exclude the existing houses along the tributary from the “V” zone, the exact areas which could be excluded from the “V” zone would depend on the actual circumstances and conditions of the areas concerned. Mr. Nip reiterated that land of lower ecological value within the “Unspecified Use” area could be incorporated into the “V” zone to compensate for the reduction of land zoned “V” due to the exclusion of the tributary and its adjoining areas.

[Professor P.P. Ho, Mr. K. K. Ling and Miss Winnie M.W. Wong left the meeting at this point.]

44. A Member asked the representatives of PlanD whether an extension of the “V”

zone to its north to compensate for the exclusion of the tributary and its adjoining areas as proposed by some representers would be acceptable from the planning point of view. In response, Ms. Jacinta Woo said that the boundary of “V” zone within the DPA Plan was drawn up provisionally to primarily reflect the existing village cluster. It would be further reviewed and defined at the preparation of OZP stage, taking into account the relevant assessments/studies and planning considerations including Small House demand of Yung Shue O Village. Since the tributary passed through the village cluster and there were private land and existing houses in the area alongside this tributary, the need and feasibility for excluding the tributary and its adjoining areas from the “V” zone and the extension of the “V” zone to other areas of lower ecological value would be examined and assessed in detail during the preparation of OZP. In response to the question of the Chairman, Ms. Jacinta Woo replied that DAFC did not make any request to exclude the tributary from the “V” zone but such issue would be further reviewed during the preparation of OZP.

45. A Member asked the representatives of PlanD whether there were any other cases that a tributary of an EIS had been included in a “V” zone. In response, Ms. Jacinta Woo said that she had no such information in hand. Mr. Lee Yiu Ban supplemented that it was not uncommon to have streams or tributaries within “V” zones since most traditional villages were developed around streamcourses. He was not aware of any environmental problem in these villages.

Other Issues

46. In response to the questions of a Member, Ms. Jacinta Woo said that according to DAFC, there was no existing Site of Special Scientific Interest in Yung Shue O. During the preparation of the OZP, DAFC would be further consulted on the ecological aspects including the need to designate conservation zonings for ecologically sensitive areas. There were two permitted burial grounds for traditional villagers in Yung Shue O and their locations were shown on Plan H-2 of the TPB Paper. The operation and maintenance of soakaway trenches in the area was under the jurisdiction of DSD. The war game centre, which fell within an area partly zoned “V” and partly designated as “Unspecified Use”, was in existence before the publication of the draft DPA Plan. Under such circumstances, the existing use would be ‘tolerated’. However, any change in use or intensification of use would need to meet the requirements as set out in the DPA Plan.

47. In response to a Member's question on the location of the war game centre in Yung Shue O, Ms. Jacinta Woo said that the war game centre was located within the "Unspecified Use" area at some distance from Yung Shue O Village. There were however some structures including a store within the village serving the war game centre for renting out war game equipment.

48. In response to a Member's question on the background of the existing village house in the proposed "V" zone extension area in the south-west of Yung Shue O, Ms. Jacinta Woo said that the subject three-storey village house, which was located outside the village proper and 'VE' of Yung Shue O Village, was in existence before the publication of the DPA Plan. Mr. Shing Yau Sang said that the subject village house, which was a property of 'Shing Sheung Fuk Tong', was approved by LandsD in the late 1980s and completed in the early 1990s.

49. As Members had no further questions, and the representatives of the representers and commenter had nothing to add, the Chairman said that the hearing procedures had been completed, the Board would deliberate on the representations in their absence and would inform them of the Board's decision in due course. The Chairman thanked the representatives of the representers, commenter and PlanD for attending the hearing. They all left the meeting at this point.

[Mr. Maurice W.M. Lee left the meeting at this point.]

Deliberation Session

50. Members generally noted that the views and concerns expressed by the representers' representatives were of similar nature to those expressed on other DPA Plans in other areas of similar characteristics and planning circumstances. The preparation of the DPA Plan provided a stopgap measure to effect planning control over the Yung Shue O area. Owing to the urgency of preparing the DPA Plan, except for the land zoned "V", the remaining majority area had been designated as "Unspecified Use" pending detailed analysis and studies to establish the appropriate detailed land use zonings in the course of preparation of the OZP for the Area.

51. Regarding the inclusion of the tributary within the “V” zone, the Chairman said that the Agriculture, Fisheries and Conservation Department (AFCD) did not require the exclusion of the tributary from the “V” zone on ecological consideration. Although ‘House (NTEH only)’ was always permitted within the “V” zone, it had to comply with relevant legislation, the lease conditions and other government requirements. Should Small House applications be received in the interim, AFCD’s comments on the ecological impact of the proposed Small House development should be sought by LandsD when processing the applications. Hence, there were administrative mechanisms to ensure that any adverse impacts on the natural stream would be properly addressed.

52. Mr. Eric K.S. Hui, Assistant Director (2), HAD, said that in carrying out minor improvement works in the territory, particularly in ecologically sensitive areas, HAD would carefully consider the environmental implications from project inception to implementation and would require its term consultants and work contractors to comply with the relevant legislation and guidelines as advised by AFCD and the Environmental Protection Department (EPD). The contracts were not necessarily awarded to the lowest bid as indicated by some representers in the meeting. Instead, only qualified contractors on the list approved by HAD or its District Offices, as appropriate, would be eligible for bidding HAD’s minor works projects.

53. A Member supported the DPA Plan and said that during the preparation of the OZP, PlanD should examine the ecological importance of the stream and see if it was necessary to protect it by excluding it from the “V” zone, while the “V” zone could be extended to other areas of lower ecological value so as to meet the aspiration of the green groups and the need of the villagers respectively. The Chairman said that the boundaries of the “V” zone would be reviewed at the OZP preparation stage, taking account of the findings of relevant assessments/studies on various aspects.

54. A Member said that since the DPA Plan was intended to provide a stopgap development control measure over the Yung Shue O area, it might be worthwhile to examine the feasibility and practicality of requiring government departments to obtain prior planning approval before undertaking public works. This would also enhance the image of the Government as well as the fairness of the statutory planning system. The

Chairman said that the public works which were exempted from the requirement of planning approval mainly involved daily operation, routine maintenance and emergency repairs of utilities and services. It would be impractical and not in the public interest to impose requirement of planning approval under the DPA Plan for such works as this might cause unnecessary delay to such essential works and adversely affect the public. Given that such works were small in scale, they would not cause significant environmental impacts. Under the current administrative mechanism, relevant government departments, including AFCD and EPD, would be consulted prior to such works and hence their environmental impacts would be properly addressed and mitigated. For large-scale works with significant environmental implications, they would not be exempted from the requirement of planning approval and/or other relevant legislations even if they were carried out by the Government. Members noted and agreed.

55. The Secretary said that R35 proposed to rezone the “Unspecified Use” area on the DPA Plan to “OU” annotated “Comprehensive Development to include Enhanced Conservation” zone with ‘House’, ‘Flat’, ‘Hotel’, ‘Nature Reserve’ and ‘Theme Park’ as Column 2 uses. If such proposal was accepted by the Board, the planning intention of Yung Shue O as specified in the DPA Plan would be changed, and the potential developer would only be required to demonstrate the technical feasibility of the proposed comprehensive development to the Board. Given that Yung Shue O was one of the twelve Priority Sites for Enhanced Conservation under the NNCP, and that the general planning intention of the Yung Shue O area was to protect its high conservation and landscape value and the rural settings, there was inadequate justification to rezone the “Unspecified Use” area to the “OU” annotated “Comprehensive Development to include Enhanced Conservation” zone as proposed by R35 at this stage. The “Unspecified Use” area on the DPA Plan would be reviewed during the OZP stage, taking into account relevant assessments/studies on various aspects. Members agreed.

56. As regards the zoning of the tributary within Yung Shue O Village, the Secretary said that according to the established plan-making practice, conservation zoning would only be designated for EIS but not its tributary. In the current case, AFCD did not make any request to exclude the tributary from the “V” zone. Protection of the tributary from disturbances that might be caused by Small Houses could depend on the administrative mechanisms under the purview of LandsD. Although there was no strong

objection from the villagers to exclude the tributary and its adjoining areas from the “V” zone, some private land might be affected. In the absence of any detailed studies and expert opinion from DAFC to support such exclusion, it was considered appropriate to retain the tributary within the “V” zone at this stage. Members agreed.

57. The Chairman then summed up by recapitulating the following key considerations of the representations, representers’ proposals and comments and responses by the government:

Ecological value

- (i) the supportive views on the DPA Plan and the information to substantiate the ecological value of Yung Shue O were noted;

Proposed conservation zonings

- (ii) the DPA Plan was an interim plan which would be replaced by an OZP within three years. As a detailed study of the area was yet to be conducted, there was no basis at this stage for the Board to decide on the detailed zonings for conservation purpose for specific areas. Detailed land use zonings would be worked out during the OZP stage, taking into account relevant assessments/studies on various aspects including ecology, archaeological interest, traffic, sewerage, landscape and geotechnical, etc. Conservation zonings would be designated for areas of high ecological value as appropriate;

Incorporating the area into the Country Park

- (iii) it was outside the jurisdiction of the Board to determine whether certain areas were suitable for designation as a country park;

“V” zone boundary

- (iv) the “V” zone boundaries on the DPA Plan were broad-brush and drawn up provisionally around existing village cluster having regard to existing building structures, approved Small House applications and existing site conditions. The boundaries of the “V” zone would be further reviewed and defined during the preparation of OZP to take account of the results

of relevant assessments/studies on various aspects including Small House demand and developments, conservation value, the environmental and infrastructural constraints and landscape character, etc.;

Amending the Notes of the “Unspecified Use” designation

- (v) the Remarks of the “Unspecified Use” area was intended to allow flexibility for public works co-ordinated or implemented by the government generally necessary for benefits of the public, emergency repairs and/or environmental improvement. It was impractical to require government departments to obtain prior planning approval before undertaking these works. There were administrative mechanisms to ensure that the environmental impacts of such works would be properly addressed;

No provision of burial ground

- (vi) there were existing permitted burial grounds for indigenous villagers in Yung Shue O. According to the covering Notes of the DPA Plan, provision, maintenance or repair of a grave of an indigenous villager and his family members for which permission had been obtained from the Government were always permitted on land falling within the boundaries of the DPA Plan. The burial right of the indigenous villagers would not be adversely affected by the DPA Plan;

Processing of Small House Applications

- (vii) processing of land grant applications in accordance with the New Territories Small House Policy was under the jurisdiction of LandsD and outside the purview of the Board; and

Inappropriate “Unspecified Use” designation

- (viii) the “Unspecified Use” area was an interim designation which would be reviewed and detailed zonings for the area would be defined during the preparation of OZP to take account of the results of relevant assessments/studies on various aspects including conservation value, the environmental and infrastructural constraints and landscape character, etc.

In the interim, any development proposal within the “Unspecified Use” area could be submitted to the Board for consideration under section 16 of the Ordinance. Each application would be considered on individual merits.

58. After further deliberation, Members agreed to note the supportive views of Representations No. R1, R2, R4 and R5 on the DPA Plan as well as the information to substantiate the ecological value of the Area provided by Representations No. R2 to R5. Members also agreed not to uphold the remaining parts of Representations No. R2 to R5 and the opposing Representations No. R6 to R35 and that no amendment should be made to the DPA Plan to meet the representations. Members then went through the reasons for not upholding the representations and not to amend the draft DPA Plan to meet the representations as detailed in paragraphs 7.2 and 7.3 of the Paper and agreed that they should be suitably amended.

Representation No. R1

59. After further deliberation, the Board noted the supportive views of R1 on the DPA Plan.

Representations No. R2, R4 and R5

60. After further deliberation, the Board noted the supportive views on the DPA Plan as well as the information to substantiate the ecological value of the Area provided by Representations No. R2, R4 and R5 and decided not to uphold the remaining parts of Representations No. R2, R4 and R5 and not to amend the DPA Plan to meet the proposals made by the representations for the following reasons:

Proposed conservation zonings (R2, R4 and R5)

- (i) the DPA Plan was an interim plan which would be replaced by an Outline Zoning Plan (OZP) within three years. Detailed land use zonings would be worked out during the OZP stage taking into account relevant assessments/studies on various aspects including ecology, archaeological interest, traffic, sewerage, landscape and geotechnical, etc.

Incorporating the area into the Country Park (R2 and R4)

- (ii) designation of Country Park was under the jurisdiction of the Country and Marine Parks Authority governed by the Country Parks Ordinance (Cap. 208) which was outside the purview of the Board;

Inappropriate “V” zoning for the tributary of the Ecologically Important Stream and the adjoining areas (R4)

- (iii) the boundaries of the current “Village Type Development” (“V”) zone were broad-brush and drawn up provisionally around existing village cluster having regard to existing building structures, approved Small House applications and existing site conditions. In general, areas of difficult terrain, dense and mature vegetation, and ecologically sensitive areas, such as Ecologically Important Stream (EIS), were not included. The stream proposed by the representer for exclusion from the “V” zone was not an EIS but a tributary to the EIS at the south. As this tributary passed through the middle part of the existing village cluster and flowed along an access road serving the village, there would be practical difficulty to exclude the tributary and the adjoining areas from the “V” zone boundaries;
- (iv) there were existing administrative mechanisms to ensure that any potential adverse impacts on the natural streams would be properly addressed;

Amending the Notes of the “Unspecified Use” designation (R2 and R5)

- (v) the Remarks of the “Unspecified Use” area was intended to allow flexibility for public works co-ordinated or implemented by the Government, which were generally necessary for provision, maintenance, daily operations and emergency repairs of local facilities, such as sidewalks, footpath, handrail, sign boards, planters, manhole, etc., for the

benefits of the public and/or environmental improvement. It was impractical to require government departments to obtain prior planning approvals before undertaking these works;

Proposals not directly related to the DPA Plan

Preparing DPA plans for areas yet to be covered (R5)

- (vi) it had been the Government's long-term target to prepare statutory plans for all areas of Hong Kong except areas covered/to be covered by Country Park. Such task would be undertaken having regard to development pressure, priorities and resources availability;

Resuming village layout plans preparation (R5)

- (vii) the preparation of new village layout plans (VLPs) for villages covered by existing OZPs would depend on a number of factors such as implementation prospect of the VLPs, manpower and priority of works within PlanD. For the new DPA Plans which had just been completed such as this DPA Plan, OZPs with specific land use zonings should be prepared before LP could be contemplated. As the boundary of the "V" zone would be further reviewed and defined at the preparation of OZP stage, the need for preparation of new VLP for the "V" zone to be covered by the OZP would then be reviewed as appropriate; and

Suspending the processing of land grant applications for Small House development (R5)

- (viii) processing of land grant applications in accordance with the New Territories Small House Policy was under the jurisdiction of Lands Department and was outside the purview of the Board.

Representation No. R3

- 61. After further deliberation, the Board noted the information to substantiate the

ecological value of the Area provided by Representation No. R3 and decided not to uphold the remaining parts of Representation No. R3 for the following reason:

Proposed conservation zonings

- (i) the DPA Plan was an interim plan which would be replaced by an OZP within three years. Detailed land use zonings would be worked out during the OZP stage taking into account relevant assessments/studies on various aspects including ecology, archaeological interest, traffic, sewerage, landscape and geotechnical, etc.

Representations No. R6 to R35

62. After further deliberation, the Board decided not to uphold Representations No. R6 to R35 and not to amend the DPA Plan to meet the proposals made by the representations for the following reasons:

Area for the “Village Type Development” zone (R6 to R35)

- (i) the boundaries of the current “Village Type Development” (“V”) zone were drawn up provisionally around existing village cluster having regard to existing building structures, approved Small House applications and existing site conditions. The DPA Plan was an interim plan which would be replaced by an Outline Zoning Plan (OZP) within three years. The boundaries of the “V” zone would be further reviewed and defined during the preparation of OZP to take account of the results of relevant assessments/studies on various aspects including Small House demand and developments, conservation value, the environmental and infrastructural constraints and landscape character, etc.;

Provision of burial ground (R6 and R8)

- (ii) there were existing permitted burial grounds for indigenous villagers located to the immediate north-east of the village cluster. It was partly designated “Unspecified Use” on the Plan and partly beyond the DPA

Plan. According to the covering Notes of the DPA Plan, provision, maintenance or repair of a grave of an indigenous New Territories villager or a locally based fisherman and his family members for which permission had been obtained from the government were always permitted on land falling within the boundaries of the DPA Plan;

Undesirable Schedule of Uses for the “V” zone (R35)

- (iii) the Schedule of Uses for the “V” zone of the DPA Plan primarily followed the Master Schedule of Notes to Statutory Plans (MSN). There was no strong justification to merit a departure from the MSN;

Inappropriate “Unspecified Use” designation (R35)

- (iv) owing to the urgency to establish planning control under the DPA plan, the Area, except land within the “V” zone, had been designated as “Unspecified Use” pending detailed analysis and studies to establish the appropriate land use zonings in the course of preparation of the OZP;

Proposed “Other Specified Uses” zoning (R35)

- (v) the DPA Plan was an interim plan which would be replaced by an OZP within three years. The “Unspecified Use” area would be reviewed and detailed zonings for the area would be defined during the preparation of OZP to take account of the results of relevant assessments/studies on various aspects including conservation value, the environmental and infrastructural constraints and landscape character, etc.; and
- (vi) the proposed “Other Specified Uses” annotated “Comprehensive Development to include Enhanced Conservation” zone, with ‘House’, ‘Flat’, ‘Hotel’, ‘Nature Reserve’ and ‘Theme Park’ as Column 2 uses, was not in line with the general planning intention of the Area which was to protect its high conservation and landscape value and the rural settings which complemented the overall naturalness and the landscape beauty of

the surrounding country park.

63. The Chairman suggested that Agenda Items 3 to 6 be moved to the afternoon session given that the applicants had indicated that they would not attend the review hearing. Members agreed.

64. The meeting was adjourned for lunch break at 1:10 p.m.

65. The meeting was resumed at 2:30 p.m.

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

Mr. Thomas Chow Chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Mr. Ivan C.S. Fu

Mr. Sunny L.K. Ho

Mr. Lincoln L.H. Huang

Professor Eddie C.M. Hui

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Mr. H.F. Leung

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Mr. Stephen H.B. Yau

Deputy Director of Environment
Environmental Protection Department

Mr. C.W. Tse

Director of Lands

Ms. Bernadette Linn

Tuen Mun and Yuen Long District

Agenda Item 9

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-HT/805

Temporary Organic Farm with Ancillary Education and Activity Centre and Small-scale Barbecue Spot for a Period of 3 Years in the “Coastal Protection Area” Zone,

Lots No. 226, 227, 233, 231 S.B, 581, 230, 222 RP, 228, 224 S.C, 224 S.B (Part), 224 S.D, 223, 222 S.A ss.1, 222 S.B, 222 S.A RP, 221, 219 S.B, 220, 215 S.A, 215 S.B, 214 RP, 214 S.A, 209, 213, 216, 217 and 208 in D.D. 128 and Adjoining Government Land,

Ha Tsuen, Yuen Long

(TPB Paper No. 9256)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

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

Mr. W.S. Lau - District Planning Officer/Tuen Mun and Yuen Long (DPO/TMYL), PlanD

Mr. To Wong - Applicant

Mr. Wong Shing Tong - Applicant’s representative

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

69. With the aid of a Powerpoint presentation, Mr. W.S. Lau, DPO/TMYL, presented the application and covered the following main points as detailed in the Paper:

(a) the applicant sought planning permission to use the application site (the

Site) for temporary organic farm with ancillary education and activity centre and small-scale barbecue spot for a period of three years. The Site fell within an area zoned “Coastal Protection Area” (“CPA”) on the approved Ha Tsuen Outline Zoning Plan (OZP) No. S/YL-HT/10;

- (b) on 7.9.2012, the Rural and New Town Planning Committee (the RNTPC) rejected the application and the reasons were :
- (i) the development was not in line with the planning intention of the “ CPA” zone, which was to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (ii) with an extensive area of over 2.2 hectares and some 25 structures on-site for various uses including education/activity centre and barbecue spot within the “CPA” zone, the applicant failed to demonstrate that the development would not have adverse environmental, drainage and landscape impacts on the surrounding areas; and
 - (iii) the approval of the application would set an undesirable precedent for similar applications within the “CPA” zone, the cumulative effect of which would result in a general degradation of the conservation value of the area;
- (c) on 10.10.2012, the applicant applied for a review of the RNTPC’s decision to reject the application. The applicant had not submitted any written representation in support of the review;

- (d) part of the Site was involved in four previous applications (No. A/YL-HT/37, 290, 310 and 317) for pond filling and agricultural use. Application No. A/YL-HT/37 was approved by the RNTPC with conditions on 19.12.1997 and the remaining three applications were rejected by the RNTPC in 2003 mainly for the reasons that the proposed development was not in line with the planning intention of the “CPA” zone, there was insufficient information to demonstrate that the proposed development would have no adverse drainage and landscape impacts on the surrounding areas, and the approval of the application would set an undesirable precedent;

[Mr. Sunny L.K. Ho returned to join the meeting at this point.]

- (e) two applications involving the Site were received after the rejection of the subject application by the RNTPC on 7.9.2012. The consideration of Application No. A/YL-HT/828 to use part of the Site for temporary place of recreation, sports or culture (fishing ground) and ancillary kiosk for a period of three years was deferred by the RNTPC on 21.12.2012 as requested by the applicant. Another application (No. A/YL-HT/824) for filling of land for agricultural use and excavation of land for provision of surface U-channel covering the southern portion of the Site was scheduled for consideration by the RNTPC on 25.1.2013;
- (f) enforcement action – the Site was involved in two enforcement cases of unauthorised filling of land and suspected hobby farming and barbecue spot. Enforcement Notice (EN) was issued by the Planning Authority to the lot owners on 4.10.2012 and the land filling activity was found discontinued during the last site inspection taken on 12.10.2012 upon the expiry of the EN. Reinstatement Notice was issued on 14.12.2012 requiring the removal of debris and fill materials on the land and to grass the land. A warning letter for suspected hobby farming and barbecue spot was issued on 23.11.2012 requiring the occupier to cease the unauthorized uses;

- (g) the Site, with an area of about 2.2 ha, was accessible from Deep Bay Road via a local track. It was currently partly vacant and partly used for the applied use. The eastern part of the Site was mainly occupied by active agricultural land. The central part was erected with some structures for uses as barbecue spot and hobby farm/education centre, and the north-western part were the existing fish ponds;
- (h) departmental comments - comments from relevant government departments were detailed in paragraph 4 of the Paper. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) considered that the drainage plan submitted by the applicant was too simple and did not provide the essential information such as directions of surface runoff flow within the Site and from adjacent areas, size and capacity of drainage facilities, and topographic conditions. Part of an existing pond within the Site was filled in 1999/2000 and stormwater storage capacity was reduced. No further land or pond filling activity should be allowed without conducting a Drainage Impact Assessment (DIA) and implementing the drainage mitigation measures. The applicant should substantiate with supporting information whether his development would affect the drainage of other existing areas/structures in the vicinity. The Director of Agriculture, Fisheries and Conservation had no in-principle objection to the application provided that the development would not involve any filling or change of use of ponds in the Site. The Director of Environmental Protection (DEP) had reservation on the barbecue spot as it would likely cause environmental nuisances to those residential dwellings in the vicinity of the Site. The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) had reservation on the application from the landscape planning point of view. The removal of a number of mature trees adjacent to the southern boundary had caused disturbance to the existing landscape resources and character. The majority of the facilities and the organic farm were located in the southern boundary where a dense tree group was originally present. In addition, no information regarding the internal road system was submitted to

ascertain its landscape impact. Moreover, the submitted landscape proposal without any tree survey or additional landscaping was unacceptable. The Director of Leisure, and Cultural Services advised that part of the Site fell within the Sha Kong Miu (North) Site of Archaeological Interest and prior consent must be sought from the Antiquities and Monuments Office on any ground excavation work proposed within the boundary of this Site of Archaeological Interest. The District Officer (Yuen Long) advised that the Village Representatives of Sheung Pak Nai and Ha Pak Nai raised strong objection to the application on the ground that the existing Deep Bay Road, which was a major access to their villages, was congested. Other government departments consulted had no adverse comment on or no objection to the application;

- (i) public comments – at the s.16 application stage, there were four objections against the application mainly on grounds of being not in line with the planning intention of the “CPA” zone and the potential adverse environmental, traffic and ecological impacts of the development. At the review application stage, one public comment from the Kadoorie Farm & Botanic Garden Corporation (KFBG) was received. KFBG objected to the application on the grounds of the development was not in line with the planning intention of the “CPA” zone, and would set an undesirable precedent for similar applications. Moreover, KFBG was also concerned that the water quality of Deep Bay could be affected by the sewage generated by the development and the applicant had not provided any information on sewage treatment of the facilities under application; and

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

- (j) PlanD’s view - PlanD did not support the review application based on the planning considerations and assessments set out in paragraph 6 of the Paper, which were summarised below:

- (i) the development was not in line with the planning intention of the “CPA” zone. There was a general presumption against development in this zone, and only developments that were needed to support the conservation of the existing natural landscape or scenic quality of the area or were essential infrastructure projects with overriding public interest might be permitted. The applicant had not demonstrated why the applied use was needed and how it could support the conservation of the existing natural landscape and scenic quality of the area. No strong planning justification had been given in the submission to justify departure from the planning intention, even on a temporary basis;
- (ii) DEP had reservation on the barbecue spot under application due to the potential environmental nuisance generated by the barbecue spot to the residential dwellings in the vicinity of the Site;
- (iii) CE/MN, DSD considered that the submitted drainage plan was too simple as essential information such as directions of surface runoff flow within the Site and from adjacent areas, the size and capacity of drainage facilities, and topographic conditions had not been provided. He was also concerned about the drainage impacts of the development on other existing areas/structures in the vicinity, and the reduced stormwater storage capacity due to filling of part of a pond within the Site in 1999/2000;
- (iv) with an extensive area of over 2.2 ha and some 25 structures within the Site, the scale of the development was large and substantial landscape change in this part of the “CPA” zone was anticipated. CTP/UD&L of PlanD had reservation on the application from the landscape planning perspective and considered the applicant’s landscaping proposal, without any tree survey or additional landscaping, unacceptable;

- (v) there was no similar application for recreational use within the subject “CPA” zone on the Ha Tsuen OZP. Approval of the application would set an undesirable precedent for similar applications within the subject “CPA” zone, the cumulative effect of which would result in a general degradation of the conservation value of the area; and
- (vi) four objections were received at the s.16 stage and one objection was received at the s.17 stage. They mainly objected on the grounds that the development was not in line with the planning intention of the “CPA” zone; the potential adverse environmental, traffic and ecological impacts of the development; the runoff from the development might affect the water quality of the area; and the sewage from the Site might cause pollution to the nearby watercourse and affect the ecology of Deep Bay.

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

71. Mr. Wong Shing Tong, the applicant’s representative, made the following main points:

- (a) the Site was located within an abandoned fishing village without any attractive geological features and physical landform. It was not within an area of high landscape or ecological value;
- (b) in 2004, to avoid the outbreak of ‘Japanese encephalitis’, extensive abandoned farmlands /ponds in the Lau Fau Shan area, including the Site, were filled by the Food and Environmental Hygiene Department without the land owners’ consent. Afterwards, the concerned land owners also received warning letters from the relevant government department reminding them to properly maintain their land to avoid mosquitoes breeding. Otherwise, prosecution action against them might be taken;

- (c) in 2009, the applicant learned from the Yuen Long District Office that the Government was carrying out the consultancy study entitled “Study on the Enhancement of the Lau Fau Shan Rural Township and Surrounding Areas” to realize the tourism and recreational potential of Lau Fau Shan and its surrounding areas. It was also noted that the Site fell within the Focus Study Area C of the study;
- (d) against this background, the applicant decided to develop a hobby farm with an education centre on the Site. It would better utilise the Site which had been abandoned for many years, complement with the future tourism/recreational development in the area, and promote environmental protection education. It could also help the applicant to bring back his childhood memory of living on the farm land;

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

- (e) the information contained in the RNTPC paper was misleading as the agricultural use of the Site was always permitted within the “CPA” zone. The applicant did not apply for filling of land and filling of the two existing ponds on the Site. Moreover, the applied use would not cause adverse drainage impact on the area as the Government was constructing a drainage channel to the north of the Site. Furthermore, given that there were many squatter structures to the north west of the Site which did not have proper drainage and sewerage disposal facilities, the area did not have high ecological value;

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

- (f) the staff in the hobby farm would teach its visitors, including school students and community groups, about farming activities. Through these activities, the youngsters could learn the principle that success had to be pursued by hard work. It could also help to promote healthy lifestyle and the protection and conservation of the environment;

- (g) with the above merits, the applicant sincerely hoped that the Board would give favourable consideration to the application.

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

72. As the presentation from the representatives of the PlanD and the applicant had been completed, the Chairman invited questions from Members.

73. The Chairman enquired about the existing conditions of the Site. In response, Mr. Wong Shing Tong said that the majority of the Site was used for agricultural activities and there were only a few structures in the central portion of the Site. According to his understanding, agricultural use was always permitted within the “CPA” zone. Only the structures on the Site which occupied a small area would require planning permission. Although the Site had an extensive area of 2.2 ha, the development under application was not that extensive. In this regard, the RNTPC had a misunderstanding of the scale of the development.

74. The Chairman asked why the applicant did not take out the area being used for agricultural activities from the application, taking into account that agricultural use was always permitted within the “CPA” zone. Mr. Wong Shing Tong explained that the applicant was a law-abiding person. In order to avoid any future disputes of unauthorised agricultural activities within the Site, he considered it necessary to include the entire development under the current application.

75. A Member asked whether the application would involve pond filling and whether the applicant had any intention to fill the existing ponds on the Site. Mr. Wong Shing Tong replied that the existing ponds would be preserved to continue the fish farming activities and the applicant had no intention to fill the ponds. Referring to Plan R-5 of the Paper, the same Member asked whether the existing bund separating the pond as shown in the photo would be preserved. Mr. Wong said that the existing bund was constructed by another lot owner for the purpose of demarcating the boundary of the lots.

76. Noting the applicant’s claim that agricultural use was always permitted, a Member asked whether PlanD would support the use of organic farm on the Site, taking

into account the comments from concerned government departments. Mr. W.S. Lau, DPO/TMYL said that while agricultural use itself was always permitted within the “CPA” zone, PlanD, in considering whether the application was acceptable, would need to adopt a holistic approach in assessing the potential environmental impact of the development as a whole on the surrounding areas. For the subject application, DEP had reservation on the barbecue spot under application due to its potential environmental nuisance to the nearby residential dwellings. There was also insufficient information in the application to demonstrate that the development would not have adverse drainage impacts on the surrounding areas. While DAFC had no in-principle objection to the application provided that the development would not involve any pond filling or change of use of ponds in the Site, there were local objections to the application mainly on the grounds of not being in line with the planning intention of the “CPA” zone and the potential adverse impacts of the development on the surrounding areas.

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

77. Mr. Wong Shing Tong did not agree that the development would generate adverse impacts on the surrounding areas. He said that the structure within the development which was nearest to the nearby residential dwellings was the education centre, but not the barbecue spot. Moreover, the education centre was separated from the nearest house by a pond at a distance of about 400m. Trees were also planted along the north-western boundary of the Site to minimise its potential adverse noise and landscape impact on the surrounding areas. The patronage of the farm was very low, with only about 10 to 20 visitors during public holidays. In addition, the barbecue spot was small in scale and it was only intended to facilitate family activities of the visitors to the Site. Hence, the development under application would not affect the tranquil environment of the area.

78. With reference to Plan R-2 of the Paper, Mr. W.S. Lau said that there was a pond at the north-western part of the Site separating the development and the residential dwellings to the north-west of the Site by about 40m. In response to the Chairman’s question, Mr. W.S. Lau clarified that the small residential structure in the south-western part of the Site, which was surrounded by the development, was not part of the application site.

79. A Member said that the RNTPC would consider planning applications on the terms submitted by the applicants. In this regard, the applied uses submitted by the applicant under the current application, was temporary organic farm with ancillary education and activity centre and small-scale barbecue spot. Since the applicant argued that the agricultural use on the Site was an always permitted use and did not require planning permission, the applicant might consider submitting a fresh application with the areas of agricultural use taken out from the application. This Member also added that the applicant did not make any submission in the review application to address the concern of the RNTPC.

80. Mr. Wong Shing Tong said that as he only received the Paper yesterday, he did not have sufficient time to respond to the RNTPC's concerns. Nevertheless, as pointed out just now, the ponds on the Site would not be filled up. Furthermore, if the Board approved the application, the applicant would employ professional consultants to prepare the drainage and landscaping proposals as required by the Board.

81. The Chairman remarked that the Board could not approve the application as the applicant failed to submit technical proposals to support the application. In response, Mr. Wong Shing Tong said that the development would not have adverse landscape and drainage impacts on the surrounding areas. While the applicant had provided substantial landscaping within the Site, he would also provide drainage connections between the Site and the drainage channel, which was to the north of the Site and being constructed by the Government. Moreover, the development would not affect other residents nearby as most of the land in the vicinity of the site was owned by the applicant's family/clan.

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

Deliberation Session

83. A Member said that in the review application, the applicant had not submitted any technical proposal to address the concerns of the RNTPC. As such, the review application should not be supported.

84. Another Member concurred that the review application should not be approved. However, this Member enquired about the planning intention of the “CPA” zone and as to why ‘Agricultural Use’ and ‘Barbecue Spot’ were Column 1 uses within the “CPA” zone given that the two uses might not enhance the objective of protecting the coastal area.

85. In response, the Chairman said that the planning intention of the “CPA” zone was to conserve, protect and retain natural coastlines and there was a general presumption against development. Only developments that were needed to support the conservation of the existing natural landscape or scenic quality of the area and were in line with the planning intention might be permitted. For the subject application, as the applicant had failed to demonstrate that the development would not have adverse environmental and drainage impacts on surrounding areas, there was no justification to approve the application.

86. The Secretary supplemented that ‘Agricultural Use’ was included as a Column 1 use of the “CPA” zone so as to respect the right of land owners in using their private land for agricultural activities. According to the Definition of Terms Used in Statutory plans, the ‘Barbecue Spot’ use under Column 1 of the “CPA” zone only referred to the barbecue sites provided by the Government. It excluded barbecue sites which were privately owned and/or commercially operated. Nevertheless, since the “CPA” zone on the OZP was a only a broad-brush zoning within which some areas might be suitable for privately run barbecue sites, the applicants could submit planning applications for such development and they would be considered by the Board on individual merits.

87. In response to the Chairman’s enquiry, the Secretary said that in designating a site for public barbecue spot within a particular area, the concerned government departments would undertake the relevant technical assessments and consult concerned

departments to ensure that such use would not pose adverse environmental, landscape and drainage impacts on the area.

88. The Chairman concluded that as the applicant did not submit any new information nor provide strong justification to merit a departure from the previous decision of the RNTPC, the review application should be rejected. Members agreed.

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

- (a) the development was not in line with the planning intention of the “Coastal Protection Area” (“CPA”) zone, which was to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
- (b) with an extensive area of over 2.2 hectares and some 25 structures on-site for various uses including education/activity centre and barbecue spot within the “CPA” zone, the applicant failed to demonstrate that the development would not have adverse environmental, drainage and landscape impacts on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “CPA” zone, the cumulative effect of which would result in a general degradation of the conservation value of the area.

Agenda Item 10

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-KTN/388

Temporary Open Storage of New and Second-hand Vehicles for Sale (Including Medium Goods Vehicle, Container Tractor and Private Car) with Ancillary Office and Storerooms for a Period of 3 Years in “Village Type Development” Zone, Lot 465 S.B RP (Part) in D.D. 103 and Adjoining Government Land, Ko Po Tsuen, Kam Tin, Yuen Long, New Territories

(TPB Paper No. 9257)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

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

- | | |
|--------------|--|
| Mr. W.S Lau | - District Planning Officer/Tuen Mun & Yuen Long (DPO/TMYL), PlanD |
| Mr. Lee Sung | - Applicant |

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

92. With the aid of a Powerpoint presentation, Mr. W.S. Lau, DPO/TMYL, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission to use the application site (the Site) for temporary open storage of new and second-hand vehicles for sale (including medium goods vehicle, container tractor and private car) with ancillary office and storerooms for a period of three years. The

site was zoned “Village Type Development” (“V”) on the approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/7;

- (b) the Site had an area of 2,175m². Two structures with a total floor area of about 581.4m² and building height ranging from 2.4m to 4.8m would be provided for office, store rooms and shed for storage of vehicles use. A total of eight parking spaces for private cars and 16 parking spaces for container tractors and medium goods vehicles were provided within the Site. The operation hours were between 9 a.m. to 7 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays;
- (c) the Site was paved, fenced off and currently used as storage/parking of vehicles and vehicle hoppers and repairing workshop. It was accessible via a local track branching off Kam Tin Road. The surrounding areas were predominated by residential developments and village houses. To its immediate north was a residential development, namely Yuk Yat Garden Stage III. A Small House construction site and another residential development named Galaxy Villa were located to its further north;
- (d) on 21.9.2012, the Rural and New Town Planning Committee (RNTPC) decided to reject the application and the reasons were:
 - (i) the development was not in line with the planning intention of the “V” zone which was intended for development of Small Houses by indigenous villagers. The development was not compatible with the surrounding land uses which were predominated by existing and proposed residential dwellings/Small Houses. 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 application did not comply with the TPB PG-No. 13E in that there was no exceptional circumstance that warranted sympathetic consideration, and that there were adverse departmental comments

and local objections against the development;

- (iii) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
 - (iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar uses to proliferate into this part of the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area;
- (e) on 11.10.2012, the applicant applied for a review of the RNTPC’s decision to reject the application with a written representation, a layout plan and photos. No technical submission had been submitted by the applicant. On 7.12.2012, the applicant submitted further information to clarify the layout plan and that there would be no storage/parking of container trailer within the Site;
- (f) the justifications submitted by the applicant in support of the review application were summarised in paragraph 3 of the Paper and highlighted as follows:
- (i) the Site was not used for selling of vehicles or other development purpose. Since the development was on a temporary basis and the same use had been approved by the Board, the development would not frustrate the planning intention of the “V” zone or cause adverse impact on the local residents;
 - (ii) the Town Planning Board Guidelines No. 13B was promulgated by the Board in October 2001 after the applicant had rented the Site in 1997 and planning approval was granted on 7.11.1997;

- (iii) the applicant had liaised with some of the residents of Yuk Yat Garden to apply for temporary storage yard at the Site for an expansion of the applicant's business, and the applicant had paved the Site and provided fencing to meet the residents' requirements;
 - (iv) the development would not cause adverse environmental and landscape/visual impacts on the area. The applicant had completed the drainage works and provided noise barrier/fencing (60m in length and 3m in width) to minimize the impact on the nearby residents. The existing noise barrier and trees along the Site would also screen the development from the surrounding areas; and
 - (v) approval of the application would not set a precedent as approval for similar use for the Site had been granted before;
- (g) the Site was the subject of a previous Application (No. A/YL-KTN/40) for intensification of an existing open storage of vehicles and vehicle parts, which was approved with conditions by the RNTPC on 7.11.1997 for a temporary period of 12 months on the considerations that the open storage use was not incompatible with the surrounding works areas for road and drainage projects, and as part of the site would be affected by the "Kam Tin Road Improvement, Stage 1" project to be implemented in 1999;
- (h) there were a total of six similar Applications (No. A/YL-KTN/4, 68, 102, 126, 315 and 334) for various temporary open storage uses within the same "V" zone. Four of the applications (No. A/YL-KTN/68, 102, 126 and 334) for temporary open storage of vehicles (private cars or medium goods vehicles) with/without canteen were approved with conditions by the RNTPC or the Board on review. The applications were approved on the consideration that the developments on a temporary basis would not frustrate the planning intention of the "V" zone; there was no adverse comment from the relevant department and/or no local objection to the

applications; or owners of the Small House adjoining the concerned site had no objection (for A/YL-KTN/334 only). The first three applications (No. A/YL-KTN/68, 102, 126) were approved in 1998 to 2000 prior to the promulgation of the locational assessment criteria of the Town Planning Board Guidelines No. 13B in 2001, and a shorter approval period of 1 year was granted for Application No. A/YL-KTN/334 to monitor the site situation and to allow time for relocation of the development to another suitable location. Two of the applications (No. A/YL-KTN/4 and 315) were rejected by the RNTPC on the grounds that the developments were not in line with the planning intention of the “V” zone and were not compatible with the surrounding land uses; the developments would generate adverse environmental impact; or the development did not comply with TPB PG-No. 13E and there were adverse departmental comments (for A/YL-KTN/315 only);

- (i) departmental comments – the departmental comments on the review application were summarised in paragraph 5 of the Paper. The Director of Environmental Protection (DEP) did not support the application as there were existing residential structures/dwellings adjoining the Site to its immediate north and in the vicinity, and environmental nuisance was expected. The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) advised that the requirements on the submission and implementation of landscape and tree preservation proposal should be included in the planning permission. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) advised that the requirement of submission and implementation of drainage proposal should be incorporated in the planning permission. Other government departments had no adverse comment on or no objection to the planning application;

[Professor Eddie C.M. Hui arrived to join the meeting at this point.]

- (j) public comments - five public comments were received from a resident of Yuk Yat Garden Stage III, two villagers of Ko Po Tsuen and two

members of the public. The commenters objected to or expressed concerns on the review application mainly on the grounds that the development which involved the use of medium goods vehicles would generate adverse impacts on the environment, traffic, air, noise and sewage impacts on the area. It would also affect the security of Yuk Yat Garden. Moreover, the local road was narrow to reversing of vehicles including medium goods vehicles or would cause road safety problem and traffic congestion; and

(k) PlanD's views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper, which were summarised below:

- (i) the planning intention of the “V” zone on the OZP was to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. While temporary uses might be tolerated in the interim, the applicant needed to demonstrate that the use was compatible with the neighbourhood and would not create adverse impacts on the surrounding environment. According to DLO/YL, LandsD, there was no Small House application on the Site. However, there were numerous residential dwellings/developments located near the Site. The development which involved open storage of medium goods vehicles and container tractors was considered not compatible with the existing and proposed residential dwellings/Small Houses in the area, particularly Yuk Yat Garden Stage III which abutted the northern boundary of the site. No strong planning justification had been given in the submission to justify a departure from the planning intention of the “V” zone, even on a temporary basis.

[Mr. Timothy K.W. Ma and Mr. Stephen H.B. Yau left the meeting at this point.]

- (ii) the previous Application No. A/YL-KTN/40 submitted by a different applicant for intensification of an existing open storage of vehicles and vehicle parts had a different site area and boundary as compared to the current application. The application was approved with conditions on 7.11.1997 for a period of 12 months mainly on the consideration that the application site would be affected by road improvement project (i.e. 'Kam Tin Road Improvement, Stage 1') and the applied use was not incompatible with the other two ongoing major infrastructure road and drainage projects in the surrounding areas. Since then, the road and drainage projects had been completed and more village houses were built or would be developed in the vicinity. There was a material change in the planning circumstances that the development was considered not compatible with the existing surrounding land uses which were predominately residential dwellings. In addition, in October 2001, the Board adopted the locational assessment criteria set out in the TPB Guidelines No. 13B to assist the Board to consider applications for open storage and port back-up uses. According to the locational assessment criteria as set out in the latest TPB PG-No. 13E, the Site fell within Category 4 areas where applications would normally be rejected except under exceptional circumstances. In this regard, the development was not in line with the latest TPB PG-No. 13E in that there was no exceptional circumstance that warranted sympathetic consideration, and there were adverse departmental comments and local objection to the application;

- (iii) though the fencing/noise barrier provided by the applicant was set back from the residential dwellings of Yuk Yat Garden Stage III, it completely obstructed the views of the ground floors of the residential dwellings of Yuk Yat Garden Stage III and was visually undesirable. It might also affect natural ventilation and daylight;

- (iv) the drainage works and landscape arrangement had yet to be accepted by the relevant departments. In this connection, the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
- (v) as mentioned above, the previous approval under Application No. A/YL-KTN/40 was approved by the RNTPC based on special considerations. Hence, approval of the subject application would set an undesirable precedent for other similar uses to proliferate into this part of the “V” zone. The cumulative effect of approving such application would result in general degradation of the environment of the area.

93. The Chairman then invited the applicant to elaborate on the review application. Mr. Lee Sung made the following main points:

- (a) since 1997, his company had used the Site for storage of vehicle parts and other miscellaneous items. At that time, the Site was unpaved with unsatisfactory hygienic condition;
- (b) to give way for the construction of the basketball court to the east of the Site, the applicant was required by the Lands Department to relocate and set back the original fencing of the Site. In addition to relocating the fencing of the Site, the applicant had also paved and landscaped the Site in order to improve the general environment and to minimise disturbance to the residential development nearby;
- (c) the development under application would not cause adverse environmental impact as brand new, environmental-friendly vehicles would be stored on the Site and no car repairing or other workshop activities would be carried out thereon. With a view to minimising potential adverse impacts on the residents of Yuk Yat Garden Stage III located to the immediate north of the Site, the applicant had liaised with

some of the residents and had carried out the landscaping works and provided the fencing to meet their requirements;

- (d) the ingress/egress of the Site was located only about 20 ft from the main road. Hence, the traffic generated from the development would not have adverse impact on the local residents; and
- (e) the applicant had completed the paving and drainage works on the site and was willing to provide additional landscaping treatment to further improve the environment.

94. As the presentation from the representative of the PlanD and the applicant had been completed, the Chairman invited questions from Members.

95. In response to the questions of the Chairman, Mr. Lee Sung clarified that the brand new environmental-friendly vehicles to be stored on the Site were vehicles which could meet the qualifying standards for environment-friendly vehicles set at Euro V level as promoted by the Environmental Protection Department. However, the storage of these vehicles would not start until June this year. In the meantime, there would be storage of second-hand vehicles on the Site.

[Ms. Bernadette Linn left the meeting temporarily at this point.]

96. The Chairman enquired whether the future Small Houses on the Site might have similar visual impacts on the adjoining Yuk Yat Garden Stage III, as compared to the existing fencing along the northern boundary of the Site. In response, Mr. W.S. Lau, DPO/TMYL, referred to Drawing R-3 of the Paper and said that the existing 60m long fencing which enclosed the full-length of the adjacent houses was visually undesirable. However, it was anticipated that the layout and disposition of the future Small Houses on the site would be appropriately designed to ensure no unacceptable adverse impacts on air ventilation and visual aspects on the adjacent area.

97. A Member noted that the applicant's company was only established in 2004, although the applicant said that his company had been using the Site for temporary storage

use since 1997. This Member asked the applicant to clarify whether the applicant of the current application was the same applicant which had obtained planning permission from the Board in 1997. In response, Mr. Lee Sung confirmed that they were under the same group of companies.

98. The same Member asked whether the applicant was the land owner of the Site. In response, Mr. Lee Sung said that the Site was owned by the Tso Tong and the applicant was a tenant of the Site. Mr. Lee also clarified that the applicant had obtained the consent of some of the residents of Yuk Yat Garden Stage III in providing the 3m-high fencing on the Site. The applicant had set back the fencing from the northern boundary of the Site and the area between the fencing and the northern boundary had been used by the adjacent residents for private garden purpose.

99. The same Member continued to ask whether the land occupied by the existing Yuk Yat Garden Stage III was also originally belonged to Tso Tong. Mr. Lee Sung said that he had no such information on whether it belonged to Tso Tong. He only knew that the land of the adjacent development belonged to local villagers.

100. As Members had no further question, the Chairman thanked the representative of the PlanD and the applicant for attending the meeting. They all left the meeting at this point.

Deliberation Session

101. A Member said that there was change in the planning circumstances since the previous application (No. A/YL-KTN/40) was approved by the Board in 1997. With the completion of a number of residential developments including Yuk Yat Garden Stage III over the years, the use of the Site for storage of medium goods vehicles and container tractors was incompatible with the surrounding areas which were predominantly residential in character. There were no strong justifications to approve the application. Other Members concurred.

102. The Chairman concluded that the development was not in line with the planning intention of the “V” zone. The application site fell within the Category 4 areas

of the Town Planning Guidelines No. 13E and the development did not comply with the said guidelines in that there were no exceptional circumstances which warranted sympathetic consideration, and there were adverse departmental comments and local objections against the development. Members agreed

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

- (a) the development was not in line with the planning intention of the “V” zone which was intended for development of Small Houses by indigenous villagers. The development was not compatible with the surrounding land uses which were predominated by existing and proposed residential dwellings/Small Houses. No strong planning justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis;
- (b) the application did not comply with the TPB PG-No. 13E in that there was no exceptional circumstance that warranted sympathetic consideration, and that there were adverse departmental comments and local objections against the development;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar uses to proliferate into this part of the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

[The meeting was adjourned for a short break of 3 minutes.]

[Ms. Anita W.T. Ma left the meeting at this point.]

Sha Tin, Tai Po and North District

Agenda Item 11

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/382

Proposed Rural Committee/Village Office in “Green Belt” zone,

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

(TPB Paper No. 9259)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

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

Ms. Jacinta Woo	-	District Planning Officer/Shan Tin, Tai Po and North (DPO/STN), PlanD
Mr. Leung Pak Keung	-	Applicant
Mr. Cheung Chee Sun]	Applicant’s Representative
Ms. Lee Suet Lan]	

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

106. With the aid of a Powerpoint presentation, Ms. Jacinta Woo, DPO/STN, presented the review application and covered the following main points as detailed in the Paper:

- (a) the applicant sought planning permission to use the application site (the Site) for a rural committee/village office of Shan Liu Village. The Site fell within an area zoned “Green Belt” (“GB”) on the approved Ting Kok

Outline Zoning Plan (OZP) No. S/NE-TK/17;

- (b) on 16.3.2012, the Rural and New Town Planning Committee (RNTPC) decided to reject the application and the reasons were:
- (i) the proposed development was not in line with the planning intention of the “GB” zoning for the area which was to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;
 - (ii) the application did not comply with the Town Planning Board Guidelines for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the proposed development would cause adverse landscape impacts on the surrounding environment and its approval would set an undesirable precedent for other similar applications in the area. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area; and
 - (iii) the applicant failed to demonstrate that the proposed development located within the water gathering ground (WGG) would not cause adverse impact on the water quality in the area;
- (c) the Site was situated in an area on the upper foothills between Pat Sin Leng Country Park and Ting Kok Village, and surrounded by hills, valleys, woodland, streams and fallow agricultural land covered with grass and trees. The Site was located outside the village ‘environ’ (VE) of Shan Liu Village in close proximity to the edge of the existing woodland to the south and was partly covered with weeds. It fell within the lower indirect WGG, about 30m away from a natural stream in the south and about 80m away from the water intake to the east leading to

Plover Cove Reservoir. The Site was about 15m away from a local track leading to Shan Liu Road off Ting Kok Road;

- (d) there was no previous application at the Site. A similar application (No. A/NE-TK/312) for rural committee/village office submitted by a different applicant within the same “GB” zone was rejected by the RNTPC on 16.7.2010 for the reasons of not being in line with the planning intention of the “GB” zone; not complying with the TPB-PG No. 10 for development within “GB” zone; having adverse landscape and water quality impacts; and setting of undesirable precedent;
- (e) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the Paper and were highlighted as follows:
 - (i) as the proposed village office was to provide a place for gathering and recreation for the villagers, it was in line with the planning intention of the “GB” zone. ‘Village office’ was a Column 2 use of the “GB” zone and the Board could grant planning permission subject to approval conditions;
 - (ii) the applicant had prepared a landscape proposal which would not only mitigate the potential landscape impacts of the proposed village office, but also could improve the landscape of the surrounding environment;
 - (iii) since every village could apply to the Lands Department (LandsD) for one village office only, approval of the subject application would not bring about any accumulative impact nor result in a degradation of the surrounding environment and landscape quality of the area;
 - (iv) in order to protect the water quality within the WGG, the applicant had hired qualified professionals to prepare a sewerage connecting

proposal for connection of the proposed village office to the public sewerage system;

- (v) it was noted that the Water Supplies Department (WSD) objected to the application on the grounds that the Site was located within the lower indirect WGG and it might cause adverse impact on the water quality of the area. However, it was questionable why similar applications (No. A/NE-TK/299, 305 and 349) were approved for Small Houses within the lower indirect WGG;
- (vi) the applicant had written to the Planning Department (PlanD) enquiring the location of alternative sites available within the 'VE' for the proposed village office; the reason why the proposed village office should be located within 'VE'; and the boundary of the 'VE'. However, PlanD had yet to respond to the applicant's enquiries. In choosing an appropriate location of the proposed village office, consideration should be given to the feasibility of connecting the village office to the public sewerage system; and
- (vii) the proposed village office was located within the "village boundary" for the Village Representative Elections as defined by the Home Affairs Department. However, the 'VE' was defined by LandsD for Small House applications for indigenous villagers. As two types of village boundaries were different in nature, the location of the proposed village office should not be restricted within the 'VE' only;

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

- (f) the planning intention of the "GB" zone was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;

- (g) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper.
- (i) The Chief Engineer/Development(2), Water Supplies Department (CE/Dev(2), WSD) objected to the application as there was insufficient information to demonstrate that the proposed development located within the lower indirect WGG would not cause adverse impact on the water quality of the area. Pollutants brought about by the activities on the Site would be washed out by surface runoff which would subsequently be collected and then be transferred to Plover Cove Reservoir. The consequence of contamination could be serious as the water intake in Shan Liu Portal (leading to Plover Cove Reservoir) was just about 80m away from the Site;
- (ii) the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objected to the application. The Site was located on the upper Pat Sin Leng foothill overlooking the Plover Cove where hillside woodland, grassland as well as other natural landscape features were present. The approval of the application would set an undesirable precedent to other developments in the area, resulting in further clearance of existing landscape resources and degradation of landscape quality. Moreover, the landscape proposal which proposed landscape planting outside the Site, was considered not acceptable;
- (iii) the Director of Agriculture, Fisheries and Conservation (DAFC) had no strong view against the application should there be no alternative site available in the area. He advised that there were some common native trees found in the vicinity of the site and development of the proposed village office would require felling of a few trees within the “GB” zone;

- (iv) the District Lands Officer/Tai Po, (DLO/TP) LandsD had no objection to the application and advised that the applicant had submitted a Short Term Tenancy (STT) application to erect a village office. While the STT application would be considered upon planning permission, there was no guarantee that such approval would eventually be given;
 - (v) the District Officer/Tai Po, Home Affairs Department (DO/TP, HAD) advised that upon approval of the planning application, the villagers would have to apply to the DLO for land allocation. Policy support would be required from DO/TP if the land was to be granted at nominal rent;
 - (vi) other government departments generally had no adverse comment on the review application;
- (h) public comments – Three public comments were received. Two comments, submitted by the acting Chairman of Ting Kok Village Council and the Chairman and Vice-chairman of village affairs committee of Shan Liu Village, supported the review application on the grounds that there was currently no village office for Shan Liu and local community facilities were not available in the area. The village meetings had to be held in other villages’ office or restaurant, which caused inconvenience to the elderly villagers and induced financial burden to the village. The comment submitted by Kadoorie Farm & Botanic Garden Corporation objected to the application for the reasons that the proposed development was not in line with the planning intention of the “GB” zone; the proposed development would cause adverse impact on the water quality in the area; some suspected unauthorized site formation/excavation work might have conducted in Shan Liu; and the approval of the application would set an undesirable precedent for other similar applications causing cumulative impacts on the “GB” zone;

[Mr. Sunny L.K. Ho returned to join the meeting at this point.]

- (i) PlanD's views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the Paper and summarised below:
- (i) the proposed development was not in line with the planning intention of the “GB” zone. There was a general presumption against development within this zone;
 - (ii) the applicant failed to provide strong justifications for a departure from the RNTPC's previous decision and to address the government departments' concerns on the adverse impact of the proposed development on the landscape and water quality in the area. CTP/UD&L of PlanD and CE/Dev(2) of WSD still maintained their objection to the review application;
 - (iii) since most of the land in Shan Liu Village were still vacant and undeveloped, the applicant failed to demonstrate why these pieces of vacant land, under Government or private ownership, were not available for village office purpose;
 - (iv) a similar application (No. A/NE-TK/312) was rejected by the RNTPC on 16.7.2010 mainly for not being in line with the planning intention of the “GB” zone; not complying with the TPB-PG No. 10 for development within “GB” zone; having adverse landscape and water quality impacts; and setting of undesirable precedent which were the same considerations as in the current application. There was no change in the planning circumstances to warrant a departure of the RNTPC's previous decisions;
 - (v) as regards Applications No. A/NE-TK/299, 305 and 349 mentioned by the applicant in the review application, these were applications for Small House development and were approved with conditions

by the RNTPC on the consideration of compliance with the Interim Criteria for Consideration of Application for New Territories Exempted House/Small House in New Territories. These sites fell within the 'VE' and were about 170m away from the water intake leading to Plover Cove Reservoir. Moreover, the Director of Environmental Protection and Director of Water Supplies had no objection to these applications provided that the proposed Small Houses could be connected to the planned public sewerage system and the occupation of the proposed Small Houses would only take place after the public sewerage system was completed in the area; and

- (vi) the alignment of the planned public trunk sewer shown on Plan R-2 of the Paper was an updated alignment of the public trunk sewer. Its updating was based on the latest information provided by the DSD who advised that the alignment would be subject to change to suit the actual on-site situations. As compared to the previous alignment, the updated trunk sewer alignment was slightly shifted southwards and the proposed village office would be at a closer distance to the planned trunk sewer. Nevertheless, CE/Dev(2) of WSD maintained his previous view of objecting to the review application with a view to protecting precious water resources and avoiding putting WGG at high risk of pollution.

107. The Chairman then invited the applicant and his representatives to elaborate on the review application.

108. Mr. Cheung Chee Sun, the applicant's representative, made the following main points:

- (a) the TPB Paper No. 9259 prepared by the PlanD failed to respond to the applicant's justifications submitted in support of the review application;
- (b) CTP/UD&L, PlanD advised that the landscape proposal submitted by the

applicant, which proposed landscape planting outside the site boundary, was not acceptable. However, given that the maximum site area granted by LandsD for village office development was 65.03m² and the applicant had applied for a site of 65.03m² for the proposed Village Office, any landscaping works could only be provided outside the application site boundary. Nevertheless, if LandsD could grant a larger site for the village office development, the applicant was willing to provide landscaping treatment within the Site in order to meet CTP/UD&L's requirement;

- (c) it was stated in paragraph 7.5 of the Paper that the applicant failed to demonstrate why most of the land in Shan Liu, which were still vacant and undeveloped, were not available for village office purpose. The applicant would like to clarify that unlike other villages in the New Territories, DSD only proposed to construct a trunk sewer for Shan Liu Village and there was no connecting sewers planned by DSD. Hence, the applicant was required to obtain the consent of relevant land owners in order to implement the necessary sewerage connection to the planned trunk sewer. In this regard, as the relevant land owners would not be willing to give consent to allow the sewerage connection to the planned trunk sewer, no suitable land was available within Shan Liu Village for the proposed village office. Moreover, although the applicant had written several times to PlanD enquiring the location of alternative sites available within the 'VE' for the proposed village office, PlanD had yet to respond to the applicant's enquiry. It therefore revealed that PlanD's claim about the availability of suitable land within the 'VE' of Shan Liu Village for the construction of village office was unfounded;
- (d) while the applicant had hired professionals to prepare a sewerage connection proposal for the proposed village office in order to minimise adverse impact on the environment, WSD had unreasonably maintained his previous objection to the review application without providing any specific comments on the sewerage connection proposal. WSD should clearly point out the deficiencies in the applicant's proposal and to

advise on the necessary improvement;

- (e) the alignment of the proposed trunk sewer to be constructed by DSD, as shown on the RNTPC paper, was outdated. Based on the old alignment of the planned trunk sewer to be constructed along the north-east of Shan Liu Road, DEP was misled by PlanD to advise that the proposed village office development might not be able to connect to the planned trunk sewer due to the low topography of the Site. According to the latest alignment, the planned trunk sewer had been realigned to the southwest of Shan Liu Road at a level of about 2.5m lower than the old alignment. This would facilitate easy connection between the proposed village office and the planned trunk sewer;
- (f) PlanD was erred to assess the application of village office by making reference to the boundary of the 'VE', which was defined by LandsD in processing Small House applications for Indigenous Villagers. As LandsD, in granting the STT for village office, would require the village office to be opened for use by both indigenous villagers and residents, it was therefore reasonable and appropriate to locate the proposed village office within the "village boundary" for the Village Representative Elections as defined by the Home Affairs Department (Plan No. 2002/P/TP-49 dated April 2010). According to the plan, the Site was located within the said "village boundary". However, PlanD did not provide any responses to this justification provided by the applicant;
- (g) the rejection reason of setting undesirable precedent was not applicable to the current application for village office development since every village could apply to LandsD for one village office only. Approval of the subject application would not bring about any accumulative impact nor result in a degradation of the surrounding environment and landscape quality of the area;
- (h) as indicated in the photos shown to Members at the meeting, there was a communal storage tank for irrigation and a paved sunning ground on the

Site. These facilities had been in existence for more than 40 years prior to the gazetting of the first statutory plan for the area. The current application which involved the demolition of the disused storage tank and sunning ground for a proposed village office would not cause any adverse impact on the surrounding environment and the approval of the application would not bring any environmental degradation to the area; and

- (i) WSD's concern about the adverse impact on water quality of the WGG caused by the proposed village office could be appropriately addressed through the STT application administered by LandsD. LandsD had the discretion to terminate or not to renew the STT application upon the advice of concerned departments e.g. WSD. Hence, there was effective mechanism for the Government to exercise proper control to ensure the water quality of the WWG.

109. Mr. Leung Pak Keung, the applicant, then made the following main points:

- (a) the Site and its surrounding areas were frequently used for dog walking. The dog droppings and urine left on the Site would cause more contamination to the water quality of the area as compared to the proposed village office. Moreover, the debris/pollutants trapped by the gate of the water tunnel which had not been cleaned by WSD for a long time would equally cause adverse impact on the water quality. The applicant could not understand why the village office, which was mainly for holding meetings and organising some gatherings, would adversely affect the water quality of the area;
- (b) the villagers of Shan Liu Village were conscientious in preserving a quality living environment of the village. In order not to adversely affect the environment, they accepted that their Small House developments could only be constructed after the completion of the planned trunk sewer in Shan Liu. If the Government considered that no developments should be allowed in this area as they would have adverse

impact on the water quality of the area, the Government should consider resuming all the private land in this area. The Government had done this before when it constructed the Plover Cove Reservoir and High Island Reservoir. The villagers whose land were affected by the reservoir projects were compensated and relocated somewhere else by the Government; and

- (c) as more indigenous villagers who had migrated overseas had started to return to Hong Kong and wished to stay in Shan Liu Village, there was a need for a village office for meetings and organising social activities. The applicant sincerely hoped that sympathetic consideration could be given to the application.

110. As the presentation from the representative of the PlanD, the applicant and his representative had been completed, the Chairman invited questions from Members.

111. In response to the Chairman's question as to whether the storage tank and sunning ground located within the Site were no longer in use, Mr. Cheung Chee Sun replied that these facilities had been disused for a long time. This was because the local villagers were forced to desert the Shan Liu Village as there was no longer water supply to the village upon the construction of the Plover Cove Reservoir.

112. In response to the Chairman's enquiry, Ms. Jacinta Woo, DPO/STN, said that currently no house was found within the "V" zone of Shan Liu Village mainly due to the unavailability of public sewerage system for the area. Although several Small House applications had been approved by the Board, the construction of these Small Houses could not commence prior to completion of the sewerage network scheduled for 2013.

113. Ms. Jacinta Woo continued to brief Members that PlanD had recently undertaken a land use review of the "V" zone of Shan Liu Village and recommended to extend the "V" zone boundary of Shan Liu to meet the increasing Small House demand for the village. On 7.12.2012, the RNTPC considered the land use review and agreed to the PlanD's rezoning proposals. Moreover, the RNTPC also agreed that the rezoning proposals would be submitted to the Tai Po District Council and the Tai Po Rural

Committee for consultation prior to submission of the proposed amendments to the OZP to the RNTPC for consideration. Ms. Woo also pointed out that there would be vacant government land as well as private land, within the proposed extension area of the “V” zone for the proposed village office development.

114. A Member enquired about the alignment of the planned trunk sewer, the boundary of the proposed “V” zone extension for Shan Liu and the reason why some site formation works were carried out in the vicinity of the Site. In response, Ms. Jacinta Woo said that the alignment of the planned trunk sewer as shown on Plan R-2 of the Paper was an updated alignment. Its updating was based on the latest information provided by the DSD who advised that the alignment would be subject to change to suit the actual on-site situation after construction commenced. As compared with the previous alignment, the planned trunk sewer was slightly shifted southwards by about 2m and was closer to the proposed village office. Nevertheless, WSD maintained his previous objection to the application as his main concern was on the surface run-off of the village office which might contaminate the nearby water intake leading to Plover Cove Reservoir. Ms. Woo said that the boundary of the proposed “V” zone extension, which was agreed in-principle by the RNTPC, was shown on Plan R-2 of the Paper in the form of pecked lines with an annotation of ‘proposed “V” zone’. She then went on to explain that the site formation works, as revealed in the aerial photo in Plan R-3 of the Paper, was the subject of planning enforcement against unauthorised site formation works. The unauthorised site formation works had been discontinued upon the enforcement action undertaken by the Planning Authority. The site formation works were not related to the sewerage project along Shan Liu Road currently undertaken by the Government.

115. The same Member asked the applicant as to whether they had any information on the number of registered voters for the election of Village Representative for Shan Liu. Mr. Cheung Chee Sun said that he did not have such information in hand.

116. Another Member said that based on a rough estimate, the Site was located at a respective distance of about 175m, 135m and 90m from the boundary of the existing “V” zone, the proposed extended “V” zone and the ‘VE’ of Shan Liu Village, and was far away from the future village clusters. This Member asked the applicant as to why a site within the “V” zone or the proposed extended ‘V’ zone or ‘VE’ was not chosen for the

development of the proposed village office.

117. Mr. Cheung Chee Sun said that he did not know about PlanD's proposal of extending the "V" zone boundary for Shan Liu Village until he received the Paper on the review application. Hence, he did not have information in hand on whether there was any suitable land within the proposed extended "V" zone for the proposed village office. However, he anticipated that within the proposed extended "V" zone, the same problem of securing the consent of relevant land owners in using their land for the construction of sewage connection to the planned trunk sewer would still persist. Mr. Cheung said that he was not convinced by PlanD's argument that the proposed village office should be located within the 'VE' boundary which was delineated by LandsD for Small House development by Indigenous Villagers. As the proposed village office was required by LandsD to be opened for use by both Indigenous Villagers and residents, the Site which was located within the boundary of "village boundary" for the Village Representative election and surrounded by the private land owned by villagers of Shan Liu Village was considered appropriate.

118. The same Member referred to Plan R-2 of the Paper and asked the applicant as to why the large stretch of land surrounding the Tsz Tong, which was not yet developed and close to the planned trunk sewer, was not considered for the village office development. Mr. Cheung Chee Sun replied that land surrounding the Tsz Tong was under private ownership and there would be practical difficulties to obtain the consent of these land owners for the construction of sewage connection to the planned trunk sewer.

119. In response to the Chairman's query, Mr. Cheung Chee Sun said that when the villagers developed their Small Houses within the proposed extended "V" zone, they would encounter the same problem regarding the connection to the planned public trunk sewer.

120. Another Member was doubtful on why the local villagers could not cooperate with one another in constructing a comprehensive local sewage connection network to the planned trunk sewer in Shan Liu Village for Small House development. In response, Mr Cheung Chee Sun said that the property rights and interests of the private land owners should be respected and it was difficult to achieve such co-operation among villagers.

121. A Member asked whether the proposed village office was supported by local villagers. In response, Mr. Cheung Chee Sun said that the proposed village office on the Site was widely supported by the villagers as it was on a piece of government and would not affect any private land. If the proposed village office was to be developed within the “V” zone or ‘VE’, the alignment of the sewerage connection to the planned trunk sewer would need to be worked out carefully and the consent of the concerned land owners was required.

122. In response to a Member’s questions on the land ownership of the Tsz Tong within the “V” zone and the functional difference between the Tsz Tong and village office, Mr. Leung Pak Keung, said that the land currently occupied by the Tsz Tong was owned by Leung Fuk Yuen Tong (梁福元堂). While the Shan Liu Village was inhabited by the descendants of a few clans, the said Tsz Tong was only used by the Leung clan to worship their ancestors. Mr. Cheung Chee Sun supplemented that the Tsz Tong was privately owned, and a village office was a community facility which served as a meeting place as well as a venue for social and recreational activities to foster the sense of belongings to the village.

123. The same Member enquired about the percentage of land owned by Leung Fuk Yuen Tong within the “V” zone and the percentage of population within the Shan Liu Village which belonged to the Leung Fuk Yuen Tong. Mr. Cheung Chee Sun replied that he did not have such information in hand.

124. A Member enquired whether all the land in the immediate vicinity of the planned trunk sewer was private land. With the aid of a plan showing the land status of land in Shan Liu Village, Ms. Jacinta Woo said that while most of the land within the existing and the proposed extended “V” zone was under private ownership, some government land was still available in the vicinity of the planned trunk sewer.

125. Ms Bernadette Linn, D of Lands, enquired whether WSD had provided any specific comments on the necessary mitigation measures to address his concern on potential water pollution generated by the proposed village office. Ms. Jacinta Woo said that WSD would assess each application based on its individual merits. Under normal

circumstances, favourable consideration would not be given to any development within the lower indirect WGG as the consequence of contamination within this area could be serious. For the subject application, WSD had adopted a stringent approach as the Site was located just about 80m away from the water intake in Shan Liu Portal which would lead to the Plover Cove Reservoir. It was considered more appropriate for the applicant to submit technical proposals or recommend mitigation measures to address WSD's concern on water quality.

126. As Members had no further question, the Chairman thanked the representative of PlanD, the applicant and the applicant's representatives for attending the meeting. They all left the meeting at this point.

Deliberation Session

127. The Chairman considered the applicant's argument that the village office could not be developed within the "V" zone or 'VE' due to the difficulty to obtain the relevant owners' consent for the construction of the necessary sewerage connection to the planned trunk sewer was unjustified. He noted from the land status plan presented by DPO/STN that government land was still available within the existing and the proposed extended "V" zone for the construction of village office and its associated sewerage connection to the planned trunk sewer.

128. Another Member also agreed that the application should not be supported on the understanding that most of the land in Shan Liu Village was unused and uninhabited at the moment. There was no strong justification for a village office and to have it developed within the "GB" zone.

129. The Secretary supplemented that although no houses were found in the Shan Liu Village at present, a few Small House applications had been approved by the Board. The construction of these approved Small Houses could only commence after the completion of the planned trunk sewer by the Government.

130. The Chairman concluded that the proposed development was not in line with the planning intention of the "GB" zone and there was a general presumption against

development within this zone. Besides, the applicant failed to demonstrate that the proposed development located within the lower indirect WGG would not cause adverse impact on the water quality in the area. In this regard, the application should not be supported. Members agreed.

131. In response to a Member's question on the background of the land use review of the "V" zone of Shan Liu Village (the Review) carried out by PlanD, the Secretary briefed Members that there was a long history in the review of the "V" zone for Shan Liu Village. PlanD submitted two proposals to enlarge the "V" zone of Shan Liu to the RNTPC in 1999 and 2004. However, the first proposal was not supported by concerned departments on water quality concern since Shan Liu was within the WGGs and there were no existing and planned sewers serving the area. The second proposal, though agreed in principle by the RNTPC, was not accepted by the Indigenous Inhabitants Representatives of Shan Liu. With the gazettal of a planned public sewerage system for Shan Liu Village in November 2008, it was opportune to revisit the extension of the "V" zone boundary. PlanD was requested by the Board in 2010 to carry out the Review in view of the shortage of land in the "V" zone in meeting the increasing Small House demand. On 7.12.2012, the RNTPC noted the findings of the Review and agreed in-principle to the rezoning proposals subject to further consultation with the Tai Po District Council and Tai Po Rural Committee.

132. The Secretary further said that according to PlanD's proposals in the Review, the area of the proposed "V" zone was increased from the existing of 0.41 ha to about 1.45 ha, and the boundary was extended up to the demarcation line between the upper/lower indirect WGG as WSD would not accept any "V" zone extension proposal that would encroach onto the lower indirect WGG, which was closer to the water intake point and more vulnerable to the risk of water pollution. Although the proposed "V" zone with an area of about 1.45ha (equivalent to about 58 Small House sites) could not fully meet the 10-year Small House demand forecast of 250 Small Houses, it was sufficient to accommodate the demand arising from the current outstanding applications of 39 Small Houses. An incremental approach was considered appropriate in reserving additional land for Small House development and further review of the "V" zone would be considered in future taking into account the latest circumstances.

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

- (a) the proposed development was not in line with the planning intention of the “Green Belt” zoning for the area which was to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;
- (b) the application did not comply with the Town Planning Board Guidelines for Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance in that the proposed development would cause adverse landscape impacts on the surrounding environment and its approval would set an undesirable precedent for other similar applications in the area. The cumulative impacts of approving such applications would result in a general degradation of the environment and landscape quality of the area; and
- (c) the applicant failed to demonstrate that the proposed development located within the water gathering ground would not cause adverse impact on the water quality in the area.

Agenda Items 3 to 6

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/NE-TK/383

Proposed House (New Territories Exempted House - Small House) in “Green Belt” zone,
Taxlord Lot 215 S.B in D.D. 26, Ha Tei Ha, Tai Po
(TPB Paper No. 9260)

Review of Application No. A/NE-TK/384

Proposed House (New Territories Exempted House - Small House) in “Green Belt” zone,
Taxlord Lot 215 S.C in D.D. 26, Ha Tei Ha, Tai Po
(TPB Paper No. 9260)

Review of Application No. A/NE-TK/385

Proposed House (New Territories Exempted House - Small House) in “Green Belt” zone,
Taxlord Lot 215 S.D in D.D. 26, Ha Tei Ha, Tai Po
(TPB Paper No. 9260)

Review of Application No. A/NE-TK/386

Proposed House (New Territories Exempted House - Small House) in “Green Belt” and
“Village Type Development” zones, Taxlord Lot 215 S.F in D.D. 26, Ha Tei Ha, Tai Po
(TPB Paper No. 9260)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

134. The Chairman informed the meeting that the applicants had indicated that they would not attend the review hearing. The following representative of the Planning Department (PlanD) was invited to the meeting at this point:

Ms. Jacinta Woo - District Planning Officer/Shu Tin, Tai Po & North
(DPO/STN), PlanD

135. The Chairman extended a welcome and then invited DPO/STN to brief Members on the review applications.

136. With the aid of a Powerpoint presentation, Ms. Jacinto Woo, DPO/STN, presented the review applications and covered the following main points as detailed in the Paper:

- (a) the four applicants sought planning permission to build a house (New Territories Exempted House (NTEH) - Small House) on each of the application sites. The application sites for Applications No. A/NE-TK/383, 384 and 385 fell entirely within “Green Belt” (“GB”) zone on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/17 and the draft Tai Po OZP No. S/TP/23, and the application site for Application No. A/NE-TK/386 fell partly within “Village Type Development” (“V”) (41%) and “GB” zones on the draft Tai Po OZP and partly within the “GB” zone on the approved Ting Kok OZP;

- (b) on 16.3.2012, the Rural and New Town Planning Committee (RNTPC) decided to reject the four applications and the reasons were:
 - (i) the proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;

 - (ii) the application did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories in that the proposed development would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas. There was no information in the submission to address the landscape, drainage and geotechnical concerns;

 - (iii) the application did not comply with the Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the proposed development would affect the existing natural landscape and adversely affect drainage or aggravate flooding in the area; and

- (iv) the approval of the application would set an undesirable precedent for other similar applications in the area. The cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape quality of the area;
- (c) the application sites fell within the village 'environ' ('VE') of Ha Tei Ha Village and were not served by any vehicular access. They were accessible by a footpath at about +3.0mPD which traversed the application sites, off Tung Tsz Road. The application sites were situated on and at the toe of steep natural hillsides overgrown with trees and shrubs. The natural hillside was at about 30 degrees gradient with the toe level at about +2.3mPD. Some existing village houses were found to the south and north of the application sites at ground level ranging from +4.7mPD to +5.3mPD, and the fallow agricultural land to the immediate east was at about +2.3mPD to +3.0mPD;
- (d) the application sites were located within the flood fringe and subject to overland flow and inundation during heavy rainfall. To the west was dense woodland, to the east was freshwater marsh areas, and to the further east was the Shuen Wan Marsh which was zoned "Conservation Area" ("CA") on the approved Ting Kok OZP;
- (e) there was no previous application for the application sites. There were two similar applications (No. A/TP/269 and 487) for Small House development within the same "GB" zone which were approved with conditions by the RNTPC on 18.5.2001 and 15.4.2011 respectively mainly on consideration that the proposed development met the Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories in that more than 50% of the footprint of the proposed Small House fell within the 'VE' and that there was insufficient land within the "V" zone to satisfy the Small House demand. In addition, the proposed two houses under Application No. A/TP/269 were situated on an Old Schedule House Lot with development right under lease;

- (f) the justifications put forward by the applicants in support of the review applications were summarised in paragraph 3 of the Paper and highlighted as follows:
- (i) as most of the areas in Ha Tei Ha were zoned “GB” and “CA”, there was insufficient land available to build Small Houses for the indigenous villagers;
 - (ii) the applicants submitted the Geotechnical Planning Review Report (GPRR) to address government departments’ concerns. According to the GPRR, the proposed Small Houses were proposed to be built on a raised platform at +7.0mPD supported by retaining walls ranging from 4m to 5.5m high in order to avoid any disturbances to the natural hillsides. Besides, the existing footpath would be relocated to the east outside the site boundaries on Government land and raised by 2m to 2.5m to a level of +4.5mPD to avoid flooding; and
 - (iii) landscape plantings along the sides of the relocated footpath were proposed in the Landscape Impact Assessment Report (LIAR) to minimise adverse impacts on the surrounding areas. No existing vegetation/trees on the hillside outside the application sites would be removed or affected by the proposed development;
- (g) the planning intention of the “V” zone was to reflect existing recognized and other villages, and to provide land considered suitable for village expansion. Land within this zone was primarily intended for development of Small Houses by indigenous villagers. The planning intention of the “GB” zone was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl. There was a general presumption against development within this “GB” zone;

- (h) departmental comments – the departmental comments were summarised in paragraph 5 of the Paper. The Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) advised that the GPRR was insufficient for concluding that the natural terrain would not affect the proposed development. Further study on natural terrain hazard might be necessary. Moreover, the proposed platform level at +7.0mPD for the proposed development, which was about 5m at maximum above the existing ground level, was unusual for NTEH. The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) objected to the applications from landscape planning point of view as approval of the applications would likely encourage similar Small House developments in the “GB” zone, resulting in further vegetation clearance, urban sprawl and degradation of landscape quality of the existing pleasant landscape setting. The landscape proposal submitted by the applicants, which proposed six trees to be planted outside the application site boundaries, was considered not acceptable. Moreover, there was inadequate information to demonstrate that the proposed retaining walls would not induce visual impact on the surroundings. The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) did not support the applications from flood control and prevention point of view as the application sites fell within the flood fringe which was subject to overland flow and inundation during heavy rainfall;
- (i) public comments – three public comments, submitted by Designing Hong Kong Limited, WWF Hong Kong, Kadoorie Farm & Botanic Garden Corporation (KFBG), were received on the four review applications. They objected to the applications mainly on the grounds of being not in line with the planning intention of the “GB” zone; being not in line with the TPB PG-10 for development within “GB” zone; having adverse landscape impacts on the area resulting in degradation of the natural habitats within the “GB” zone; having negative off-site impacts on the ecologically sensitive wetland; and setting of undesirable

precedent for future applications. Another three public comments, submitted by WWF Hong Kong, KFBCG and an individual, on the further information of the review applications were received. Additional grounds of objection were that developments in Ha Tei Ha village should be kept within the “V” zone in the locality and the “GB” zone should be left untouched; approval of the applications would lead to the construction of vehicular access and other facilities causing further damages and adverse impacts on the “GB” zone; and

- (j) PlanD’s views – PlanD did not support the review applications based on the planning considerations and assessments as set out in paragraph 7 of the Paper and summarised below:
 - (i) the proposed development was not in line with the planning intention of the “GB” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;
 - (ii) the GPRR and LIAR submitted by the applicants in the review applications still failed to address the geotechnical and landscape concerns raised by H(GEO) of CEDD and CTP/UD&L of PlanD. H(GEO) of CEDD advised that the content of the GPRR was insufficient for concluding that the natural terrain would not affect the proposed development. Further study on natural terrain hazard might be necessary. Also, the proposed platform level at about 5m above the existing ground level was unusual for NTEH. CTP/UD&L of PlanD maintained his previous views of objecting to the applications from landscape planning point of view and pointed out that there was inadequate information to demonstrate that the proposed retaining wall would not induce visual impact on the surroundings. The proposed landscape plantings located outside the application boundaries was considered unacceptable.

CE/MN of DSD also maintained his previous views that the applications were not supported from flood control and prevention point of view; and

- (iii) the sites of the two similar Applications (No. A/TP/269 and 487) were located on vacant flat land and at a certain distance away from the natural hillsides and the edge of the existing woodland. Hence, their impacts on the surrounding landscape would be minimal. Moreover, Application No. A/TP/269 mainly involved redevelopment of the old ancestral houses into two NTEHs. As the application sites were on the steep natural hillsides covered with trees, construction of the proposed houses would involve building of raised platform and the associated works activities that would cause adverse impacts on the surrounding natural hillsides/woodland area that had significant landscape value. As the site circumstances were different, the current applications did not warrant the same considerations as the two similar applications.

137. As the presentation from the representative of PlanD had been completed, the Chairman invited questions from Members.

138. As Members had no question, the Chairman thanked the representative of PlanD for attending the meeting. Ms. Jacinto Woo left the meeting at this point.

Deliberation Session

139. Members generally noted that the proposed Small House developments were not in line with the planning intention of the “GB” zone and did not comply with the Interim Criteria for Consideration of Application for NTEH/Small House in the New Territories in that the proposed developments would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas. Moreover, the further information submitted by the applicants still failed to address the concerns of the RNTPC.

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

- (a) the proposed development was not in line with the planning intention of the “Green Belt” zone which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;
- (b) the proposed development did not comply with the Interim Criteria for Consideration of Application for New Territories Exempted House/ Small House in the New Territories in that the proposed development would cause adverse landscape, drainage and geotechnical impacts on the surrounding areas. The applicant failed to address the landscape, drainage and geotechnical concerns;
- (c) the proposed development did not comply with the Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the proposed development would affect the existing natural landscape and adversely affect drainage or aggravate flooding in the area; and
- (d) the approval of the application would set an undesirable precedent for other similar applications in the area. The cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape quality of the area.

Procedural Matter

Agenda Item 12

[Open meeting]

Submission of the draft Wong Nai Chung Outline Zoning Plan No. S/H7/16A under Section 8 of the Town Planning Ordinance to the Chief Executive in Council for Approval (TPB Paper No. 9262)

[The meeting was conducted in Cantonese.]

141. The following Members had declared interests in this item:

Professor S.C. Wong - had business dealings with Ove Arup & Partners Hong Kong Ltd. (OAP), which was a consultant of Hong Kong Sanatorium and Hospital (HKSH) and HKSH was one of the representers (R708) to amendments under draft Wong Nai Chung OZP No. S/H7/15. He was also the Director of the Institute of Transport Studies of the University of Hong Kong (HKU) and OAP sponsored some activities of the Institute

Mr. Dominic K.K. Lam] had business dealings with OAP which was
Mr. Ivan C.S. Fu] a consultant of HKSH. HKSH was one of the representers (R708) to amendments under draft Wong Nai Chung OZP No. S/H7/15

Mr. Patrick Lau - owned a flat at Kwai Sing Lane
- being the Chairman of the Happy Valley Residents' Association (HVRA), which was one of the representers (R1) to amendments

- under draft Wong Nai Chung OZP No. S/H7/13, and also one of the representers (R999) to amendments under draft Wong Nai Chung OZP No. S/H7/15, and ;
- had business dealings with OAP and MVA Hong Kong Ltd. which were the consultants of HKSH. HKSH was one of the representers (R708) to amendments under draft Wong Nai Chung OZP No. S/H7/15
- Ms. Bonnie J.Y. Chan - her family member owned a flat in Happy Valley
- Dr. Wilton W.T. Fok - his family member owned a flat at Blue Pool Road
- Mr. Maurice W.M. Lee - owned a flat at Link Road and a flat at Wun Sha Street
- Ms. Bernadette Linn (Director of Lands) - owned a flat at Broadwood Road and her spouse was a private practice doctor who would occasionally use the facilities in HKSH
- Miss Ophelia Wong (the Secretary) - owned a flat at Broadwood Road

142. Members also noted that Professor S.C. Wong, Mr. Dominic K.K. Lam and Mr. Ivan S.C. Fu had no involvement in the HKSH project, and the properties owned by Mr. Maurice W.M. Lee, Ms. Bernadette Linn, and the family members of Ms. Bonnie J.Y. Chan and Dr. Wilton W.T. Fok (that had very distant view of HKSH) would not be affected by the HKSH project. Members considered that Professor Wong's interest declared in the capacity of the Director of the Institute of Transport Studies of HKU was indirect. Members noted that Ms. Linn's spouse was not an employee of HKSH nor was

he involved in the HKSH project and considered that the interest declared was indirect. Members, however, considered that Mr. Patrick H.T. Lau's interest as a representative of HVRA, who was representer R1 and R999 for two rounds of OZP amendments, was direct.

143. As the item was procedural in nature and no discussion was required, Members agreed that the above Members could stay in the meeting. Members noted that Mr. Lau had tendered apology for not able to attend the meeting, and Ms. Chan, Dr. Fok and Mr. Lee had indicated that they would not attend the afternoon session of the meeting.

144. The Secretary briefly introduced the Paper. Since the Chief Executive in Council (CE in C) referred the approved Wong Nai Chung OZP No. S/H7/11 to the Town Planning Board (the Board) for amendment on 16.12.2003, the OZP had been amended several times mainly to impose Building Height Restrictions (BHR) for various development zones, and to rezone a few sites with stipulation of plot ratio and/or site coverage restrictions.

145. Since the representation consideration process for the draft Wong Nai Chung OZP No. S/H7/15, which had incorporated amendments to the BHRs for the "Government, Institution or Community" zone covering the HKSH site, had been completed, the draft Wong Nai Chung OZP was ready for submission to the CE in C for approval.

146. After deliberation, the Board:

- (a) agreed that the draft Wong Nai Chung OZP No. S/H7/16A and its Notes were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Wong Nai Chung OZP No. S/H7/16A as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft OZP and issued under the name of the Board; and

- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft OZP.

Agenda Item 13

[Open Meeting]

Any Other Business

Court of First Instance Miscellaneous Proceedings (HCMP No. 2781 of 2012)
between Regal Shining Limited and the Secretary for Justice
(on behalf of the Director of Lands and the Town Planning Board)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

147. The Secretary reported that on 7.12.2012, Regal Shining Limited (the Plaintiff), the registered owner of Hong Dao Tang, served an originating summons on the Secretary for Justice (who acted on behalf of the Director of Lands Department (D of Lands) and the Town Planning Board (the Board)). She said that the Plaintiff sought the Court's declarations on the following:

- (a) a declaration that General Condition No. 15 of Sale in Gazette Notice (G.N.) No. 364 of 1934 as amended by G.N. No. 50 of 1940 incorporated by New Grant No. 3306 governing the Lot did not prohibit storage on the Lot of ashes resulting from the cremation of human remains;
- (b) a declaration that Hong Dao Tang was a 'Religious Institution' ('RI') as defined in the Definition of Terms used in Statutory Plans (DoT) and was a use always permitted under the Kwai Chung Outline Zoning Plan governing the site;
- (c) a declaration that the Plaintiff was entitled, without the consent or approval of the Lands Department or the Board or any other government or statutory

bodies, to store ashes resulting from the cremation of human remains on the lot currently occupied by Hong Dao Tang; and

- (d) costs of this application be to the Plaintiff.

148. The Secretary also briefed Members on the background of the case and made the following main points:

Background

- (a) Hong Dao Tang was one of the private columbaria included in Part B of the Information on Private Columbaria published by the Administration, which indicated that the columbarium use in Hong Dao Tang was not in compliance with the statutory planning requirements and lease conditions;
- (b) the Hong Dao Tang site was zoned “Other Specified Uses” annotated “Business” (“OU(Business)”) on the draft Kwai Chung Outline Zoning Plan. Under ‘Schedule I: for open air development or for building other than industrial or industrial-office building’ of the Notes for the “OU(Business)” zone, which was applicable to Hong Dao Tang, ‘RI’ was a column 1 use that was always permitted while ‘Columbarium’ was not a permitted use (i.e. neither a Column 1 nor a Column 2 use);
- (c) according to the DoTs, ‘RI’ and ‘columbarium’ were two different user terms. ‘RI’ was defined as “any place or premises where in accordance with the practice of religious principles services were held or prayers said by congregations loyal to a belief”. ‘Columbarium’ was defined as “any place or vault with niches or urns that contain the ashes of cremated bodies”;
- (d) under the broad use terms (BUTs), ‘RI’ and ‘Columbarium’ uses were also under different groups of BUTs. ‘RI’ was under the ‘religious use’ group of BUTs and ‘Columbarium’ was under the ‘funeral related facility’ group of BUTs;

Previous Correspondences with the Plaintiff's representatives

- (e) on 4.1.2012, the planning consultant of the Plaintiff (TMA Planning & Design Limited (TMA)), sent a letter to the Planning Department (PlanD) and sought clarifications on their interpretation of the DoTs regarding 'RI' and 'columbarium' uses. The letter set out similar stance as the Originating Summons, i.e. Hong Dao Tang was a 'RI', the definition of 'RI' did not explicitly exclude 'Columbarium' use and therefore, columbarium use was a permitted use within a 'RI';
- (f) on 28.2.2012, the Secretary of the Board (after consulting the Department of Justice) replied to TMA disagreeing with their interpretation of the DoTs. In gist, TMA was informed that 'Columbarium' and 'RI' were two different land uses with different planning implications and were clearly defined as two different user terms in the DoTs and grouped under different BUTs. Hence, the columbarium use in Hong Dao Tang did not fall within the definition of 'RI' and was not a permitted use on the site.

149. In response to two Members' questions, the Secretary clarified that the presence of a small number of niches of the deceased monks within temples might be considered as an ancillary use to the RI. To determine whether the storage of human ashes within a site/establishment should be classified as a 'RI' or 'Columbarium' use, it would depend on the predominant use of the site/establishment having regard to its relevant facts and circumstances.

150. Another Member asked whether an establishment with the placing of ancestral tablets would be considered as a 'Columbarium' use, the Secretary said that an establishment mainly with the deposition of ancestral tablets was normally considered as an 'Ancestral Hall' use.

151. Members noted the case and agreed that the Secretary would represent the Board in all matters relating to the subject Court case in the usual manner.

152. There being no other business, the meeting closed at 5:05 p.m.