

**Proposed Amendments to the Draft
So Lo Pun Outline Zoning Plan No. S/NE-SLP/1
Incorporating the Amendments as Shown on Plan No. R/S/NE-SLP/1-A2**

1. Introduction

This paper is to brief Members on the review of the issues related to the draft So Lo Pun Outline Zoning Plan (OZP) No. S/NE-SLP/1 arising from the Court of First Instance (CFI)'s judgment on the judicial review (JR) lodged by Chan Ka Lam (the Applicant) in respect of the So Lo Pun OZP and two others¹, and to seek Members' agreement that:

- (a) the proposed amendments to the draft So Lo Pun OZP as shown on the draft OZP No. S/NE-SLP/2A at **Annex B1** (to be renumbered as S/NE-SLP/3 upon exhibition) and its Notes at **Annex B2** are suitable for exhibition under section 7 of the Town Planning Ordinance (the Ordinance); and
- (b) the revised Explanatory Statement (ES) of the OZP at **Annex B3** is an expression of the planning intentions and objectives of the Town Planning Board (the Board) for the various land use zonings of the draft So Lo Pun OZP No. S/NE-SLP/2A (to be renumbered as S/NE-SLP/3 upon exhibition) and is suitable for exhibition together with the draft OZP.

2. The Preparation of OZP

- 2.1 So Lo Pun is one of the country park enclaves (CPEs) for which statutory plans were prepared under the Ordinance. The draft development permission area plan (DPA Plan) covering So Lo Pun was published on 30.9.2010, which was interim in nature and subsequently replaced by OZP.
- 2.2 On 27.9.2013, the draft So Lo Pun OZP No. S/NE-SLP/1 (**Annex A1**) was exhibited for public inspection under section 5 of the Ordinance. During the statutory exhibition periods, a total of 10,748 valid representations and 3,673 valid comments, of which all were related to the designation of "Village Type Development" ("V") zone, including the comment submitted by the Applicant (C3652), were received. After giving consideration to the representations and comments from April to June 2014, the Board, on 4.6.2014, decided to partially uphold 9,863 representations by rezoning two pieces of land at the north-eastern end and south-western end of the "V" zone to "Green Belt" ("GB"). On 25.7.2014, the proposed amendments to the draft OZP were published under section 6C(2) of the Ordinance. Upon expiry of the three-week publication period, a total of 21 valid further representations were received.

¹ The other two OZPs are those for Hoi Ha and Pak Lap, which will be covered in separate papers and considered by Members at the same meeting.

- 2.3 After giving consideration to the further representations and the related representations and comments under section 6F(1) of the Ordinance on 21.11.2014, the Board decided to partially uphold 11 further representations and to vary the proposed amendments by rezoning the land at the north-eastern end of the “V” zone to “Agriculture” (“AGR”) and to confirm the remaining part of the proposed amendments by rezoning the land at the south-western end of the “V” zone to “GB” (**Annex A2**).
- 2.4 On 19.12.2014, the Board agreed to submit, under section 8 of the Ordinance, the draft So Lo Pun OZP, together with the draft OZPs for Hoi Ha and Pak Lap, to the Chief Executive in Council (CE in C) for approval. On 3.2.2015, the CE in C under section 9(1)(a) of the Ordinance, approved all three draft OZPs. On 13.2.2015, the approved OZPs were exhibited for public inspection under section 9(5) of the Ordinance.

3. The JR Application

- 3.1 On 18.2.2015, a JR application was lodged by the Applicant against (i) the decision of the CE in C made on 3.2.2015 to approve the three draft OZPs for Pak Lap, Hoi Ha and So Lo Pun; and (ii) the decision of the Board made on 19.12.2014 to submit the three draft OZPs to the CE in C for approval. The CFI allowed the JR on 24.11.2017 quashing the said decisions of the CE in C and the Board with a direction that all three draft OZPs be remitted to the Board for reconsideration.
- 3.2 According to the CFI’s judgment, the JR was allowed on the grounds that the Board failed to carry out its duty to inquire, specifically on two issues, namely, the genuine need for Small House development (the genuine need issue) (for all three OZPs) and the accuracy of the base map (the maps issue) (for Hoi Ha OZP only), and such failure had tainted the CE in C’s decision. On both issues, the Court holds the view that the deliberation and reasons given by the Board did not demonstrate it had properly inquired into the representations in respect of the three OZPs and made its decisions on the representations. For the genuine need issue in particular, the Board had not explained on what basis it had treated the forecast figures of the Small House demand to provide support for showing the needs of “V” zoning, whether and why it had accepted or rejected the validity of those extensive representations made under the question on the genuine need issue, and how the representations had affected its view on planning the size of the “V” zones.

4. Review of the Genuine Need Issue

- 4.1 To comply with the CFI’s judgment, a review has been undertaken on the issue on the genuine need for Small House development in So Lo Pun, taking into account the following aspects relating to the designation of “V” zone:
- (a) the principles for designating the “V” zone; and
 - (b) information for assessing the Small House need of indigenous villagers.

- 4.2 Additional/updated information, where necessary, on the above aspects is obtained/collated to facilitate Members' deliberation on the issue and making further inquiries as necessary.

Principles for Designating the "V" Zone

- 4.3 So Lo Pun is one of the CPEs protected by statutory planning, for which sites of high conservation value are suitably protected. The plan-making process was an iterative process with proposals carefully drawn up to strike a balance between conservation and development. In drawing up the land use proposals, a conservation-oriented approach was adopted as a starting point. All the important habitats, with information obtained from Agriculture, Fisheries and Conservation Department (AFCD), were protected by conservation zonings, e.g. "Conservation Area" ("CA") and "GB" as a start. Since CPEs mostly cover existing indigenous villages, consideration would also be given to designating "V" zone on the OZP to reflect the existing village clusters and identify suitable land for village expansion if necessary. In this regard, the areas within and outside the village 'environs' were carefully analysed in terms of suitability for Small House development taking account of a host of planning factors including but not limited to local topography, settlement pattern, outstanding Small House applications, Small House demand forecast, availability of road access and infrastructure, areas of ecological and landscape importance as well as site specific characteristics.
- 4.4 When planning for "V" zone, the demand for Small House developments would only be one of the various factors to be considered. There was no obligation to cater for the full Small House demand at the outset. In order to minimise the adverse impacts on the natural environment, an incremental approach should be adopted by first confining the "V" zone to the existing village settlements and the adjoining suitable land and then expanding outwards upon due consideration of all relevant planning considerations.

Information for Assessing the Small House Need of Indigenous Villagers

- 4.5 During the hearing of the representations/comments/further representations, the following information has been presented to the Board as reference on the estimated Small House demand:
- (a) there was no outstanding Small House applications being processed by Lands Department (LandsD) at the time of the hearing of representations/comments in April – June 2014, which remained the same when the further representations were heard in November 2014; and
 - (b) the figure of 10-year forecast of Small House demand provided by the Indigenous Inhabitant Representatives (IIRs) was 270 when the draft So Lo Pun OZP was gazetted. This figure was presented to the Board at the hearing of representations/comments in April – June 2014, which was updated to 269 at the hearing of the further representations in November 2014.

Additional/Updated Information

- 4.6 For this review, additional/updated information has been obtained for assessing the Small House demand of villagers, including (i) the actual number of Small House applications received/approved/rejected by LandsD since 2010, and the latest number of outstanding Small House applications being considered by LandsD and (ii) the 10-year Small House demand forecasts starting from 2010 provided by the IIRs, and breakdown of 10-year Small House demand forecasts provided by IIRs. Consideration has also been given to other relevant factors such as the latest population and other local circumstances.
- 4.7 The actual number of Small House applications received/approved/rejected by the LandsD since 2010 are summarized as follows:

Year	The number of Small House applications received	The number of approved Small House applications	The number of rejected Small House applications
2010	0	0	0
2011	0	0	0
2012	0	0	0
2013	0	0	0
2014	0	0	0
2015	0	0	0
2016	0	0	0
2017	0	0	0
2018	0	0	0
2019	0	0	0

- 4.8 The figures of 10-year Small House demand forecasts provided by the IIRs of So Lo Pun (based on the replies from the IIRs on a standard proforma issued by LandsD on a yearly-basis (**Annex C**)²) are summarised in the following table:

Year*	Figure of “10-year forecast” demand
2010	230
2011	270
2012	Not submitted [@]
2013	270 [#]
2014	269 [^]
2015	218
2016	Not submitted [@]
2017	212
2018	Not submitted [@]
2019	228
2020	229

* The starting year of the 10-year period covered by the forecast demand

@No proforma was submitted by the IIRs for that period

At the time of gazettal of the draft OZP, and presented to the Board at the hearing of the representations/comments

^ Presented to the Board at the hearing of the further representations

² According to District Lands Officer/North (DLO/N), LandsD, the format of the proforma and the breakdown of forecast being sought have changed over the years. The current standard proforma has been used since 2015.

4.9 The major observations/findings on the above figures and other relevant information are as follows:

4.9.1 Actual number of Small House applications

- (a) since 2010, there has been no Small House application for So Lo Pun submitted to or processed by LandsD; and
- (b) as advised by DLO/N, LandsD, there is also no outstanding Small House application under processing.

4.9.2 The 10-year Small House demand forecast

- (a) the 10-year Small House demand forecast is subject to changes over time. As shown in the above table, it rose from 230 in 2010 to 270 in 2011 and then dropped to 212 in 2017. In 2020, it rose slightly to 229;
- (b) as shown in the IIR's reply on the standard proforma, the forecast demand of 229 Small Houses in 2020 was made on a prediction that 215 male indigenous villagers aged 18 or above (50 residing in Hong Kong and 165 overseas) and 14 male indigenous villagers to be aged 18 or above in coming 10 years (1 residing in Hong Kong and 13 overseas) will apply for Small House grants;
- (c) DLO/N, LandsD advises that the forecast was provided solely by the IIRs and could not be easily verified based on the information currently available. DLO/N, LandsD would verify the status of an applicant for Small House development at the stage of Small House grant application; and
- (d) based on the above, while the 10-year Small House demand forecasts provided by the IIRs in the past 10 years as set out in paragraph 4.8 above provide a useful reference for considering the reasonableness of the Small House demand forecast figures, there is no practical means available for determining the genuine need for Small House development at the planning stage.

4.9.3 Land available for Small House development

According to the Planning Department (PlanD)'s latest estimation, about 1.83 ha of land (73 Small Houses) within the current "V" zone is available for Small House development. A summary table of Small House demand and land available for Small House development in So Lo Pun Village is as follows:

Latest Small House Demand Figure (as at December 2019) (A)+(B)=229		“V” zone Area	Available land to meet Small House demand	Land required to meet the outstanding applications (A) (ha)	Land required to meet Small House Demand ((A) + (B)) (ha)	% of the outstanding applications (A) met by available land	% of the Small House Demand ((A) + (B)) met by available land
Outstanding Small House Applications (A)	10-Year Small House Demand Forecast (B)						
0	229	2.48 ha	1.83 ha (73 houses)	0	5.73	N/A*	32%

*There is no outstanding Small House application in So Lo Pun

4.9.4 Other relevant information

- (a) So Lo Pun has been largely un-inhabited and its population has remained nil for years. Most of the village houses have become ruins; and
- (b) So Lo Pun is not accessible by vehicular access and not supplied with sewerage and drainage systems. It is served by an existing water mains along the north-eastern boundary of the Area but there is no plan for upgrading the water supply system. There is no strong infrastructural basis to support significant development in the Area.

5. Recommendation

- 5.1 As shown in the above review, there has been no application for Small House development submitted by the villagers of So Lo Pun in the past years since 2010 and there is currently no outstanding Small House application being processed by LandsD. Furthermore, the Small House demand forecast provided by the IIRs is subject to changes over time and could not be easily verified to establish the genuine need for Small House development. There is also no strong infrastructural basis to support significant development in the Area. To further enhance the balance between conservation and development needs in the Area, it is considered that the extent of “V” zone could be suitably adjusted.

Areas (with a total area of about 1.11 ha) Proposed to be Retained as “V” (Plan 1)

- 5.2 The area proposed to be retained as “V” is drawn up having regard to the principles for designating “V” zone as generally set out in paragraphs 4.3 and 4.4 above, notably:
- (a) the conservation-oriented approach in drawing up land use proposals;
 - (b) determining suitable areas for Small House development taking account of a host of planning factors including but not limited to local topography, settlement pattern, outstanding Small House applications, Small House

demand forecast, availability of road access and infrastructure, areas of ecological and landscape importance as well as site specific characteristics; and

- (c) the incremental approach to confine the “V” zone to the existing village settlements and the adjoining suitable land.

5.3 Based on the above principles and taking account of the updated/additional information set out in paragraphs 4.6 - 4.9 above, it is proposed that the “V” zone should be confined to the areas covered by the existing village clusters as generally delineated by the built village houses, ruins of previous houses, lots with building entitlement, and adjoining topographic features such as footpaths, building footprints, paddy field boundaries and contour lines. Areas with potential for community use by villagers should also be included.

5.4 As shown on **Plan 1**, the retained “V” zone will comprise three parcels of land with a total area of 1.11 ha. It covers mainly the existing village clusters (about 0.98 ha) as delineated above and also a small piece of flat land (about 0.13 ha) with a shrine and tree groups, which has a potential for community use by villagers. There will be about 0.75 ha of land available for Small House development, which could meet about 13% of the latest forecast of 10-year Small House demand (i.e. 229 in 2020). A comparison between the current “V” zone and the proposed amendment is as follows.

	“V” zone (ha)	Land available for Small House development within “V” zone	Percentage of the outstanding applications met by available land	Percentage of the forecast demand (229 houses) met by available land
Current	2.48 ha	1.83 ha (73 houses)	N/A*	32%
Proposed	1.11 ha	0.75 ha (29 houses)	N/A*	13%

*There is no outstanding Small House application in So Lo Pun

Two Areas (with a total area of about 1.37 ha) Proposed to be Rezoned to “AGR” (Plans 2 and 4)

5.5 Two areas, one at the north-eastern (with an area of 0.22 ha) and the other along the southern part (with an area of 1.15 ha) of the current “V” zone are proposed to be rezoned. As advised by Director of Agriculture, Fisheries and Conservation (DAFC), these areas comprise mainly abandoned agricultural fields currently dominated with herbaceous plants, shrubs and young trees. They are relatively less well-wooded comparing to the “GB” zone to the north and are also relatively less ecologically sensitive comparing to the “CA” zone to the south, in which there are freshwater marsh and an Ecologically Important Stream. Furthermore, the areas are available with agricultural infrastructures such as footpath and water source, and possess a potential for agricultural rehabilitation.

5.6 Having regard to their ecological value, which is not so high as the “GB” and “CA” zone, and their potential for agricultural rehabilitation, these two areas are considered appropriate to be rezoned as “AGR”. Under this proposal, the two areas will be merged with the existing “AGR” zone, which was designated by the

Board after hearing the further representations on the draft So Lo Pun OZP on 21.11.2014 with a view to addressing the villagers' aspiration to resume agricultural activities in So Lo Pun, to further encourage agricultural rehabilitation in the Area. Moreover, it will lead to the formation of a continuous agricultural belt between the retained "V" zone to the north and the existing "CA" zone to the south, serving the function as a buffer between village development and areas of high conservation value in So Lo Pun.

- 5.7 The proposed rezoning of the two areas to "AGR" will not necessitate any amendments to the Notes for the "AGR" zone. Under the current Notes for the "AGR" zone, agricultural use is always permitted but development of Small Houses will require planning permission from the Board, which would be considered by the Board on individual merits. Furthermore, diversion of streams or filling of land/pond within the "AGR" zone will require planning permission to avoid adverse impacts on the natural environment and the ecological value of the adjacent area.
- 5.8 The proposal is supported by DAFC as it will benefit the conservation of natural and traditional value, and is in line with their guiding principles to adopt a flexible approach in supporting and promoting sustainable development through improving the livelihood of the rural community.
- 5.9 The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD advises that the proposal to rezone part of the "V" zone to "AGR" could encourage retention of existing farmland as buffer between the "V" zone and the "CA" zone. In view of this, she has no objection to the proposal from landscape planning perspective.
- 5.10 A comparison of the existing and proposed "V" zone is shown on **Plan 3**.
- 5.11 A table comparing the concerned zones between the current So Lo Pun OZP and the proposed amendments is shown below:

Zoning	Current (Draft OZP No. S/NE-SLP/1 incorporating amendments shown on Plan No. R/S/NE-SLP/1-A2) (ha)	Proposed (Draft OZP No. S/NE-SLP/2A) (ha)	Changes (ha)
"V"	2.48	1.11	-1.37
"AGR"	0.65	2.02	+1.37

6. Proposed Amendments to OZP

6.1 *Amendment to Matters Shown on the Plan*

Amendment Item A (about 1.37 ha) (Plan 3)

Rezoning two pieces of land at the north-eastern and southern parts of "V" zone to "AGR"

6.2 *Amendment to the Notes of the OZP*

- 6.2.1 No amendments to the Notes of the OZP are necessary for the Amendment Item A above.

Technical Amendments

- 6.2.2 Opportunity will be taken to delete 'Market' from Column 2 use in the "V" zone, which is in accordance with the amendments to the Master Schedule of Notes endorsed by the Board on 28.12.2018 to subsume 'Market' use under 'Shop and Services' use.
- 6.2.3 The proposed amendment to the Notes of the OZP is at **Annex B2** (with additions in ***bold and italic*** and deletions in 'cross-out') for Members' consideration.

7. **Revisions to the Explanatory Statement of the OZP**

The ES of the OZP is proposed to be revised to take into account the proposed amendments as mentioned in the above paragraphs. Opportunity has been taken to update the general information for various land use zones to reflect the latest status and planning circumstances. The proposed amendments to the ES of the OZP (with additions in ***bold and italic*** and deletions in 'cross-out') are at **Annex B3** for Members' consideration.

8. **Plan Number**

Upon exhibition for public inspection, the Plan will be renumbered as S/NE-SLP/3.

9. **Consultation**

Departmental Consultation

- 9.1 The findings of the review and the proposed amendments to the draft So Lo Pun OZP have been circulated to relevant government bureaux and departments for comment.
- 9.2 District Officer (North), Home Affairs Department (DO(N), HAD) anticipates that the rural community is likely to have concerns of the proposal to amend the "V" zone.
- 9.3 The comments of DAFC and CTP/UD&L of PlanD have been incorporated in paragraphs 5.5 to 5.9 above. The following bureaux/departments have no objection or adverse comments:
- (a) District Lands Officer/North, Lands Department;
 - (b) Director of Environmental Protection;
 - (c) Commissioner for Transport;

- (d) Chief Engineer/Mainland North, Drainage Services Department;
- (e) Chief Engineer/Sewerage Projects, Drainage Services Department;
- (f) Chief Engineer/Construction, Water Supplies Department;
- (g) Director of Fire Services;
- (h) Project Manager (North), North Development Office, Civil Engineering and Development Department;
- (i) Chief Highway Engineer/New Territories East, Highways Department;
- (j) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (k) Director of Electrical and Mechanical Services;
- (l) Director of Marine;
- (m) Director of Leisure and Cultural Services;
- (n) Director of Housing;
- (o) Chief Building Surveyor/New Territories West, Buildings Department;
- (p) Commissioner of Police;
- (q) Director of Food and Environmental Hygiene;
- (r) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau;
- (s) Government Property Administrator, Government Property Agency;
- (t) Secretary for Education;
- (u) Commissioner for Tourism;
- (v) Director-General of Communications; and
- (w) Chief Town Planner/Studies and Research, PlanD.

Consultation with North District Council, Sha Tau Kok District Rural Committee and Public Consultation

- 9.4 The proposed amendments to the OZP are mainly a follow-up consequential to the CFI's rulings on the subject JR in respect of the draft So Lo Pun OZP. Subject to agreement of the proposed amendments by the Board for gazetting under section 7 of the Ordinance, the North District Council and Sha Tau Kok District Rural Committee will be consulted during the 2-month statutory plan exhibition period. Members of the public can submit representations on the OZP to the Board during the same statutory plan exhibition period.

10. Responses to Previous Representations, Comments and Further Representations Relating to the Genuine Need Issue

All the previous representations, comments and further representations submitted to the Board in respect of the draft So Lo Pun OZP No. S/NE-SLP/1 raised views and queries related to the designation of "V" zone. Should the Board agree to the recommendations of the review as set out in paragraph 5 above and the proposed amendments to the OZP as detailed in paragraph 6 above, all the representers, commenters and further representers will be informed accordingly. They may submit representations on the amendments to the OZP or comments on representations for the Board's consideration under sections 6 and 6A of the Ordinance respectively.

11. **Decision Sought**

Members are invited to:

- (a) consider the findings and recommendations of the review as detailed in paragraphs 4 and 5 above;
- (b) agree to the proposed amendments to the draft So Lo Pun OZP as detailed in paragraph 6 above and that the draft So Lo Pun OZP No. S/NE-SLP/2A at **Annex B1** (to be renumbered as S/NE-SLP/3 upon exhibition) and its Notes at **Annex B2** are suitable for exhibition under section 7 of the Ordinance;
- (c) adopt the revised ES at **Annex B3** for the draft So Lo Pun OZP No. S/NE-SLP/2A as an expression of the planning intentions and objectives of the Board for the various land use zonings of the OZP, and agree that the revised ES should be published together with the draft OZP; and
- (d) agree to inform all the representers, commenters and further representers in respect of the draft So Lo Pun OZP No. S/NE-SLP/1 on the amendments to the draft OZP, and that they may submit representations on the amendments to the OZP or comments on representations for the Board's consideration under sections 6 and 6A of the Ordinance respectively.

12. **Attachments**

Annex A1	Draft So Lo Pun OZP No. S/NE-SLP/1 (reduced to A3 size)
Annex A2	Amendment Plan No. R/S/NE-SLP/1-A2
Annex B1	Draft So Lo Pun OZP No. S/NE-SLP/2A
Annex B2	Revised Notes for the draft So Lo Pun OZP No. S/NE-SLP/2A
Annex B3	Revised Explanatory Statement for the draft So Lo Pun OZP No. S/NE-SLP/2A
Annex C	The proforma of 10-year Small House demand forecast for So Lo Pun submitted by the IIRs
Plan 1	The Land Proposed to be Retained as "Village Type Development" Zone
Plan 2	The Land Proposed to be Excised from "Village Type Development" Zone
Plan 3	Comparison of Existing and Proposed Zoning on the OZP
Plan 4	Aerial Photo

PLANNING DEPARTMENT
MARCH 2020