

Response to Departmental Comments Table

**Section 12A Planning Application No. Y/H6/3,
Rezoning Application for Lee Garden One Layby, 33 Hysan Avenue, Causeway Bay,
(Inland Lots 29 S.MM, 29 S.L RP and 457 RP)**

Departmental Comments	Response
Commissioner for Transport (contact officer: Mr. WONG Chi-Yuen, tel: 28295425)	
<u>General</u>	
<p><i>The concerned “Road” zone consists of a driveway with approximately 65m in length and 7m in width for off street loading/unloading, picking up and setting down of passengers by private cars and taxi. Additionally, there are pedestrian access with approximately 3m in width within this zone in connection with public footpath of Hysan Avenue, Lee Garden Road and Yun Ping Road.</i></p> <p><i>The provision of above transport facilities is essential to support daily operation of Lee Garden I and facilitate pedestrian and vehicular circulation in this area. If these transport facilities are removed, it will lead to adverse traffic impacts by imposing pickup/drop off demand on public road creating traffic obstruction. Thus, she considers there is a genuine traffic need in maintaining these transport facilities.</i></p> <p><i>The applicant shall clarify whether the above transport facilities will be disturbed by the rezoning exercise. If affirmative, the applicant shall assess its traffic impact. Also, the applicant shall clearly demonstrate the scheme he/she intends to propose for rezoning and assess its associated traffic impact, while other uses without technical assessment shall be restricted under relevant planning tools.</i></p>	<p>Please be clarified that this s12A application is to secure the long-term development rights of private land and to give flexibility in the future, and there is no current intention to have any material alteration, removal, or disturbance to the existing traffic arrangements of lay-by, driveway or pedestrian access.</p> <p>Meanwhile, the transport facilities mentioned are the ancillary provision in supporting the current operation of the building on private land as per the landowner’s decision. Any future redevelopment, if pursued, will be required to satisfy all prevailing transport standards and will undergo the technical assessment process as per the relevant departments’ requirements. This is the appropriate and statutory mechanism to regulate internal provisions of transport facilities, rather than retaining an outdated zoning designation that no longer reflects any planned public road function.</p>
<p><u>Further setback fronting Hysan Avenue</u></p> <p>The width of existing public footpath along northern Hysan Avenue is about 2m. Taking into account of the pedestrian access with approximately 3m width provided within the private lot, the total pedestrian access is considered adequate to cater for the</p>	<p>Ditto.</p>

<p>pedestrian flow at most of the time, especially for pedestrians heading to Lee Garden I or area near Causeway Bay MTR.</p> <p>Yet, if indicative scheme requires deletion of the pedestrian access after re-zoning, the pedestrian flow may be significantly affected and detailed traffic impact assessment shall be conducted and submitted by the applicant.</p>	
<p><u>Relocation of layby to Lan Fong Road</u></p> <p>Based on her observation, the traffic situation at Lan Fong Road is very busy for most of the time in view of numerous GMB stands, high loading/unloading demand and the access to the carpark of Lee Garden I.</p> <p>If the drop-off area is relocated from Hysan Avenue to Lan Fong Road, it will impose significantly traffic pressure to Lan Fong Road and may resulting tailback of traffic queue along Yun Ping Road affecting traffic flow of Leighton Road and Hysan Avenue during peak hours.</p>	<p>Noted your department’s concern. Please be clarified that there is no current intention to have any material alteration, removal, or disturbance to the existing traffic arrangements of lay-by, driveway or pedestrian access. Any prior reference to alternative layouts was conceptual and purely illustrative of long-term flexibility in a hypothetical scenario. This has been omitted from the planning statement.</p> <p>Yet, if any future redevelopment is pursued, will be required to satisfy all prevailing transport standards and will undergo the technical assessment process as per the relevant departments’ requirements.</p>
<p><u>Increase of parking provision</u></p> <p>With the proposed Tunnel T1 & T2, some of the existing parking spaces will inevitably be removed. Yet, this office has requested the applicant in previous GBP submissions to consider re-providing the omitted parking spaces or propose alternative parking facilities (i.e. mechanical parking, etc.) within the existing carpark to cater for the parking demand. Thus, we consider that extending the boundary of C(2) zone for the reason of re-providing the omitted parking spaces due to Tunnel T1 & T2 is not a solid justification for supporting the rezoning.</p>	<p>Please be clarified that there is no additional parking nor alteration to the existing car park proposed in this application. This s12A application is to secure the long-term development rights of private land and to give flexibility in the future.</p> <p>The reference presented in paragraphs 8.25-8.28 of the planning statement demonstrates that a likely unintended consequence of the “Road” zoning, is that the basement of the current Lee Garden One building does not extend to the edge of the private lots, but stops at the edge of the “Road” zone. This has resulted in fewer carparking spaces for the lifetime of the existing building. The rezoning of the land to “C(2)” would prevent this from happening again, upon the future eventual redevelopment of the site, and provide greater flexibility in future basement and parking layouts. The Applicant would be able to optimize the use of the private land that it owns.</p>

Departmental Comments	Response
Road Management Office, Hong Kong Police Force (contact officer: Mr. Raymond LAW, tel: 3660 1887)	
<p>From regional traffic police perspective, the pick up/drop off area outside Lee Garden One is important because the traffic at Hysan Avenue is heavy. Any change of zone from road to other zone should be supported by Traffic Impact Assessment.</p>	<p><u>There is no current intention to have any material alteration, removal, or disturbance to the existing traffic arrangements including the concerned pickup/drop off area.</u></p> <p>Besides, the long-standing existence of the lay-by within private land is the owner’s own choice of the use of the land to suit the operational need of the existing building. Any future redevelopment will undergo the relevant transport assessments, including the Traffic Impact Assessment, upon requested by the relevant departments, and the design shall comply with the relevant government standards and requirements, at that time.</p> <p>Furthermore, zoning of “Road” is not an appropriate tool to control the provision of ancillary transport facilities for a development within private lots.</p> <p>As set out in paragraph 3.2 of the TPB Paper No. 11037 for consideration by the TPB on 12 December 2025 (proposed amendments to the TPB Guidance Notes for Application for Permission under section 16 of TPO) and related TPB Guidelines for Planning Applications to TPB)¹, in principle, technical assessments should be submitted <u>only</u> when they are <u>essential</u> for demonstrating the technical feasibility of the <u>proposed development(s)/use(s)</u> in a planning application.</p> <p>Likewise, in paragraph 80(b) of the minutes of 1351st of TPB's meeting held on 12 December 2025, the chief town planner explained that the underlying principle of requiring technical assessments in planning application was to ensure that <u>essential</u> assessments were provided to ascertain technical feasibility while minimizing adverse impacts on the surrounding area.²</p> <p>This is a s12A application, and not a s16 application, but the principles should be the same. Accordingly, technical assessments should be submitted only when they are essential for demonstrating the technical feasibility of the proposed development(s)/use(s). It is inappropriate and disproportionate to require a detailed technical assessment for s12A application because:</p> <p>(a) There is no intention to redevelop Lee Garden One involving the current “Road” zone in the foreseeable future. The s12A application is to secure the long-term development rights of private land.</p>

¹ [Microsoft Word - TPB Paper Revised s.16 GN and TPB PG-No.41](#)

² [Minutes of 1351st Meeting of the Town Planning Board held on 12.12.2025](#)

	<p>(b) It would not be possible to conduct an appropriate or detailed technical assessment as the underlying extent, details and design parameters etc. of redevelopment are all unknown.</p> <p>(c) There is also no intention to alter the existing traffic arrangements.</p>
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Departmental Comments	Response
<p><u>Chief Town Planner/Urban Design and Landscape Section</u> Contact Officer: Ms Vanessa TSANG, Tel.: 3565 3942</p>	
<p>Her detailed observations/comments are as follows:</p> <p><u>Urban design and visual perspectives</u></p>	<p>Noted.</p>
<p>(a) based on the photographs in the planning statement, the Site comprises pavement, lay-bys, grass lawn and planted trees. According to the indicative ‘Market Street’ concept, pavilions for cafes or exhibitions are proposed at the eastern part of the Site. The Applicant should ensure that the pedestrian connectivity would not be compromised;</p>	<p>The Applicant recognises the importance of pedestrian connectivity and is committed to retaining or enhancing walkability. The indicative “Market Street” concept does not imply any loss of connectivity. Any future design—even interim activation—will maintain the required pedestrian movement and public accessibility.</p> <p>There is no basis to retain a “Road” zoning over private land to safeguard pedestrian connectivity that can be—and routinely is—addressed through standard redevelopment processes and approvals.</p>
<p>(b) it is noted from the planning statement that the indicative ‘Market Street’ is one of many possibilities for the Site. Based on the rendering shown in Figures 10-13, given the relatively small scale of the pavilions, significant visual impact on the surrounding is not anticipated. However, as noted from the planning statement, the Site may form part of the future comprehensive redevelopment. In such case, a visual impact assessment is required and shall be conducted according to the TPB PG-No. 41A;</p>	<p>In principle, technical assessments should be submitted only when they are <u>essential</u> for demonstrating the technical feasibility of the <u>proposed development(s)/use(s)</u> in a planning application. The same principle applies to a s12A application. In TPB Guidelines 41A on Visual Impact Assessment (“VIA”), it is provided in §2.2(f) and (g) that the Guidelines are applicable, inter alia, when (i) the proposal involves rezoning of a site from non-development use to development use which will result in loss of visual openness on-site or off-site from key public viewing points or (ii) the proposal may affect existing visually sensitive areas, visual amenities and visual resources on-site or off-site enjoyed by the public due to its nature, scale, location, visual prominence, design, relationship to the site context, etc..</p> <p>(a) In this case there is no intention to redevelop Lee Garden One involving the current “Road” zone in the foreseeable future, and no intention to alter the existing traffic arrangements.</p> <p>(b) More importantly, there is no relevant “key public viewing points”, or existing “visually sensitive areas” or “visual amenities and resources” on-site or off-site enjoyed by the public which may be affected by the s12A application.</p>

	<p>(c) A VIA is simply not essential for the s12A application.</p> <p>Should a comprehensive redevelopment be pursued in the future, the Applicant will prepare a Visual Impact Assessment in full compliance with TPB’s Guidelines. However, hypothetical future scenarios should not dictate a rezoning application that simply aims to rectify an outdated zoning. Any future development proposals will be assessed under the appropriate statutory processes at that time.</p>
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Departmental Comments	Response
<u>Chief Town Planner/Urban Design and Landscape Section</u>	
Contact Officer: Mr NGAI CM, Tel.: 3565 3955	
<p>(b) the Site is a linear strip of land along the Northern side of Hysan Avenue, comprising pavement, lay-bys, grass lawn and some planted trees of common species. In the Planning Statement, while it is not stated whether tree felling will be involved, Figures 10 to 13 showing views of the proposed “Market Street” seems to indicate that trees and grass lawns will be included in the proposal. The landscaping features should be provided for pedestrian comfort and streetscape amenity; and</p>	<p>No tree felling is proposed. Future design will include landscaping and streetscape improvements, but these are matters for the future scheme stage, not for a zoning rationalisation exercise.</p>
<p>(c) it is noted that ‘Old and Valuable Trees along Hysan Avenue’ are mentioned in para. 7.5 of the Planning Statement. However, the five existing OVTs along Hysan Avenue (i.e. LCSD WCH/2, 3, 4, 5 and 6) are not within the Site. Hence LU/PlanD will not review/comment on the tree protection proposal of these OVTs.</p>	<p>The OVT is located at the side of Hysan Avenue in front of Lee Garden Three, not located in front of Lee Garden One. Thus, the OVT will not be affected by any construction within the rezoning area of Lee Garden One.</p>
<p><u>Advisory Comments</u> 2. The applicant should be advised that approval of the application does not imply approval of tree works such as pruning, transplanting, felling and compensatory/ new tree planting. The applicant is reminded to seek approval for any proposed tree works from relevant departments prior to commencement of the works.</p>	<p>For the private trees within the lot boundary of Lee Garden One, no approval of tree works is required.</p> <p>For any non-private tree works outside site boundary of Lee Garden One, relevant government approvals will be sought,</p>

Departmental Comments	Response
<u>Director of Environmental Protection (contact officer: Ms. Virginia WONG, tel.: 2835 1109)</u>	
In view of the information provided, the document does not contain any environmental-related information. The applicant is suggested to observe relevant requirement under HKPSG (in particular the buffer distance requirement) and elaborate potential environmental implication of the proposal.	Noted. The rezoning introduces no development, no construction, and no operational change, and therefore no environmental impacts occur at this stage. At redevelopment, in the distant future, the Applicant will comply fully with HKPSG buffer distance requirements and any environmental assessments required under the prevailing regulatory framework.

Departmental Comments	Response
<u>Director of Food and Environmental Hygiene (contact officer: Ms. Stella KWOK, tel.: 3141 1229)</u>	
His previous comments on the pre-submission enquiry remain valid.	Noted.
Previous comments: -	
<i>“No environmental nuisance should be generated to the surroundings. Also, arrangement shall be made to dispose any waste so generated from commercial/trading activities properly at own expenses, and;</i>	Noted.
<i>Proper licence / permit issued by Food and Environmental Hygiene Department is required if there is any food business / catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.”</i>	Noted.

Departmental Comments	Response
<u>District Lands Officer/ Hong Kong East (contact officer: Ms. Phoebe TAI, tel.: 2835 2169)</u>	
Comparing with the planning statement (PS) contained in the pre-submission, it is noted that the PS in this submission is largely similar but provides more details and elaboration, particularly on relevant background at Section	Noted.

<p>4, land administration at Section 5, and planning assessment and justification at Section 8 of the PS. It is also noted that the area of the application site as indicated in para. 2.2 of the PS has been updated (in response to her comment mentioned in para. 1(d)) to tally with the area shown on the plans attached to the Deed of Rectification dated 29.4.1994 in respect of IL 29 s.L RP, IL 29 s.MM and IL 457 RP.</p>	
<p>Given the application site, the affected land status (i.e. IL 29 s.L RP, IL 29 s.MM and IL 457 RP) and the indicative scheme as Section 8 of the PS are identical to the Pre-submission scheme, it is considered that her previous comments, except para. 1(d) which has been addressed, remain applicable.</p>	<p>Noted. Our previous responses to the comments are still valid.</p>

Departmental Comments	Response
<p>District Planning Officer/Hong Kong (contact officer: Mr. Harvey LAW, tel.: 2231 4929)</p>	
<p>1. The Site has been used as a lay-by/drop-off area and pedestrian walkway since the 1960s. It functions as an important local road serving the core commercial area of Causeway Bay, carries heavy traffic, and forms an integral part of the streetscape in the area. Any modification to the existing pedestrian environment and lay-by arrangement is likely to have implications for existing traffic and pedestrian conditions, public enjoyment, and the overall streetscape of the area.</p>	<p>We acknowledge the historical use of the site. However, the historical reason for the “Road” zoning remains unknown. The long-standing existence of the lay-by as well as the pedestrian walkway within private land are the owner’s own choice of the use of the land to suit the operational need of the existing building. The presence of ancillary transport provisions on a private land, including the internal circulation access and lay-by, does not justify retaining a “Road” zoning.</p> <p>Particularly, TD has confirmed that there is no planned road widening or improvement in this location. Without any public road intention, the zoning no longer serves a planning function.</p> <p>Furthermore, pedestrian conditions are not relevant to the requirement for a “Road” zoning. There is an existing public footpath outside the Application Site and internal pedestrian arrangements will be provided within the private lot. Any future redevelopment will undergo all relevant transport assessments and comply with relevant government standards, at that time.</p> <p>What the TPB should consider is the appropriate zoning for the “Road” zone from the planning perspective. The proper zoning should be “C(2)” which is in accordance with and compatible with the "C(2)" zone where Lee Garden One is situated, and consistent with the design or scheme of the planned land use of the site of the private land.</p>

	<p>In <i>Hong Kong Resort Co Ltd v Town Planning Board</i> [2020] 4 HKLRD 298, the Court of First Instance (the decision of which was upheld by the Court of Appeal) held that (§§63-69):</p> <ul style="list-style-type: none"> (a) TPB should only take into account relevant facts and planning considerations in rezoning applications. (b) "Planning" is concerned with the making of "designs or schemes" according to which things were, or were intended to be, arranged or carried out; and (c) TPB is to assess whether the proposed amended plan and the existing plan are compatible with each other as a <i>design or scheme</i>. <p>The long-standing existence of the lay-by is the owner’s own choice of the use of the land which the owner can alter to suit the best use of the site. It cannot be equated with planning intention, particularly when:</p> <ul style="list-style-type: none"> (a) The historical reason for the “Road” zoning is unknown. (b) The Transport Department has confirmed that there are no planned public road widening and no implementation timeline.
<p>2. According to the planning statement, the proposed rezoning to “C(2)” is to provide more design and land-use flexibility, allowing a wider variety of commercial uses (e.g. market street, underground car park) to meet market demand and local needs. However, all indicative schemes are representing just one of several possible scenarios. Should the Site be rezoned to “C(2)” as proposed, wholesale redevelopment of the Site resulting in a very different building layout and form (e.g. having permanent high-rise development built over the rezoned portion) would be allowed under the OZP, and these would have very different</p>	<p>This is an application to secure the long-term development rights of private lots, which have over 800 years remaining in the lease. There is no intention to redevelop the existing building any time in the near-future.</p> <p>The Applicant does not seek approval for redevelopment. It would be inappropriate and procedurally inconsistent to require full technical assessments for hypothetical future scenarios when no development is proposed. All such assessments will be provided at the correct statutory stage—during redevelopment—not during rezoning of private land that currently has no public road purpose.</p> <p>As set out in paragraph 3.2 of the TPB Paper No. 11037 for consideration by the TPB on 12 December 2025 (proposed amendments to the TPB Guidance Notes for Application for Permission under section 16 of TPO) and related TPB Guidelines for Planning Applications to TPB)³, in principle, technical assessments should be submitted <u>only</u> when they are <u>essential</u> for demonstrating the technical feasibility of the proposed development(s)/use(s) in a planning application. It</p>

³ [Microsoft Word - TPB Paper Revised s.16 GN and TPB PG-No.41](#)

<p>impacts and technical concerns. It is necessary for the applicant to submit a more detailed and substantive proposal supported with relevant technical assessments as advised by relevant government departments (please refer to comment 5 below) to assess the possible ‘worst-case’ scenario, and demonstrate no adverse impact on pedestrian circulation and the distinctive character of the area.</p>	<p>is inappropriate and disproportionate to require a detailed technical assessment for s12A application because:</p> <ul style="list-style-type: none"> (a) There is no intention to redevelop Lee Garden One involving the current “Road” zone in the foreseeable future. The s12A application is to secure the long-term development rights of private land. (b) It would not be possible to conduct an appropriate or detailed technical assessment as the underlying extent, details and design parameters etc. of redevelopment are all unknown. (c) There is also no intention to alter the existing traffic arrangements. <p>Zoning is an evolving concept, and should be reviewed and amended from time to time to reflect current planning circumstances. Using a “Road” zoning for the purpose to control the nature of a future commercial development goes beyond the intention and purpose of a “Road” zone, while the existing controls on the OZP and building regulations relating to a “C(2)” zone already address potential impacts and technical concerns to acceptable standards, as they would for any commercial development in that zone.</p> <p>If there are no planned public road widening and no implementation timeline, then there is no planning justification for retaining a "Road" zone. Even if the land is rezoned to "C(2)", it does not preclude future road provision should a genuine need arise, as the Government can always invoke the Roads (Works, Use and Compensation) Ordinance and the Lands Resumption Ordinance to implement it. In any event, the s12A application is to give flexibility for the future, there is no current intention to have any material alteration, removal, or disturbance to the existing traffic arrangements of lay-by, driveway or pedestrian access. Therefore, the rezoning does not affect current traffic arrangements.</p> <p>Lastly, the retention of “Road” zone causes unreasonable infringement of property rights protected by Articles 6 and 105 of Basic Law.</p> <ul style="list-style-type: none"> (a) The Court of Final Appeal (“CFA”) in <i>Hysan Development Co Ltd v Town Planning Board</i> (2016) 19 HKCFAR 372 (“Hysan case”) held that restrictions imposed under an OZP must satisfy a proportionality test involving a four-step analysis, namely: <ul style="list-style-type: none"> (i) the restriction must pursue a legitimate aim; (ii) the restriction must be rationally connected to that legitimate aim; (iii) the restriction must be no more than is necessary to accomplish that legitimate aim; and
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	<ul style="list-style-type: none"> (iv) the restriction must be such that a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutional protected rights of the individual, asking in particular whether the pursuit of societal interest resulted in an unacceptable harsh burden on the individual. (b) In this case, the “Road” zoning is an encroachment and inroad into the private property rights of the owner protected by the Basic Law. Accordingly, retention of the zoning must satisfy the proportionality test laid down by the CFA in the Hysan case. <ul style="list-style-type: none"> (i) “Road” zoning is intended for use of the land as a public road. Improvement of traffic may be a legitimate aim. Since TD has confirmed that there is no planned public road widening and no implementation timeline, the retention of the “Road” zoning cannot be said to be a planning restriction for the pursuit of the legitimate aim of traffic improvement (when there is no such need of improvement). (ii) Absent a need for use of the land as a road, the PlanD and TPB would need to identify a legitimate aim for which the “Road” zone is intended to pursue. (iii) In any event, given that air ventilation, pedestrian and walking environment have already been provided for by the non-building areas and setbacks in the OZP, the retention of the “Road” zone is more than is necessary to pursue a legitimate aim. Further or in the alternative, even without the non-building areas and setbacks in the OZP, retention of the “Road” zone is more than is necessary for any improvement for air ventilation, pedestrian and walking environment. (iv) Lastly, the retention of the “Road” zone fails to strike a reasonable balance between the societal benefits and the encroachment and inroad into the constitutional protected rights of the owner, and imposes an unacceptably harsh burden on the owner.
<p>3. Based on the approved GBP record for the existing building, it is noted that the development potential of the portion of private lots within the area shown as ‘road’ has already been included in the GFA calculation.</p>	<p>While historic GFA calculations are noted, they are not the basis for determining zoning. Zoning should reflect land-use intention, not legacy GFA arrangements. The fact that the development potential has already been accounted for confirms that no additional GFA consequence arises from the rezoning, further supporting the rationalisation.</p>
<p>4. Given the fact that the development right of the concerned private lots has</p>	<p>That the majority of the development potential has already been accounted for is not relevant to the long-term zoning of the private lots.</p>

already been accounted for at the time of developing Lee Garden One (most of the site area is included in the plot ratio calculation), together with the fact that an existing mechanism is available to accommodate the temporary event activities not more than five years without planning permission under the covering Notes for the OZP and that permanent commercial uses may be permitted on application to the TPB under s.16 of the Town Planning Ordinance, we consider that more robust and convincing planning justifications are required to support the rezoning proposal. It should be clearly set out in the planning statement the public or community benefits and the planning merits that would result from the rezoning. This is particularly important given the Site's long-standing use as a lay-by and pedestrian area.

A significant number of community and planning merits have been outlined in the Planning Statement. However, it should be noted that as mentioned above in response to your comment number 2, that there appears to be no genuine need for the "Road" zone:

- (a) If there are no planned public road widening and no implementation timeline, then there is no planning justification for retaining a "Road" zone.
- (b) Further, in the approved OZP, non-building areas and setbacks have already been provided to address air ventilation, and pedestrian and walking environment. See paragraphs 7.7, 7.10 and 7.12 of the Explanatory Statement.
- (c) Zoning is an evolving concept, and should be reviewed and amended from time to time to respond to the then planning circumstances. If the "Road" zone is inappropriate, it should be rezoned.

There is no intention for a public road to be implemented or required on the site (as stated by Transport Department in their Pre-submission comment). Therefore, there is no need for the zoning to ensure that upon redevelopment there are adequate internal access provisions. These will be covered adequately through the normal development processes relating to the redevelopment of a "C(2)" zone.

It should be reiterated that the "Road" zoning could be considered to be an unreasonable infringement of the property rights protected by Articles 6 and 105 of Basic Law.

The CFA in the Hysan Case held that restrictions imposed under an OZP must satisfy a proportionality test involving a four-step analysis as detailed in our response to your comment number 2. Please see that response to understand why we do not feel that the current zoning would satisfy the proportionality test and therefore should be rezoned.

Also, the CFA decision in the Hysan Case draws attention to what are legitimate planning considerations for zoning and what are not appropriate considerations. For the justification to retain private property as a "Road" zone many of the considerations listed in this question are not relevant planning considerations such as: GFA development, temporary use options, s.16 application possibilities, pedestrian use and the length of time that a site has been used as a layby (which has no relationship to a "Road" zoning, because it is only there due to the owners choice and could be removed by their choice without rezoning – although there is no intention to remove it).

	<p>Even if the land is rezoned to "C(2)", it does not preclude future road provision should a genuine need arise as the Government can always invoke the Roads (Works, Use and Compensation) Ordinance and the Lands Resumption Ordinance to achieve its objectives.</p> <p>In any event, the s12A application is to give flexibility in the future, there is no current intention to have any material alteration, removal, or disturbance to the existing traffic arrangements of lay-by, driveway or pedestrian access.</p> <p>The lay-by and pedestrian area are unable to change significantly as the majority of the GFA has already been accommodated in the Lee Garden One building. Upon redevelopment in the distant future, the internal access arrangements would need to comply with the regulations existing at the time. It should be noted that neither of these aspects require a Road zoning.</p>
<p>5. The additional information requested above is essential for us to make an informed recommendation to the TPB on whether the proposed rezoning is agreeable in principle, and whether additional restrictions may be necessary to safeguard the planning intention and function of the rezoned area.</p>	<p>It has been stated in the pre submission comments from Transport Department that <u>“currently this office has no planned road widening or traffic improvement plans at Hysan Avenue.”</u> It is unclear what “Road” zone <u>“planning intention and function”</u> Planning Department are intending to safeguard by retaining the zoning. <u>The zoning has been in place since 1968, and yet there are still no plans to implement a public road.</u></p> <p>The points made in our response to your comments numbers 2 and 4, above, are also relevant to this response regarding; lack of genuine need, unreasonable infringement of property rights protected by Articles 6 and 105 of the Basic Law and the proportionality test set out in the CFA in the Hysan Case.</p> <p>To reiterate an additional point made in our response to your comment number 2 - even if the land is rezoned to "C(2)", it does not preclude future road provision should a genuine need arise, as the Government can always invoke the Roads (Works, Use and Compensation) Ordinance and the Lands Resumption Ordinance to implement it.</p>
<p>6. Please also take into account comments from relevant government departments, such as the Transport Department, the Hong Kong Police Force, and our Urban Design & Landscape Section.</p>	<p>Noted.</p> <p>We have addressed all departmental comments in this Response to Comments document.</p> <p>The rezoning does not alter existing operations, and all relevant approvals and technical assessments will be sought and conducted at the appropriate time - during eventual redevelopment.</p>

Departmental Comments	Response
<u>Chief Engineer, Hong Kong & Islands, Drainage Services Department (contact officer: Mr. Calvin LO, tel.: 3101 2364)</u>	
<u>Drainage Planning</u> (a) Even though the subject lot is a developed site, the submission contains no discussion about the change in paved area under the application. In addition, the submission does not mention any proposed drainage design or potential drainage issues. Thus, we have inadequate information to comment from the drainage planning perspective.	In the distant future - at the time of a comprehensive redevelopment - the drainage aspects of the project will be constructed in accordance with the relevant regulations and requirements.
<u>Sewerage Impact Assessment</u> (b) Please assess the sewerage impacts due to the application.	Similarly, in the distant future - at the time of a comprehensive redevelopment - the sewerage aspects of the project will be constructed in accordance with the relevant regulations and requirements.

The following departments have no objection to/comment on the application:

1. The Chief Architect, Advisory & Statutory Compliance Division, Architectural Services Department;
2. Director of Electrical and Mechanical Services;
3. Director of Leisure and Cultural Services;
4. Chief Engineer/Construction, Water Supplies Department

Pre-Submission Departmental Comment

Departmental Comments	Response
<u>Lands Department (contact officer: Ms. Michelle WONG, tel: 2835 2169) – Previous Comments</u>	
(a) <i>The application site comprises three private lots, namely IL 29 s.L RP, IL 29 s.MM and IL 457 RP. The relevant conditions under the leases governing the respective lots are summarized below.</i>	<i>Noted.</i>
(i) <i>The lease governing IL 29 s.L RP and s.MM is virtually unrestricted except the standard rate and range clause and offensive trades clause. The term of the said lease is 982 years commencing from 25 June 1860. A licence permitting the carrying out of the five standard offensive trades (i.e. Oilman, Tavern Keeper, Victualler, Butcher and Sugar-</i>	<i>Noted.</i>

<p>baker) on these lots was issued on 4 September 1995.</p>	
<p>(ii) <i>The lease governing IL 457 RP is restricted for first class European Houses or Godowns only and is subject to the standard rate and range clause and offensive trades clause. A licence permitting the carrying out of the five standard offensive trades (i.e. Oilman, Tavern Keeper, Victualler, Butcher and Sugar-baker) on these lots was issued on 4 September 1995. The term of the said lease is 999 years commencing from 24 December 1865.</i></p>	<p><i>Noted.</i></p>
<p>(b) <i>The uses as permitted under the proposed “Commercial (2)” zone do not conflict with the above lease conditions governing IL 29 s.L RP, IL 29 s.MM and IL 457 RP.</i></p>	<p><i>Noted.</i></p>
<p>(c) <i>Apart from the above lease conditions, it is noted from the land registrar of I.L. 29 s.L RP that a Deed of Covenant dated 18.8.1949 (“the Deed” was made between the then lot owner (Lee Hysan Estate Company) (“the Company”), the then mortgagee (The Hongkong and Shanghai Banking Corporation (“the Bank”) and “His said Majesty”. Under the Deed the Company and the Bank respectively covenanted with His said Majesty that Section L of Inland Lot No. 29 as coloured green on the plan annexed thereto the Deed (“the Green Strip”) will be maintained as open space throughout the residue of the lease term, upon which no building of whatever type shall be constructed, and any assignment of the Green Strip or any part thereof shall be subject to the said restriction and shall include a covenant by the assignee to be bound by and in all aspects to observe and perform the said covenant.</i></p>	<p><i>The Deed should NOT be a relevant consideration for the planning application. The Deed of Covenant (“the Deed”) dated 18.8.1949 was a legal document made between the then lot owner (Lee Hysan Estate Company) , the then mortgagee (The Hongkong and Shanghai Banking Corporation) and “His Majesty King George VI”.</i></p> <p><i>Similar to land grants in other sites, any existing restrictions under land grants should NOT be a relevant consideration under planning consideration.</i></p> <p><i>The Town Planning Board should consider the rezoning application on its planning merits. The Deed shall not affect the subject application under Town Planning Ordinance.</i></p> <p><i>In general, separate land application(s) may be made to and proceeded by the Lands Department at any time.</i></p>
<p>(d) <i>Incidentally, it is noted that the area of the application site of approximately 1,278m² as indicated in para. 2.2 of the PS does not tally with the 1,227.7m² as shown on the plans attached to the Deed of Rectification dated 29 April 1994 in respect of IL 29 s.L RP, IL 29 s.MM and IL 457 RP. You may wish to clarify such area with the Applicant.</i></p>	<p><i>See Annex I attached to this Response to Comments. Figure 1 demonstrates the site area has been calculated based on the CAD file of the OZP “Road” zone, overlapping with the Lee Garden One Lot Boundary from the Deed of Rectification dated 29 April 1994.</i></p>

