

TOWN PLANNING BOARD

**TPB PAPER NO. 10180
FOR CONSIDERATION BY
THE TOWN PLANNING BOARD ON 7.10.2016**

**CONSIDERATION OF REPRESENTATIONS
AND COMMENTS IN RESPECT OF
THE DRAFT KUK PO, FUNG HANG AND YUNG SHUE AU
OUTLINE ZONING PLAN NO. S/NE-KP/1**

**CONSIDERATION OF REPRESENTATIONS AND COMMENTS IN RESPECT OF THE
DRAFT KUK PO, FUNG HANG AND YUNG SHUE AU
OUTLINE ZONING PLAN NO. S/NE-KP/1**

Group	Subject of Representation/ Representation Site	Representers (Total: 97)	Commenters (Total: 2)
A	Generally <u>provide comments</u> on the draft Kuk Po, Fung Hang and Yung Shue Au Outline Zoning Plan (OZP) No. S/NE-KP/1, including support to the “Conservation Area” (“CA”) zone and concerns on adverse environmental impacts of Small House development and agricultural activities, and suggestions to better protect the environmentally sensitive areas whilst R4 also <u>indicates objection</u> to the draft OZP	<p><u>Total: 8 (R1 to R8)</u></p> <p>R1: World Wide Fund for Nature Hong Kong (WWF-HK) R2: The Hong Kong Bird Watching Society (HKBWS) R3: Kadoorie Farm & Botanic Garden Corporation (KFBG) R4: Designing Hong Kong Limited (DHKL)</p> <p><i>Individuals:</i> R5 to R8</p>	
B	<u>Oppose</u> the draft OZP, mainly for inadequate “Village Type Development” (“V”) and “Agriculture” (“AGR”) zones and designation of private land as conservation zones and propose to improve transport infrastructure of the Area	<p><u>Total: 89 (R9 to R97)</u></p> <p>R9: Heung Yee Kuk (HYK) R10: Indigenous Inhabitant Representative (IIR) of Kuk Po Village cum Executive Member of the Sha Tau Kok District Rural Committee (STKDRC) R11: Village Representative of Kuk Po Village and his family members R12: Village Representative and Villagers of Fung Hang Village</p> <p><i>Villagers/Individuals:</i> R13 to R97</p>	<p><u>Total: 2 (C1 & C2)</u></p> <p>2 comments (C1 & C2) from individuals <u>object</u> to Group B on their proposed “V” zone expansions and designation of “AGR” zones mainly on environmental grounds</p>

1. INTRODUCTION

- 1.1 On 19.2.2016, the draft Kuk Po, Fung Hang and Yung Shue Au Outline Zoning Plan No. S/NE-KP/1 (the Plan) was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). During the two-month exhibition period, a total of 97 representations were received. On 3.6.2016, the representations were published for three weeks for public comment and a total of two comments on the representations were received.
- 1.2 This paper is to provide the Town Planning Board (the Board) with information for consideration of the representations and comments at **Annexes I and II**. Relevant locations are shown on **Plans H-1, H-2a and H-2b**. The representers and commenters have been invited to attend the meeting in accordance with section 6B(3) of the Ordinance.

2. THE REPRESENTATIONS

- 2.1 The representations and comments could be generally categorized into two groups and on 19.8.2016, the Board decided to consider them separately:

Group A

- (a) collective hearing of the first group comprising eight representations (**R1 to R8**) and two comments (**C1 and C2**) submitted by the green/concern groups and individuals, generally supporting the “CA” zone and providing comments on the draft OZP, whilst **R4** also indicates objection to the draft OZP. There are views supporting and opposing the designation of “AGR” zone, and concerns on adverse environmental impacts of Small House development and lack of control on tree felling; and

Group B

- (b) collective hearing of the second group comprising 89 representations (**R9 to R97**) submitted by HYK, Executive Member of STKDRC, IIRs, villagers and individuals, opposing the draft OZP mainly for inadequate “V” and “AGR” zones, designation of private land as conservation zones and not respecting their views in preparing the draft OZP.

GROUNDINGS AND PROPOSALS OF REPRESENTATIONS

Group A

- 2.2 The major grounds and proposals of the representations in **Group A (R1 to R8)** are summarized below:
- 2.3 **R1 to R3 and R5 to R7** support the “CA” zone and **R5 and R7** also support the “AGR” and/or “V” zone in the draft OZP. **R4**, though generally satisfied with many aspects of the draft OZP, objects to the Plan because of the concerns on environmental conservation and adverse impacts of Small House development.

Ecological Importance of the Area (R1-R4 & R8)

- 2.4 Kuk Po, Fung Hang and Yung Shue Au are enclaves surrounded by the Plover Cove Country Park (PCCP). Woodlands in the Area are dense and ecologically linked with the surrounding Country Park. The wetland complexes in the Area support various odonate, freshwater fish and freshwater crab species of conservation concern. There are amphibians,

reptiles and mammals in the Area and **R2** also submits records of 104 bird species including 31 species of conservation concern therein and **R8** opines that Starling Inlet is one of the last ‘undisturbed’ habitats for Mangrove horseshoe crabs in Hong Kong. To protect the natural habitats of the Area, it is proposed to designate areas covered by woodlands, seasonal wetlands, natural streams and 30m riparian zones as “Green Belt (1)” (“GB(1)”) or “CA” zone (**Plan H-2a**).

Adverse Environmental Impacts of the Small House Development (R1-R4 & R7)

- 2.5 Small House developments in the “V” zones are immediately adjacent to the marshes, and such use may be permitted in the “AGR” and “GB” zones covering or adjoining the environmentally sensitive areas in the Area. However, as the use of septic tanks and soakaway (STS) systems is not effective in treatment of domestic sewage, and with the associated construction works and infrastructure, Small House developments would cause adverse impacts on the natural environment, in particular the surrounding wetland habitats. There are proposals to remove ‘House’ use from the Notes for “AGR” and/or “GB” zones (**R4 & R7**).

Designation of “AGR” Zones (R1-R5 & R7)

- 2.6 The “AGR” zone in Kuk Po is a seasonally wet grassland/shrubland mosaic which is hydrologically and ecologically connected with the adjacent marshes/wetland complexes. Agricultural activities which involve the use of pesticides and fertilizers would adversely affect these habitats. Noting that there are no large-scale agricultural activities in the Area and ‘Agriculture Use’ is always permitted in conservation zones, the “AGR” zones which provides opportunity for Small House development are not supported by **R1 to R4**. **R4** also considers that the villagers’ intention is for development rather than agricultural rehabilitation as some land in Fung Hang and Kuk Po have been entered into agreements of sale and purchase by private companies. Hence villagers’ proposed rezoning of “CA” and “GB” to “AGR” should not be agreed. On the other hand, **R5 and R7** support the “AGR” zone designated on the draft OZP.

Inadequate Planning Control for Conservation (R1, R2 & R4-R7)

- 2.7 Recent tree felling activities are found in Fung Hang and Kuk Po. Such acts should be punished by strengthening control against land and environmental destruction. **R1, R2 and R4** suggest to impose restriction on tree felling and vegetation clearance in the Notes of the “GB” and “CA” zones whilst **R6** considers that tree legislation should be introduced for management and protection of natural environment in the long run. For the disturbed habitats, **R7** opines that in assessing their conservation value, due consideration should be given to the land's physiographical properties supporting the original species thereon because given time, the now lost trees and species may recover.

Other Views (R8)

- 2.8 **R8** suggests that any land use or activity which is incompatible with preserving the unique marine ecosystem in Starling Inlet should not be allowed.

Group B

- 2.9 The major grounds and proposals of the representations in **Group B (R9 to R97)**, opposing the draft OZP, are summarized below:

Insufficient “V” Zones to Meet Small House Demand (R9-R10, R11-R16, R19-R23, R25, R27, R29-R38, R40-R41, R44, R46-R47, R49, R51, R52, R54-R55, R62, R66-R67, R72, R79, R80, R83-R86, R90-R92 & R95)

- 2.10 The development in the Area would be constrained by the draft OZP, in that the “V” zones are insufficient to meet the demand of indigenous villagers for Small House developments. The “V” zones in Kuk Po have been designated based on the incorrect estimation of population of Kuk Po Village, i.e. 67 persons which is much less than the actual population. It should be noted that villagers have moved out due to the lack of access road and other infrastructure provision in the villages. They have not given up their homeland inherited from ancestors and would return to live in the villages.
- 2.11 Priority should be given to development over conservation. The “V” zones should be designated based on the number of male indigenous villagers in each village or expanded to provide more land for development. Application for Small House development should be allowed in agricultural lots and building lots should be designated for housing development (**Plan H-2b**).

Insufficient “AGR” Zones (R9-R11, R19-R20, R23, R34-R38, R40, R42, R47, R59, R66-R67, R69, R72, R75, R80, R84, R91-R92 & R94)

- 2.12 The conservation zonings would restrict agricultural activities in the Area, not conducive to agricultural rehabilitation, and there is insufficient land zoned “AGR”. It is proposed to designate agricultural lots as “AGR” zone instead of conservation zones or to retain them for agricultural use (**Plan H-2b**).

Objection to Designation of Private Land as Conservation Zones (R9-R41, R43-R97)

- 2.13 The designation of private land as “CA” and “GB” zones without compensation to or consent from landowners infringes their private land rights/interests, and hence is unreasonable or unfair. The draft OZP has disregarded the rights and interests of indigenous villagers, which should be protected by Articles 40 and 122 of the Basic Law (BL40 and BL122), regulations on the protection of overseas Chinese (中國華僑保護法例第90條) and Articles 17 and 25 of the International Covenant on Civil and Political Rights (ICCPR).
- 2.14 **R80** opines that given the limited development potential of the Area and as urban sprawl would not encroach onto the surrounding Country Park, the designation of agricultural land and permitted burial grounds as conservation zones is unnecessary.
- 2.15 It is proposed to reconsider or withdraw the conservation zonings of private land or planned land uses for the Area, provide compensation or resume the land in the “CA” and “GB” zones. **R58** proposes that the Government could create wetland on Government land for relocating the animal species on private land in the Kuk Po Village; whilst **R62** proposes to only designate the Government land in the area 50m extending from the dam to the village as “CA” zone in Kuk Po (**Plan H-2b**), and to set a time limit for the “GB” zone and review the zoning thereafter.

Unreasonable Designation of “Government, Institution or Community” (“G/IC”) Zone in Kuk Po (R50, R62, R67 & R96)

2.16 Kai Choi School and Hip Tin Temple belongs to the Kuk Po Village, and its designation for “G/IC” use is unreasonable (**Plan H-2b**).

To Provide Access Road for Villages (R9, R12, R29-R33, R40, R44, R46-R47, R49, R55, R70, R72, R88, R91-R92 & R97)

2.17 The Government should provide access road for the villages to improve their accessibility and facilitate villagers’ living therein.

Not Respecting Stakeholders’ Views (R9-R10, R12, R29-R39, R42, R44, R49, R53, R55-R57, R60, R66, R68, R69, R74-R77, R80-R81, R84, R86, R89, R93-R94 & R96)

2.18 Villagers, rather than the Government/green groups, are stakeholders eligible for providing views to the draft OZP or planning for the villages. However, their views have not been respected in the preparation of the draft OZP. The villagers should be consulted and their views should be duly considered.

Other Views (R67)

2.19 **R67** complains about incorporation of the Sha Tau Kok area into the PCCP.

3. COMMENTS ON REPRESENTATIONS

Comments **C1 and C2** are submitted by two individuals objecting to the representations in **Group B (R9 to R97)** on their proposed “V” zone expansions and designation of “AGR” zones mainly on the grounds similar to those of the representations in **Group A** in paragraphs 2.4 and 2.6 above.

4. BACKGROUND

4.1 On 23.6.2015, under the power delegated by the Chief Executive, the Secretary for Development directed the Board, under section 3(1)(a) of the Ordinance, to prepare an OZP to cover the Kuk Po, Fung Hang and Yung Shue Au area. On 28.8.2015, the Board gave preliminary consideration to the draft Kuk Po, Fung Hang and Yung Shue Au OZP No. S/NE-KP/B and agreed that the draft OZP was suitable for submission to the North District Council (NDC) and Sha Tau Kok District Rural Committee (STKDRC) for consultation.

4.2 The NDC and STKDRC were consulted on the draft OZP on 14.9.2015 and 2.10.2015 respectively. They strongly objected to the draft OZP mainly on the grounds that the “V” zones are insufficient to meet the demand of indigenous villagers for Small House developments and designation of private agricultural land as conservation zones would deprive the landowners’ interests; and considered that landowners’ comments had not been reflected in the draft OZP. They mainly proposed to expand the “V” zones, designate private agricultural land as “AGR” zone and provide access road for the villages.

4.3 Views were also received from green/concern groups namely KFBG, WWF-HK, HKBWS, DHKL and The Conservancy Association. They largely concerned about the adverse

environmental impacts of Small House development and agricultural activities, and proposed to exclude 'House' use from the Notes of the "AGR" and "GB" zones, designate the "AGR" zones as "GB", "GB(1)" or "CA" and all natural streams and their 30m-wide riparian zones, seasonal wetlands and woodlands as "GB(1)" or "CA" zone.

- 4.4 On 29.1.2016, the Board gave further consideration to the draft OZP together with the views received from the NDC, STKDRC, the concerned IIRs and villagers as well as the green/concern groups. After considering these views, the Board agreed that the draft Kuk Po, Fung Hang and Yung Shue Au OZP No. S/NE-KP/B was suitable for exhibition for public inspection. On 19.2.2016, the draft Kuk Po, Fung Hang and Yung Shue Au OZP re-numbered as No. S/NE-KP/1 was exhibited for public inspection under section 5 of the Ordinance.

5. LOCAL CONSULTATION

STKDRC was consulted on the gazetted draft Kuk Po, Fung Hang and Yung Shue Au OZP No. S/NE-KP/1 on 9.3.2016. They strongly objected to the draft OZP considering that their views had not been respected and proposed to expand the "V" zones, designate private agricultural land as "AGR" zone and provide compensation for the private land in "CA" zone. NDC has previously been consulted on the draft OZP as mentioned in paragraph 4.2. As no amendment has been made to the draft OZP, NDC does not consider repeated consultation necessary. Upon gazetting of the draft OZP No. S/NE-KP/1 on 19.2.2016, PlanD informed NDC on the same day that the draft OZP had been published for public inspection until 19.4.2016, and any person may make representation to the Board in respect of the draft OZP.

6. PLANNING CONSIDERATIONS AND ASSESSMENT

THE REPRESENTATION SITES AND THEIR SURROUNDING AREAS (Plans H-1, H-2a and H-2b)

- 6.1 The representation sites cover the whole OZP.

Planning Scheme Area (Plans H-3 to H-6)

- 6.2 The Planning Scheme Area (the Area), covering a total land area of about 90.27 ha, comprises three sub-areas, namely Fung Hang (about 9.32 ha), Kuk Po (about 62.82 ha) and Yung Shue Au (about 18.13 ha). It is surrounded by the PCCP at the northeastern fringe of the New Territories and fronting the Starling Inlet in the north.
- 6.3 The Area is not served by any vehicular access and the nearest public road, Bride's Pool Road, is situated near Kai Kuk Shue Ha to the west in Luk Keng. There is a walking trail running along the southern coast of Starling Inlet connecting the Area to Luk Keng. There are also piers/jetties in Fung Hang, Kuk Po and Yung Shue Au where small boats would berth. At present, there is no public sewer for the Area.
- 6.4 Comprising mainly woodland, shrubland, fallow agricultural land, low-lying wetland habitat (including freshwater/brackish marsh, intertidal water pond/mudflat, mangrove, reedbed, seagrass), stream course, estuarine mangrove and rocky/sandy shore, the Area forms part of the wider natural system of the Plover Cove countryside. In general, the Area is natural and rural in character with high landscape and scenic value and is popular to visitors and hikers for its seaside walk.

Fung Hang

- 6.5 Fronting Starling Inlet in the north, Fung Hang mainly comprises an elongated vegetated knoll in the middle separating two tracts of flat land, which are gradually sloping uphill to the mountains in the south. There are some plant species of conservation significance and butterfly species of conservation concern in Fung Hang. The woodland in the south and west is adjoining the PCCP. Fung Hang Village in the eastern part is flanked by the mature woodland to the southwest and the freshwater/brackish marsh to the northeast. There is a natural stream flowing in the western part and at the coast along the northern fringe, a dam and a short strip of rocky shore and estuarine mangrove can be found. Fallow agricultural lands mainly covered with grasses and shrubs can be found in front of and adjoining the existing village cluster, as well as along the natural stream. Fung Hang is the only recognized village in the sub-area with groups of village houses arrayed generally in two rows facing north. Their conditions vary from fair to poor with quite a number of them abandoned.

Kuk Po

- 6.6 Kuk Po is dominated by a large piece of flat land at the coastal area facing Tai Wan to the northwest and two strips of flat land sandwiched between the hillslopes extending inland to the south. It is surrounded by vegetated hillslopes on three sides adjoining PCCP and the coastal front is mainly defined by a long dam with sandy/rocky shore in the eastern and western ends. There are recognized villages namely Kuk Po Lo Wai and Kuk Po San Uk Ha and the inland villages of Yi To, Sam To, Sze To and Ng To. Village clusters are scattered along the periphery of the freshwater/brackish marsh near the coast, amidst patches of marshy areas on the seasonally wet grassland/shrubland mosaic in the east or situated at the foothills in the inland. Mature woodlands behind villages are located at Kuk Po Lo Wai, Kuk Po San Uk Ha, Sam To and Ng To where plant species of conservation significance can be found. Natural streams flow across the sub-area from south to north including an Ecologically Important Stream (EIS) of about 1 km from Ng To to Kuk Po San Uk Ha. The sub-area supports a high diversity of dragonflies and freshwater fishes, and provides a good habitat for over 100 species of butterflies and wetland plants of conservation concern. Fallow agricultural lands mainly covered with grasses and shrubs basically spread around the existing village clusters.
- 6.7 Kai Choi School and Hip Tin Temple, and Yeung Ancestral Hall and Li Ancestral Hall at Kuk Po Lo Wai are Grade 3 historic buildings worthy of preservation. Also, Kuk Po Site of Archaeological Interest largely falls within the sub-area.

Yung Shue Au

- 6.8 In Yung Shue Au, a large piece of flat land fronting Yung Shue Au Wan in the northeast extends into a narrow valley in the southwest surrounded by vegetated hillslopes. Yung Shue Au¹ Village is a long strip of village cluster situated between the freshwater/brackish marsh to the east and the mature woodland to the west. A dam dominates the coastal front with sandy/rocky shore at its eastern end. Plant and butterfly species of conservation concern are recorded. An EIS of about 750 m in length flowing across the sub-area is identified as a hotspot for freshwater fish with records of a rare goby, *Stiphodon atropurpureus* (菲律賓枝牙鰕虎魚). Fallow agricultural lands mainly covered with

¹ According to District Lands Officer/North, Lands Department's record, the English Name of the recognized village at Yung Shue Au is read as "Yun Shue Au".

grasses and shrubs are located near the village cluster. Yung Shue Au, which is the only recognized village in the sub-area, is basically uninhabited. Besides, there are some abandoned barracks near the entrance of the village.

Planning Intention

- 6.9 The general planning intention of the Area is to protect its high conservation and landscape value which complements the overall naturalness and the landscape beauty of the surrounding PCCP. Apart from the environmental and ecological considerations, development in the Area is constrained by limited transport and infrastructural provisions. It is also intended to consolidate village development so as to avoid undesirable disturbances to the natural environment and overtaxing the limited infrastructure in the Area.

Individual Zones (Annex III)

- 6.10 The “V” zone is to designate both the existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.
- 6.11 The “G/IC” zone is primarily for the provision of Government, institution or community (GIC) facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organizations providing social services to meet community needs, and other institutional establishments.
- 6.12 The “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 6.13 The “GB” zone is 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 is a general presumption against development within this zone.
- 6.14 The “CA” zone is intended to protect and retain the existing natural landscape, ecological or topographical features of the area for conservation, educational and research purposes and to separate sensitive natural environment such as Country Park from the adverse effects of development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.
- 6.15 For the “GB” and “CA” zones, any diversion of streams, filling of land/pond or excavation of land shall not be undertaken without the permission from the Board (including public works implemented or co-ordinated by Government in “CA” zone) whilst any diversion of streams or filling of land/pond in the “AGR” zone and any diversion of streams or filling of pond in the “V” zone requires planning permission from the Board.

RESPONSES TO GROUNDS AND PROPOSALS OF REPRESENTATIONS

6.16 The supportive views of **R1 to R7** on the draft OZP and its individual zonings are noted.

Ecological Importance of the Area (R1-R4 & R8) and Designation of Conservation Zones (R9-R41, R43-R97)

6.17 The Area is natural and rural in character and has high conservation, landscape and scenic value which have been an important consideration in drawing up the draft OZP. In formulating the land use zonings of the draft OZP, special attention has been given to protect the ecological and landscape significance of the Area having regard to the wider natural system of the adjoining PCCP. Regarding the proposal of some representations in **Group A** to designate woodlands, seasonal wetlands, natural streams and 30m riparian zones as “GB(1)” or “CA” zone, and the proposal of those in **Group B** to withdraw the conservation zonings covering private land, it should be noted that the ecologically more sensitive areas including the mature woodlands behind villages and freshwater/brackish marshes in the three sub-areas (including the adjoining lower sections of the EISs in Kuk Po and Yung Shue Au) as well as the estuarine mangrove in Fung Hang have been zoned “CA”, whilst the vast areas of woodlands and shrublands (covering small portions of the permitted burial grounds on the hillslopes along the northwestern edge of Fung Hang and northeastern edge of Kuk Po), streams and their remaining riparian zones, part of the seasonally wet grassland as well as rocky/sandy shores are largely zoned “GB” (**Plan H-3**). According to the Agriculture, Fisheries and Conservation Department (AFCD), the riparian zones of the upper sections of the EISs should be zoned with reference to their respective adjacent areas having similar habitats and site conditions for which the current “GB” zoning is considered appropriate. AFCD also considers that both conservation zonings with a general presumption against development in the draft OZP are appropriate in providing adequate planning protection to the natural environment of the Area. On the ecological information submitted by some representations in **Group A**, it is noted by AFCD and the ecological importance of the Area has been taken account of in the course of preparing the OZP.

6.18 As for the proposal to only designate the Government land in the area 50m extending from the dam to the village as “CA” zone in Kuk Po (**R62**), the concerned Government land forms part of a freshwater/brackish marsh which is covered by the “CA” zone (**Plans H-2b and H-3**). AFCD considers that the current extent of the “CA” zoning is appropriate to reflect the ecological importance of this habitat. Besides, whether the habitat is on Government land or not should not be the only factor for formulating the land use zones. Regarding the regular review of “GB” zone (**R62**), statutory plans will be reviewed from time to time and amended to meet changing community needs and aspirations in individual areas as appropriate.

Designation of “V” Zones (R9-R10, R11-R16, R19-R23, R25, R27, R29-R38, R40-R41, R44, R46-R47, R49, R51, R52, R54-R55, R62, R66-R67, R72, R79, R80, R83-R86, R90-R92 & R95)

6.19 Fung Hang, Kuk Po and Yung Shue Au Villages are the recognized villages in the Area. Thus there is a need to designate “V” zones at suitable locations to meet the Small House demand of local villagers after delineating the areas that have to be conserved. The boundaries of the “V” zones have been drawn up having regard to the village ‘environs’ (‘VEs’), the number of outstanding Small House applications, Small House demand

forecast, local topography and site constraints. Areas of difficult terrain, dense vegetation, stream courses and burial grounds have to be avoided as far as possible.

- 6.20 As advised by the District Lands Officer/North, Lands Department (DLO/N, LandsD) (as at August 2016), there are three outstanding Small House applications in Kuk Po and no such application in Fung Hang and Yung Shue Au and the total of the latest 10-year Small House demand forecasts provided by the respective IIRs (a form with breakdown on the number of eligible male indigenous inhabitants currently aged 18 and to be aged 18 in the future ten years who will apply for Small House grants and those living in Hong Kong and the overseas) is 1,423 (including 540 in Fung Hang, 600 in Kuk Po and 283 in Yung Shue Au). Based on PlanD's preliminary estimate, land required for meeting the total Small House demand of 1,426 is about 35.65 ha (**Table 1**).

Table 1: Supply and Demand for Small Houses in the Kuk Po, Fung Hang and Yung Shue Au Area

Village	Small House Demand Figure in 2013 ⁽¹⁾		Small House Demand Figure in 2016		"VE" Area ('VE' Area in Draft OZP) (ha)	"V" Zone on Draft OZP (ha)	Required Land to Meet New Demand (ha)	Available Land to Meet New Demand (ha)	Percentage of the New Demand Met by Available Land (%)
	Outstanding Demand	10-year Forecast ⁽²⁾	Outstanding Demand	10-year Forecast ⁽²⁾					
Fung Hang	0	182 (2011-2020)	0	540 (2015-2024)	6.47 (5.86)	0.73	13.50	0.42 (16 houses)	3%
Kuk Po	0	500 (2012-2021)	3	600 (2015-2024)	14.32 (13.49)	3.63	15.08	1.76 (70 houses)	12%
Yung Shue Au	0	20 (2009 - 2018)	0	283 (2016-2025)	6.72 (6.72)	1.52	7.08	0.40 (16 houses)	6%
Total	0	702	3	1423	27.51 (26.07)	5.88	35.65	2.58 (102 houses)	7%

Notes:

(1) The TPB Paper No. 9282 on Consideration of the Draft Kuk Po, Fung Hang and Yung Shue Au DPA Plan No. DPA/NE-KP/B in February 2013 refers.

(2) As advised by DLO/N, LandsD, the 10-year Small House demand forecasts are provided by the respective IIRs and her office is not in a position to verify the accuracy of the figures.

- 6.21 With a view to minimizing adverse impacts on the natural environment of the Area and coupled with its limited infrastructure, an incremental approach has been adopted for designating "V" zones for Small House development in that the land area of "V" zones would not fully meet the land requirement of Small House demand at the outset with an aim to confining such developments at suitable locations adjacent to existing village clusters for more orderly development pattern, efficient use of land and provision of infrastructure and services. A total of about 5.88 ha of land, which represents an increase of 1.1 ha in land area as compared with the "V" zones on the draft DPA Plan, mainly covering the existing village clusters and their adjoining fallow agricultural land mostly covered with grasses and shrubs, has been zoned "V" on the draft OZP for Small House development. Within the "V" zones, about 2.58 ha of land is available, equivalent to about 102 Small House sites, capable of meeting the three outstanding Small House applications and about 7% of the estimated Small House demand of 1,426 houses (**Table 1**). A number of building lots, which are mostly small and demised for latrine use, are scattering away from the existing village clusters and/or in environmentally sensitive areas, and hence not covered by the "V" zones (**Plans H-2b, H-4a and H-4b**). There are provisions to allow for application for their development/redevelopment to the Board. Each application would be considered by the Board based on its individual merits.

- 6.22 Regarding the population of Kuk Po Village and in the Area, an estimation of about 67 persons for the whole Area taking account of the 2011 Census information, has been adopted in the preparation of the draft OZP which is consistent with the practice applied in the plan-making process. In fact, population is only one of the indicators and background information of the characteristics of the Area to facilitate the preparation of the draft OZP.

Adverse Environmental Impacts of the Small House Development (R1- R4 & R7)

- 6.23 There is sufficient control in the current administrative system to ensure that individual Small House development would not entail unacceptable impacts on the surrounding environment. For the protection of the water quality of the Area, the design and construction of the STS systems for Small House development need to comply with relevant standards and regulations, such as Environmental Protection Department (EPD)'s Practice Note for Professional Person (ProPECC PN) 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". The ProPECC PN 5/93 has stipulated specific requirements (e.g. minimum clearance distance) to ensure satisfactory performance of the STS system. Operation and maintenance practices for septic tank (e.g. desludging practices) are also given in EPD's "Guidance Notes on Discharges from Village Houses".
- 6.24 Besides, in accordance with the Environment, Transport and Works Bureau's Technical Circular (Works) No. 5/2005 "Protection of Natural Streams/Rivers from Adverse Impacts arising from Construction Works", for development proposals/submissions that may affect natural streams/rivers, the approving/processing authorities should consult and collate comments from the AFCD and relevant authorities.
- 6.25 LandsD, when processing Small House grant applications, will consult concerned Government departments including the EPD, AFCD, Water Supplies Department, Drainage Services Department, Civil Engineering and Development Department (on slope issue), Transport Department, Fire Services Department (on emergency vehicular access issue) and PlanD to ensure that all relevant departments would have adequate opportunity to review and comment on the applications to avoid adverse impacts of Small House development on the surrounding environment. The applicants would also be required to comply with relevant standards and regulations for development proposals/submissions.

Designation of "AGR" Zones (R1-R5 & R7; R9-R11, R19-R20, R23, R34-R38, R40, R42, R47, R59, R66-R67, R69, R72, R75, R80, R84, R91-R92 & R94)

- 6.26 There are different views on the designation of "AGR" zone. Some representations (**R5 & R7**) in **Group A** support the current designation whilst others (**R1-R4**) to the contrary not supporting it on environmental grounds. The representations in **Group B** consider that the "AGR" zone is insufficient and that agricultural land under the lease should be zoned "AGR" instead of conservation zones.
- 6.27 With a view to facilitating revitalization of the inhabited villages with agricultural activities and preserving the rural setting in the Area, in consultation with AFCD, about 3.94 ha of the fallow agricultural land which is relatively flat with potential for agricultural rehabilitation mainly covered with grasses and shrubs near the existing village clusters in Fung Hang and Kuk Po Lo Wai at more accessible locations have been zoned "AGR". Though 'Agricultural Use' is in general always permitted in "CA", "GB"

and “V” zones, the designation of “AGR” zone at suitable location could provide a clearer planning intention for agricultural activities. Regarding the concern on adverse ecological impacts arising from agricultural activities, AFCD advises that cropping activities could co-exist with conservation.

Planning Control for Conservation (R1, R2 & R4-R7)

To Remove ‘House’ Use from the Notes of the “AGR” and/or “GB” Zones (R4 & R7)

- 6.28 The Schedules of Uses under the Notes of the “AGR” and “GB” zones primarily follow the Master Schedule of Notes endorsed by the Board. ‘House (NTEH only)’ and ‘House’ are Column 2 uses under the “AGR” and “GB” zones respectively requiring planning permission from the Board. Any potential adverse impact from Small House development on the surrounding area would be assessed through the planning application system in consultation with departments concerned. Each application will be considered by the Board based on its individual merits taking into account the prevailing planning circumstances, relevant guidelines and relevant departments’ comments. Moreover, activities such as diversion of streams or filling of land/pond in “AGR” and “GB” zones that may cause adverse impacts on the natural environment should not be undertaken without permission from the Board. There is no strong justification for the above proposal.

To Restrict Tree Felling and Vegetation Clearance in the Notes of the “GB” and “CA” Zones (R1, R2 & R4-R7)

- 6.29 Apart from designating areas having high conservation and landscape values as “GB” and “CA” zones where there is a general presumption against development, there are other measures in force to provide protection of plants and animals. The Forests and Countryside Ordinance (Cap 96) prohibits felling, cutting, burning or destroying of trees and growing plants in forests and plantations on Government land. Its subsidiary legislation, the Forestry Regulations (Cap 96A), prohibits the picking, felling, selling or possession of listed plant species. The Wild Animals Protection Ordinance (Cap 170) protects local wildlife through both the prohibition of hunting territory-wide and the possession of scheduled protected wild animals or hunting appliances. With regard to trees on private land, tree preservation clause would usually be included in new grant lot. However, Block Government Leases for agricultural use in the New Territories do not have any tree preservation clause.
- 6.30 For **R1, R2 and R4's** proposal to control tree felling and vegetation clearance through the OZP, it is considered that the Town Planning Ordinance (Cap 131) may not be the appropriate vehicle to serve this particular purpose. The Ordinance has primarily made provision for systematic preparation of town plans for providing guidance and control on the use and development of land. Tree felling and vegetation clearance in itself does not constitute development. Regarding **R6's** proposal of introducing tree legislation, it is outside the purview of the Board and would be relayed to relevant Government bureaux/departments for consideration as appropriate.
- 6.31 As mentioned in paragraph 6.17, areas having high conservation and landscape values are zoned “GB” and “CA” on the OZP taking account of their natural habitats as well as the wider natural system of the adjoining PCCP. Development within these zones will be strictly controlled and requires planning permission from the Board. Any deliberate action to destroy the rural and natural environment would not gain sympathy from the Board.

The Board has well established practice in dealing with “Destroy First, Build Later” cases.

Designation of “G/IC” Zone in Kuk Po (R50, R62, R67 & R96)

- 6.32 Kai Choi School and Hip Tin Temple falls outside any ‘VEs’ of the Kuk Po Village and is isolated from the existing village clusters and “V” zones in Kuk Po (**Plans H-2b and H-4a**). About 32% of the area of the “G/IC” zone is on private land, and this zone is mainly intended to reflect the existing use of the building, which is a Grade 3 historic building worthy of preservation.

Rights of Landowners (R9-R41, R43-R97)

- 6.33 Regarding the allegation that the draft OZP infringes private land rights/interests of landowners and also disregards the rights and interests of indigenous villagers, which are protected by various laws, the legal advices are set out below.

Private Land Rights/Interests - Articles 6 and 105 of the Basic Law

- 6.34 BL 6 and BL 105 protect private ownership of property in Hong Kong while BL 105 further provides for the right to compensation for lawful deprivation of property. Based on the draft OZP, the zoning would unlikely constitute “deprivation” of property and the issue of compensation does not arise since the draft OZP would not affect any landowner’s right to transfer or assign his/her interest of land. Nor would it leave the land concerned without any meaningful use or economically viable use. Besides, insofar as it pursues the legitimate aim of providing better planning control and the land concerned could be put to “always permitted uses” and other uses as long as planning approval is obtained, it does not appear inconsistent with protection of property rights under BL 6 and BL 105.

Rights and Interests of Indigenous Villagers - Articles 40 and 122 of the Basic Law, Regulations on the Protection of Overseas Chinese (中國華僑保護法例第90條) and Articles 17 and 25 of the ICCPR

- 6.35 BL40 provides that “the lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” shall be protected by the HKSAR”. As long as any asserted traditional rights and interests have already been subject to the system of OZP under the Town Planning Ordinance (Cap.131) by the time the Basic Law came into effect, subjecting them to the planning control of designation as “CA” and “GB” zones that may be lawfully imposed pursuant to the Ordinance by way of the draft OZP would not be inconsistent with BL40. As there would not be any change in rent resulting from the draft OZP, BL 122 would not be engaged.
- 6.36 1991年中國華僑保護法例 does not exist under the Mainland laws. Neither has it been listed in Annex III to the Basic Law. As such, it is not applied in the HKSAR according to BL18. Based on the facts alleged in the representation concerned (**R80**), the zoning arrangement in the draft OZP cannot be said to be inconsistent with Article 17 or 25 of the ICCPR. With respect to Article 17 of the Covenant, the right to be free from arbitrary or unlawful interference with one’s privacy, family or home is not engaged in the present context, and even if it is engaged, there is no violation of Article 17 because any interference is neither arbitrary nor unlawful. With respect to Article 25 of the Covenant, the representer has not put forward any concrete arguments as to how the draft OZP has affected his right to participate in public life. In any event, the representer and the

villagers have been given ample opportunities to participate in the preparation of the draft OZP.

To Provide Access Road for Villages (R9, R12, R29-R33, R40, R44, R46-R47, R49, R55, R70, R72, R88, R91-R92 & R97)

- 6.37 According to the covering Notes of the draft OZP, road works coordinated or implemented by Government are in general always permitted on land falling within the boundaries of the Plan. At present, the Area is not served by any vehicular access but is mainly accessible by a walking trail from Luk Keng and piers/jetties in the three sub-areas. Relevant works departments would keep in view the need for infrastructure in future subject to resources availability.

Not Respecting Stakeholders' Views (R9-R10, R12, R29-R39, R42, R44, R49, R53, R55-R57, R60, R66, R68, R69, R74-R77, R80-R81, R84, R86, R89, R93-R94 & R96)

- 6.38 When formulating the draft OZP, public views, including those from the NDC, STKDRC, IIRs of the concerned villages, villagers and other relevant stakeholders such as green/concern groups, had been sought and reported to the Board for preliminary and further considerations before gazetting the draft OZP. Upon gazettal of the draft OZP, the statutory plan-making process, which involves its exhibition for public inspection (in which any person may make representation and comment on the representations to the Board) and hearing of representations and comments received, is itself a public consultation process under the Town Planning Ordinance. The Board would take into account the relevant planning considerations and the representations and comments received before making a decision.

Other Views (R8 & R67)

- 6.39 The suggestion not to allow any land use or activity incompatible with preserving the marine ecosystem in Starling Inlet from **R8 in Group A**, and the complaint about incorporation of the Sha Tau Kok area into the PCCP from **R67 in Group B** are outside the purview of the Board or not directly related to the draft OZP, and would be relayed to relevant Government departments for consideration as appropriate.

RESPONSES TO GROUNDS OF COMMENTS

- 6.40 The two comments (**C1 and C2**) object to **Group B's** proposed "V" zone expansions and designation of "AGR" zones mainly on the grounds similar to those of the representations in **Group A** in paragraphs 2.4 and 2.6 above. The responses in paragraphs 6.17, 6.19 to 6.21 and 6.26 to 6.27 above are relevant.

7 CONSULTATION

- 7.1 Relevant Government departments have been consulted and their comments have been incorporated in the above paragraphs where appropriate.
- 7.2 The following Government bureaux and departments have been consulted and they have no major comment on the representations:
- (a) Secretary for Education;
 - (b) Chief Building Surveyor/New Territories West, Buildings Department;

- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Director of Leisure and Cultural Services;
- (e) Director-General of Communications;
- (f) Government Property Administrator;
- (g) Project Manager/New Territories East, Civil Engineering and Development Department;
- (h) Chief Town Planner/Studies & Research Section, Planning Department;
- (i) Chief Town Planner/Strategic Planning Section, Planning Department;
- (j) Director of Electrical and Mechanical Services;
- (k) Greening, Landscape and Tree Management Section, Development Bureau;
- (l) Director of Fire Services;
- (m) Director of Social Welfare;
- (n) Antiquities and Monuments Office, Director of Leisure and Cultural Services;
- (o) Commissioner for Heritage's Office ;
- (p) Commissioner for Tourism;
- (q) Chief Engineer/Construction, Water Supplies Department;
- (r) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (s) Chief Engineer/Sewerage Projects, Drainage Services Department;
- (t) Chief Engineer/Drainage Projects, Drainage Services Department;
- (u) Chief Engineer/Mainland North, Drainage Services Department;
- (v) Director of Food and Environmental Hygiene;
- (w) Director of Marine;
- (x) Commissioner for Transport; and
- (y) Commissioner of Police.

8. PLANNING DEPARTMENT'S VIEWS

- 8.1 The supportive views of **R1 to R7 (part)** on the draft Outline Zoning Plan (OZP) and its individual zonings are noted.
- 8.2 Based on the assessments in paragraph 6 above and for the following reasons, Planning Department does not support the representations **R8, R9 to R97 and the remaining part of R1 to R7** and considers that no amendment should be made to the draft OZP to meet these representations:

Ecological Importance of the Area (R1-R4 & R8) and Designation of Conservation Zones (R9-R41, R43-R97)

- (a) Conservation zones, including "Conservation Area" ("CA") and "Green Belt" ("GB") under which there is a general presumption against development, have been designated to cover areas having high conservation and landscape value to protect the natural environment of the Area and the ecologically linked Plover Cove Country Park under the statutory planning framework.
- (b) The concerned Government land forms part of a freshwater/brackish marsh which is zoned "CA" to reflect the ecological importance of this habitat. Whether the habitat is on Government land or not should not be the only factor for formulating the land use zones. Statutory plans will be reviewed and amended to meet changing community needs and aspirations in individual areas as appropriate.

Designation of “Village Type Development” (“V”) Zones (R9-R10, R11-R16, R19-R23, R25, R27, R29-R38, R40-R41, R44, R46-R47, R49, R51, R52, R54-R55, R62, R66-R67, R72, R79, R80, R83-R86, R90-R92 & R95)

- (c) “V” zones have been designated at suitable locations to meet Small House demand of indigenous villagers in the Area. The boundaries of the “V” zones have been drawn up having regard to the village ‘environs’, Small House demand, settlement pattern, local topography, areas of ecological importance as well as other site-specific characteristics.
- (d) For future Small House developments outside the “V” zone, there are provisions to allow for application for their development/redevelopment to the Board.
- (e) An estimated population taking account of the 2011 Census information has been adopted as background information in the preparation of the draft OZP, which is consistent with the established practice.

Adverse Environmental Impacts of the Small House Development (R1- R4 & R7)

- (f) There is sufficient control in the current administrative system to ensure that individual Small House development would not entail unacceptable impacts on the surrounding environment.

Designation of “Agriculture” (“AGR”) Zones (R1-R5 & R7; R9-R11, R19-R20, R23, R34-R38, R40, R42, R47, R59, R66-R67, R69, R72, R75, R80, R84, R91-R92 & R94)

- (g) The “AGR” zones have been designated to facilitate revitalization of the inhabited villages with agricultural activities. Though ‘Agricultural Use’ is in general always permitted in “CA”, “GB” and “V” zones, the designation of “AGR” zone at suitable location could provide a clearer planning intention for agricultural activities.

Planning Control for Conservation (R1, R2 & R4-R7)

To Remove ‘House’ Use from the Notes of the “AGR” and/or “GB” Zones (R4 & R7)

- (h) ‘House (New Territories Exempted House only)’ and ‘House’ in the “AGR” and “GB” zones respectively require planning permission from the Board and each application will be considered by the Board based on its individual merits. There is no strong justification to impose further restrictions on the two zones.

To Restrict Tree Felling and Vegetation Clearance in the Notes of the “GB” and “CA” Zones (R1, R2 & R4-R7)

- (i) Areas having high conservation and landscape values have been designated as “GB” and “CA” zones where there is a general presumption against development, and there are other measures in force including the Forests and Countryside Ordinance (Cap 96) and the Wild Animals Protection Ordinance (Cap 170) to provide protection of plants and animals. The Town Planning Ordinance (Cap 131) is not considered the appropriate vehicle to control tree felling and vegetation clearance which in itself does not constitute development.
- (j) Development within “GB” and “CA” zones will be strictly controlled and requires planning permission from the Board. Any deliberate action to destroy the rural and

natural environment would not gain sympathy from the Board. The Board has well established practice in dealing with “Destroy First, Build Later” cases.

Designation of “Government, Institution or Community” (“G/IC”) Zone in Kuk Po (R50, R62, R67 & R96)

- (k) The “G/IC” zone is mainly to reflect the existing use of the building of Kai Choi School and Hip Tin Temple.

Rights of Landowners (R9-R41, R43-R97)

- (l) The draft OZP would not affect any landowner’s right to transfer or assign his/her interest of land, nor would it leave the land concerned without any meaningful use or economically viable use. Besides, insofar as it pursues the legitimate aim of providing better planning control and the land concerned could be put to “always permitted uses” and other uses as long as planning approval is obtained, it does not appear inconsistent with the protection of property rights under Articles 6 and 105 of the Basic Law (BL 6 and BL 105).
- (m) As long as any asserted traditional rights and interests have already been subject to the system of OZP under the Town Planning Ordinance (Cap.131) by the time the Basic Law came into effect, subjecting them to the planning control of designation as “CA” and “GB” zones that may be lawfully imposed pursuant to the Ordinance by way of the draft OZP would not be inconsistent with BL40. As there would not be any change in rent resulting from the draft OZP, BL 122 would not be engaged. 1991年中國華僑保護法例 does not exist under the Mainland laws and is not applied in the HKSAR according to BL18 and the zoning arrangement in the draft OZP cannot be said to be inconsistent with Article 17 or 25 of the International Covenant on Civil and Political Rights.

To Provide Access Road for Villages (R9, R12, R29-R33, R40, R44, R46-R47, R49, R55, R70, R72, R88, R91-R92 & R97)

- (n) According to the covering Notes of the draft OZP, road works coordinated or implemented by Government are in general always permitted on land falling within the boundaries of the Plan.

Not Respecting Stakeholders’ Views (R9-R10, R12, R29-R39, R42, R44, R49, R53, R55-R57, R60, R66, R68, R69, R74-R77, R80-R81, R84, R86, R89, R93-R94 & R96)

- (o) The Board has considered the views of villagers and other stakeholders in formulating the draft OZP and would take into account the relevant planning considerations and the representations and comments received in respect of the draft OZP before making a decision.

Other Views (R6, R8 & R67)

- (p) There are views/suggestions outside the purview of the Board or not directly related to the draft OZP, and they should be relayed to relevant Government departments for consideration as appropriate.

9. DECISION SOUGHT

The Board is invited to give consideration to the representations and comments taking into consideration the points raised in the hearing session, and decide whether to partially uphold/not to uphold the representations.

10. ATTACHMENTS

Annex I	Submissions of Representations (R1 to R97)
Annex II	Submissions of Comments on Representations (C1 and C2)
Annex III	Extract of the Notes of “V”, “G/IC”, “AGR”, “GB” and “CA” Zones of the Draft Kuk Po, Fung Hang and Yung Shue Au OZP No. S/NE-KP/1
Plan H-1	Location Plan
Plan H-2a	Specific proposals of Representations R1 to R8 and Comments C1 and C2 in Group A
Plan H-2b	Specific Proposals of Representations R9 to R97 in Group B
Plan H-3	Development Constraints – Kuk Po, Fung Hang and Yung Shue Au
Plan H-4a & 4b	Land Ownership and Village ‘Environs’ – Kuk Po, Fung Hang and Yung Shue Au
Plan H-5	Aerial Photos – Kuk Po, Fung Hang and Yung Shue Au
Plan H-6	Helicopter Photos – Kuk Po, Fung Hang and Yung Shue Au

PLANNING DEPARTMENT
OCTOBER 2016