

# **TOWN PLANNING BOARD**

**TPB Paper No. 10733**

**For Consideration by  
the Town Planning Board on 23.4.2021**

**CONSIDERATION OF FURTHER REPRESENTATIONS  
NO. TPB/R/S/SK-PL/3-F1 TO F86 ON THE PROPOSED AMENDMENT TO  
THE DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3  
ARISING FROM THE CONSIDERATION OF REPRESENTATIONS AND  
AND COMMENTS ON THE DRAFT OUTLINE ZONING PLAN**

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Subject of Further Representations	Further Representers (No. TPB/R/S/SK-PL/3-)
<p><b><u>Item A</u></b> Rezoning of an area to the east of the village cluster at Pak Lap from “Village Type Development” (“V”) to “Agriculture” (“AGR”)</p>	<p><b>Total: 86</b></p> <p><b><u>Oppose (81)</u></b> <b>F1:</b> Master Mind Development Limited <b>F2 to F81:</b> Individuals</p> <p><b><u>Providing Views (3)</u></b> <b>F82 to F84:</b> Individuals</p> <p><b><u>Support (2)</u></b> <b>F85 to F86:</b> Individuals</p>

Note: The names of all further representers are at **Annex III**. Soft copy of their submissions is sent to the Town Planning Board Members via electronic means; and is also available for public inspection at the Town Planning Board’s website at [https://www.info.gov.hk/tpb/en/plan\\_making/S\\_SK-PL\\_3.html](https://www.info.gov.hk/tpb/en/plan_making/S_SK-PL_3.html) and the Planning Enquiry Counters of the Planning Department (PlanD) in North Point and Sha Tin. A set of hard copy is deposited at the Town Planning Board Secretariat for Members’ inspection.

## **1. Introduction**

- 1.1 On 3.4.2020, the draft Pak Lap Outline Zoning Plan (OZP) No. S/SK-PL/3 (**Annex I**) was exhibited for public inspection under section 7 of the Town Planning Ordinance (the Ordinance). During the two-month exhibition period, a total of 17 valid representations were received. On 16.6.2020, the representations were published for public comments for three weeks and a total of 61 valid comments were received.
- 1.2 After consideration of the representations and comments under section 6B(1) of the Ordinance on 13.11.2020, the Town Planning Board (the Board) decided to partially uphold 14 representations (**R1 (part), R2 to R4, R5 (part), R6 (part) and R7 to R14**) by further reviewing the “V” zone with a view to reducing its area and providing a buffer area between the “V” zone and the stream abutting the “V” zone, taking into account the Small House demand forecast, the proximity of the “V” zone to the stream and the country park, and the

inaccessibility of the area. The relevant TPB Paper No. 10689 and the minutes of the TPB meeting are deposited at the Board's Secretariat for Members' inspection. They are also available at the Board's website<sup>1</sup>. On 11.12.2020, the Board considered and agreed that the Proposed Amendment to the draft OZP, which involves the rezoning of a piece of land to the east of the existing village cluster (the Further Representation Site) from "V" to "AGR", was suitable for publication for further representation (FR) under section 6C(2) of the Ordinance.

- 1.3 On 22.1.2021, the Proposed Amendment to the draft OZP was exhibited for public inspection under section 6C(2) of the Ordinance (**Annex II**). Upon the end of the first three weeks of the exhibition period on 16.2.2021, a total of 86 FRs (**F1** to **F86**) were received. On 19.3.2021, the Board decided to hear the FRs collectively in one group as they were all related to the Proposed Amendment.
- 1.4 This paper is to provide the Board with information for the consideration of the FRs. A summary of the FRs with the responses of the Planning Department (PlanD), in consultation with the concerned government departments, is at **Annex IV**. The location of the FR Site is shown on **Plan FH-1**.
- 1.5 In accordance with section 6F(3) of the Ordinance, the original representers/commenters who have made representations/comments after consideration of which the Proposed Amendment has been made, and the further representers (i.e. **F1** to **F86**) have been invited to the meeting.

## **2. Background**

### Preparation of Outline Zoning Plan

- 2.1 Pak Lap is one of the country park enclaves (CPEs) for which statutory plans were prepared under the Ordinance. The draft development permission area plan (DPA Plan) covering Pak Lap was published on 30.9.2010, which was interim in nature and subsequently replaced by the draft Pak Lap OZP No. S/SK-PL/1, which was published on 27.9.2013. After considering the representations, comments and further representations, the Board, on 19.12.2014, agreed to submit the draft Pak Lap OZP to the Chief Executive in Council (CE in C) for approval. On 3.2.2015, the CE in C approved the draft OZP.

### Judicial Review

- 2.2 On 24.11.2017, the Court of First Instance (CFI) allowed a judicial review (JR) and quashed the decisions of the CE in C to approve the draft Pak Lap, Hoi Ha and So Lo Pun OZPs and the Board to submit the three draft OZPs to CE in C for approval, with a direction that all three draft OZPs be remitted to the Board for reconsideration of the relevant issues.
- 2.3 According to the CFI's Judgment, the JR was allowed on the grounds that the

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<sup>1</sup> TPB Paper No. 10689 and the minutes of the TPB meeting are available at the Board's website at [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_HH\\_PL\\_SLP\\_3.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_HH_PL_SLP_3.html) and [https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1236tpb\\_e.pdf](https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1236tpb_e.pdf) respectively.

Board failed to carry out its duty to inquire, specifically on two issues, namely, the genuine need for Small House development (the genuine need issue) (for all three OZPs) and the accuracy of the base map (the maps issue) (for Hoi Ha OZP only), and such failure had tainted the CE in C's decision.

#### Amendments to the Outline Zoning Plan

- 2.4 To comply with the CFI's Judgment, a review on the genuine need for Small House development has been undertaken for the three OZPs, taking into account the principles for designating the "V" zone and relevant information for assessing the Small House need of indigenous villagers for the areas concerned. Additional/updated information including (i) the actual number of Small House grant applications received/approved/rejected by the Lands Department (LandsD) since 2010, and the latest number of outstanding Small House grant applications being considered by LandsD and (ii) the 10-year Small House demand forecasts starting from 2010 provided by the Indigenous Inhabitant Representatives (IIRs), and breakdown of such forecasts were obtained to facilitate the Board's deliberation on the issue and making further inquiries as necessary. Other relevant information including the population figures and existing conditions of the three OZPs has been provided for the Board's consideration.
- 2.5 The Board, on 3.3.2020, considered the reviews and reconsidered the three OZPs. The Board well notes that there is no practical means available for determining the genuine need for Small House development at the planning stage and best available information has already been obtained relating to the Small House demand in the review. The Board is also fully aware that there is no mechanism to verify the figures in the Small House demand forecast provided by the IIRs at the planning stage. The status of the Small House applicant would be verified by respective District Lands Offices (DLOs) during the processing of the Small House grant applications. The Board noted the findings of the review of the genuine need issue on Pak Lap OZP that there is certain demand for Small House development in the area and a balance between enhancing nature conservation of the area and meeting the needs of the villagers for Small House development has been struck in drawing up the "V" zone in the area, including the FR Site, which was cleared and considered suitable for Small House development.
- 2.6 Having also considered the review of the genuine need issue and the latest circumstances of the area, the Board agreed to make amendments, which are shown on the draft Pak Lap OZP No. S/SK-PL/3, to rezone an area to the south of the village cluster from "V" to "Government, Institution or Community(1)" ("G/IC(1)") and an area to the further south of the village cluster from "G/IC" to "Conservation Area" ("CA"). The relevant TPB Paper No. 10624 and the minutes of the TPB meeting are available at the Board's website<sup>2</sup>. A total of 17 valid representations and 61 valid comments were received. After consideration of the representations and comments, the Board decided to partially uphold 14 representations and proposed Amendment to the draft OZP to meet these representations as detailed in paragraph 1 above.

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<sup>2</sup> TPB Paper No. 10624 and the minutes of the TPB meeting are available at the Board's website at [https://www.info.gov.hk/tpb/en/papers/TPB/SKIs/S\\_SK-PL\\_2A-Main%20Paper.pdf](https://www.info.gov.hk/tpb/en/papers/TPB/SKIs/S_SK-PL_2A-Main%20Paper.pdf) and [https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1217tpb\\_e.pdf](https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1217tpb_e.pdf) respectively.

### **3. The Further Representation Site and its Surrounding Areas**

#### **3.1 The Further Representation Site and its Surrounding Areas (Plans FH-1 to FH-4b)**

3.1.1 The FR Site (with an area of about 0.45 ha) is located to the southeast of the existing village cluster at Pak Lap. The central part of the FR Site has been hard paved and covered by artificial grass, whereby a stage is set in the middle with a tent cover above. There are some tents and temporary structures and storage of tables, chairs and construction materials at the paved southern part of the FR Site. At the southwestern part of the FR Site, toilets, changing rooms and bathing facilities are found. Unpaved planting areas are located at the northern tip and the southern part of the FR Site. Along the eastern boundary of the FR Site is a bank of a streamcourse made of rubbles. Apart from minor stripes of government land (about 16.4%), the rest of the FR Site falls within private land (about 83.6%).

3.1.2 An Enforcement Notice has been served against the unauthorised use for the said toilets, changing rooms and bathing facilities at the FR Site on 4.1.2021. Investigation into unauthorised storage use and the alleged recreational facilities at the FR Site and the adjacent area is being undertaken by the Planning Authority. Should there be sufficient evidence that there is unauthorised development (UD) under the Ordinance, appropriate planning enforcement action would be taken by the Planning Authority.

3.1.3 The surrounding areas of the FR site are characterised by a rural and countryside ambience, comprising mainly village houses, shrubland, woodland, grassland, fallow agricultural land and streamcourses. Pak Lap is the only recognised village in the area and the main village cluster is in the middle of the planning scheme area. The village houses there are mainly two to three-storey in height and most of them are left vacant while some of them are still being used for habitation. To the east of the main village cluster is an existing stream flowing across the area from north to south leading to Pak Lap Wan. To the east of the stream is fallow agricultural land zoned “AGR” which is now turfed, whereby wooden platforms, tents, temporary structures and planters are found. New village houses are being constructed to the west of the main village cluster and in the area zoned “V” at the northeastern part of the area.

#### **3.2 Planning Intention**

The planning intention of “AGR” 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.

#### 4. **The Further Representations**

##### 4.1 **Subject of Further Representations**

4.1.1 There are a total of 86 FRs, including two supporting (**F85** and **F86**), three providing views on (**F82** to **F84**), and 81 opposing (**F1** to **F81**) the Proposed Amendment. Among the opposing FRs, 79 FRs are made in the form of three types of standard letters (**F2** to **F16**; **F17** to **F36**; and **F37** to **F80**).

4.1.2 The major grounds of FRs as well as their proposals, and PlanD's responses, in consultation with the relevant government departments, are at **Annex IV** and summarised in paragraphs 4.2 and 4.3 below.

##### 4.2 **Major Grounds of and Responses to Supportive FRs and Views**

4.2.1 **F85** and **F86** are supportive in nature. While **F83** and **F84** are providing views, they indicate support for the reduction in the "V" zone.

<b>Major Grounds</b>	<b>FRs</b>
(1) A conservation-oriented approach should be adopted in the designation of various zones in Pak Lap. The Proposed Amendment by taking an incremental approach is in line with the planning intention of the OZP, and the further reduction of the "V" zone is appropriate. The rezoning from "V" to "AGR" would provide greater buffer distance between the section of stream and the existing village cluster.	<b>F83</b>
(2) The reduction of the "V" zone to safeguard the ecologically sensitive environment in Pak Lap and the intention to provide buffer to the stream from adverse sewage impact are supported.	<b>F84</b>
(3) Support the reduction of "V" zone area to only cover the existing village settlements, which is in line with the planning intention to protect the high natural landscape value and rural character of the area.	<b>F85, F86</b>
<b>Response</b>	
(a) The supportive views are noted.	

##### 4.3 **Major Grounds/Proposals of and Responses to Opposing FRs and Views**

4.3.1 **F1** to **F81** are opposing in nature. Whilst **F82** to **F86** are either providing views or supportive of the reduction of the "V" zone as detailed in paragraph 4.2 above, there are also adverse comments including those on the designation of the "AGR" zoning.

##### 4.3.2 ***Genuine Need for Small House Development***

<b>Major Grounds</b>	<b>FRs</b>
(1) Information presented to the Board so far cannot constitute a comprehensive review on the genuine need for Small House development, and as such, the Board's decision on reducing	<b>F1</b>

<p>available land intended and zoned for “V” is both arbitrary and premature. Assumptions on the need for Small House development should be based on a host of considerations including the actual number of eligible indigenous villagers.</p>	
<p>(2) The Board did not account for whether or not male indigenous villagers would wish to apply for building a Small House beyond the 10-year period. Indigenous villagers have a right to apply for building a Small House under the Small House Policy and the Basic Law without time restriction and regardless of where they are currently residing.</p>	<p><b>F1</b></p>
<p>(3) In taking the view that the 10-year forecast for Small House application is unknown, the Board only relied on the information provided to the LandsD by the IIR, without resorting to any other available measures that could have been taken. The limitations of the standard proforma submitted by the IIR to the LandsD lead to a significant information gap that prevents the Board from making an informed decision. It also appears that the Board has not adopted any measures to verify the information provided by the IIR and blindly relied on the information. The Board should have taken into account results from its independent investigation and/or expert opinion in coming up with the Proposed Amendment.</p>	<p><b>F1</b></p>
<p><b>Responses</b></p>	
<p>(a) In response to (1) to (3), to follow up the JR judgment, a review of the genuine need issue has been undertaken for the Board’s consideration on 3.3.2020. The best available information relating to the Small House demand, including the updated/past figures on Small House applications and 10-year demand forecasts and its breakdown provided by IIRs starting from 2010, was obtained from the LandsD for consideration by the Board. For the case of Pak Lap, the Board noted that the 10-year demand forecast changes over time, and the IIR did not specify the 10-year demand forecast in his latest reply in 2020. The Board was fully aware that there is no mechanism to verify the figures in the Small House demand forecast provided by the IIRs at the planning stage, whereas the status of the Small House applicant would be verified by the District Lands Officer/Sai Kung (DLO/SK) during the processing of Small House grant application. The Board also considered that the genuine need for Small House development might vary according to different circumstances, for example, due to improvement in infrastructure. In this connection, the Board has already sufficiently acquainted itself with the best available information on the genuine need issue as detailed above and reached the conclusion that there is no practical means to determine the genuine need for Small House development at the planning stage. It would be impractical for the Board to conduct and verify a forecast separately on the genuine need for Small House development for individual village. Demand forecast for Small House development was only one of the host of planning factors being considered in the designation of “V” zone. In designating the “V” zones in the Pak Lap OZP and making the Proposed Amendment, the Board has also taken into account all related planning considerations including but not limited to the ‘village environs’, local topography, existing settlement</p>	

<p>pattern, approved and outstanding Small House applications, availability of road access and infrastructure, areas of ecological and landscape importance, site specific constraints, as well as the representations and comments on the draft OZP.</p> <p>(b) The Proposed Amendment would not affect the indigenous villagers' <i>right to apply</i> for building a Small House under the Small House Policy. Should there be a change in planning circumstances in the future, including the case when land within the reduced "V" zone is insufficient to meet the need for Small House development, alternative land use proposals/planning approvals could be considered by the Board.</p> <p>(c) In response to (2), on the issue of time and residency restrictions under the Small House Policy, DLO/SK, LandsD advises an overseas indigenous villager applying for Small House Grant on government land has to return to Hong Kong and satisfy the DLO that he has a genuine intention to live in Hong Kong for permanent residence. If the application for Small House Grant is sent from outside of Hong Kong, it would be rejected. There is no time restriction and requirement on residency imposed on applications for Small House Grant on private land.</p>
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#### 4.3.3 *Reduction in the "Village Type Development" Zone*

Major Grounds	FRs
(1) An incremental approach has already been adopted in designating the "V" zone. Given that the vacant land within "V" zone has been cleared and is considered suitable for Small House development, allowing the FR Site to remain "V" does not deviate from the conservation-oriented approach on CPEs. It is inappropriate for PlanD to reduce the "V" zone while acknowledging potential demand for "V" in the future.	<b>F1</b>
(2) For indigenous villagers hoping to implement their Small House rights, the Proposed Amendment creates greater administrative and financial burdens and uncertainty with the requirement for a s.16 planning approval in addition to application to the LandsD.	<b>F1</b>
(3) The Further Representer is a "concerned friend of the village", who recognises the importance of village enhancement and ecological conservation, and has a mission of supporting the repair and restoration works in Pak Lap. The Proposed Amendment neglects the 300-year history of Pak Lap Village. The Proposed Amendment will seriously curtail the Further Representer's efforts in supporting village growth and achieving comprehensive ecological enhancement, and the villagers' ability to improve living standards. Indigenous villagers are in effect being discouraged from returning to their roots and home.	<b>F1</b>
(4) The Board has acted unreasonably in providing only one solution with no other alternatives to address the issue of balancing the Small House development and agricultural rehabilitation in Pak Lap.	<b>F1</b>
(5) The development rights of villagers of Pak Lap would be	<b>F2 to</b>



fundamentally deprived by the rezoning from “V” to “AGR” in that land reserved for villagers to develop Small House would be further reduced. This would extinguish all hope for the older generation reaching retirement age, who have decided to return to the village, to build a residence in Pak Lap.	<b>F16</b>
(6) The Board must not only take into account the views of green groups and deprive the rights of others. Retaining the “V” zone would not induce adverse ecological impacts. The Board should respect the lawful traditional rights of the indigenous inhabitants of the New Territories.	<b>F2 to F16</b>
(7) The further reduction of the “V” zone neglects the genuine need of the villagers and is detrimental to village development. The “V” zone could generate synergy and sustainable development in that villagers would return to the village bringing a new labour force, developing eco-tourism, striking a balance between environmental, societal and economic needs, and ensuring rational development of land.	<b>F17 to F36</b>
<b>Proposal</b>	
(8) Not to adopt the Proposed Amendment as part of the draft OZP and the FR Site should remain to be zoned as “V”.	<b>F1</b>
<b>Responses</b>	
<p>(a) In response to (1) to (7), having considered the representations and comments on the draft OZP, the Board was of the view that the original “V” zone on the draft OZP, which could accommodate 16 new Small Houses, was excessive. The Board directed that the “V” zone should be confined to the existing village cluster, and reiterated that an incremental approach for designating the “V” zone for Small House development should be adopted in order to minimise the adverse impacts on the natural environment. With the Proposed Amendment, it is estimated that about 0.10ha of land is available within the “V” zone to meet the four outstanding Small House applications<sup>3</sup>. Having considered all relevant planning considerations detailed in paragraph 4.3.2(a) above, expert advice from government departments and the views from stakeholders (including the representers and commenters in relation to the draft OZP), the Proposed Amendment could strike a balance between enhancing nature conservation and meeting the needs for Small House development. The response in paragraph 4.3.2(b) above is also relevant.</p> <p>(b) In response to (3) and (7), the Proposed Amendment is considered not incompatible with village development and the proposed rezoning to “AGR” would not affect sustainable growth of the village. There is no justification to demonstrate that the planning intention for agricultural use in the FR Site would be in conflict with village enhancement and environmental conservation.</p>	
<u><b>Proposal</b></u>	
(c) Responses (a) and (b) above are relevant.	

<sup>3</sup> According to information provided by the DLO/SK, LandsD as at 13.4.2021, no further Small house applications have been received since the last hearing of the representations and comments on the draft OZP.

#### 4.3.4 Designation of the “Agriculture” Zone

Major Grounds	FRs
<u>“AGR” Zone Unsuitable for Farming</u>	
(1) The “AGR” designation lacks common sense and scientific ground. There have never been growth of cash crops in Pak Lap due to the acid and cohesive soil in the area. The villagers in Pak Lap are mostly elderly and there is no labour force for farming. Pak Lap is remote with insufficient transport facilities. It is not easy to develop agriculture with economic value.	<b>F2 to F16</b>
(2) The “AGR” zone in Pak Lap is not used for farming as there is insufficient water in winter and flooding in summer – a lack of irrigation and stable water source. There is already sufficient land in Pak Lap for agriculture and nature conservation purposes.	<b>F17 to F36</b>
<b>Responses</b>	
(a) In response to (1) and (2), the “AGR” designation under the Proposed Amendment is considered appropriate from agricultural perspective. The Director of Agriculture, Fisheries and Conservation (DAFC) advises that the FR Site possesses a potential for agricultural rehabilitation. Agricultural infrastructures such as footpath and water source are available. The FR Site can be used for agricultural activities such as greenhouse farming and plant nurseries. Moreover, according to DAFC’s site inspection in April 2019, there were agricultural activities at the FR Site.	

Major Grounds	FRs
<u>Lower Value of Land Zoned “AGR”</u>	
(3) In the case where a landowner intends to rezone a land from the lower-valued “AGR” to a higher-valued “V”, the Government would demand the payment of a large sum of premium. On the contrary, when the Board proposes Amendment by rezoning higher-valued “V” to lower-valued “AGR”, there would be no compensation to the landowner. Such practice is unreasonable and unfair. The Government is intruding private land and such act is comparable to the robbery of the citizens’ properties.	<b>F37 to F80</b>
(4) If the Board could arbitrarily rezone any land from higher-valued zonings to lower-valued zonings, such practice would set an undesirable precedent and would deprive the rights of landowners.	<b>F37 to F80</b>
<b>Response</b>	
(b) In response to (3) and (4), as advised by DLO/SK, LandsD, the private lots at the FR Site are Old Schedule Agricultural Lots held under Block Government Lease where approval from the Government is required for erection of structure thereat. The proposed “AGR” zoning would not affect the permitted use of the land and the rights under the lease.	

Major Grounds	FRs
<b><u>“AGR” Offers Insufficient Protection for Environment</u></b>	
<p>(5) There is doubt and concern over the effectiveness of the “AGR” zoning for the FR Site and the draft OZP in general for protection of the environment on the following grounds:</p> <ul style="list-style-type: none"> <li>(i) failure to promote genuine agricultural activities;</li> <li>(ii) high approval rate (over 60%) of Small House applications in “AGR” zones according to a study;</li> <li>(iii) land uses permitted pose undesirable environmental and sewerage problems; and</li> <li>(iv) unauthorised excavation/ land filling have taken place in the “AGR” zone, thus promoting “destroy first, develop later” attitudes among landowners.</li> </ul>	<b>F81, F83 to F86</b>
<b>Proposals</b>	
(6) Rezone the FR Site from “AGR” to “CA”/“GB(1)”.	<b>F81, F82, F83, F84</b>
(7) Rezone the FR Site from “AGR” to “AGR(2)”, with restrictions that “no redevelopment, including alteration and/or modification, of an existing house shall result in a total redevelopment in excess of the plot ratio, site coverage and height of the house which was in existence on the date of the first publication in the Gazette of the notice of the draft development permission area plan”. The “AGR(2)” zone is to avoid houses development or incompatible developments including existing recreational intensive hobby farm practices, and to protect the stream from adverse sewage impacts and provide stringent development control.	<b>F84</b>
(8) Review and limit the uses permitted under Columns 1 & 2.	<b>F85, F86</b>
<b>Responses</b>	
<p>(c) In response to (5), the designation of “AGR” zone on the OZP had been duly considered by the Board in the previous hearing on the draft Pak Lap OZP No. S/SK-PL/3 and the Board considers that in general the designation of the “AGR” zoning in Pak Lap is appropriate. There is no strong justification for a departure from the Board’s previous decision. To ensure that activities within the “AGR” zone would not result in adverse environmental impact, the Notes of the OZP have stipulated that diversion of stream, and filling of land/pond within “AGR” zone are subject to the Board’s approval. Although land of the FR Site is filled and hard-paved, private lots within the FR Site are Old Schedule Agricultural Lots for agricultural purposes and DAFC advises that it has potential for agricultural rehabilitation.</p> <p>(d) In response to item (ii) of (5), whilst ‘House (New Territories Exempted House)’ is a Column 2 use under “AGR” zone, the Board has adopted established criteria to assess and consider each of the applications on their individual merits. The applicants must demonstrate that the proposed Small House under application would not cause adverse environmental, landscape, drainage and sewerage impacts, etc. Any such potential impacts must be mitigated to the satisfaction of relevant government departments.</p>	

**Proposals**

- (e) In response to (6), according to the advice of DAFC, the FR Site has already been filled and partly paved with concrete with few vegetation, and as such, higher conservation zonings such as “CA” or “GB(1)” are not justified for the FR Site from the nature conservation perspective. Taking into account the considerations as detailed in responses (a) and (c) above, the designation of “AGR” for the FR Site is considered appropriate.
- (f) In response to (7), it should be noted that New Territories Exempted House and Hobby Farm are both Column 2 uses under the “AGR” zone. Applications for such uses will be considered on their own merits. As such, there is sufficient development control under the “AGR” zoning. Response (d) above is also relevant.
- (g) In response to (8), responses (c) and (d) above are relevant.

**4.3.5 *Provision of Buffer to the Existing Stream and Sewage Impact***

Major Grounds	FRs
(1) The Board’s view on the need to provide a buffer between the “V” zone and the stream is unsubstantiated. There is an established approval framework of Small House applications to ensure no adverse environmental impacts. The Board also has discretion in the approval of any major diversion of streams or filling of pond in “V” zone including that to effect a change of use for Small House development under the planning framework. There is no strong evidence demonstrating adverse environmental or ecological impacts as a result of village development as compared with agricultural use.	<b>F1</b>
(2) There is no existing nor planned public sewerage for the area. Any further increase in recreation or residential developments will first require additional infrastructure. Septic tank is not appropriate given the lack of access and proximity to watercourses. Enhanced control over development is needed to reduce potential pollution source which may impact the stream running through the east of the FR Site to the south of Sai Kung East Country Park (SKECP) and Pak Lap Wan.	<b>F85, F86</b>
Responses	
(a) In response to (1) and (2), in consideration of the representations and comments on the draft OZP, the Board was well aware that the stream in Pak Lap is not an Ecologically Important Stream (EIS) or Site of Special Scientific Interest (SSSI) and there are current administrative control on the design and construction of Septic Tank and Soakaway (STS) systems. Nonetheless, the Board was of the view that consideration should be given to providing a buffer area between the “V” zone and the stream, having deliberated on the issues such as, inter alias, a careful approach in handling the interface between the “V” zone and the sensitive surroundings, and the conservation of an unpolluted stream. In this regard, DAFC advises that the Proposed Amendment at the FR Site would reduce the likelihood of further deterioration of the stream due to village development thereon.	

<p>The Director of Environmental Protection (DEP) has no comment on the “AGR” zoning for the FR Site provided that the buffer distance requirement from the stream as laid down in Environmental Protection Department’s (EPD’s) Practice Note for Professional Person (ProPECC PN) 5/93 “Drainage Plans subject to Comment by the EPD” could be met. The rezoning of the FR Site from “V” to “AGR” is appropriate for provision of a buffer to the stream.</p> <p>(b) In response to (2), the concerns on sewage treatment arrangements and water quality impact of Small Houses were raised by many previous representations and comments on the current and the previous draft OZPs. In this regard, the Board is all along satisfied that there is an established mechanism in the current administrative system to ensure that individual Small House development and STS systems would not entail unacceptable impacts on the surrounding environments. As for recreational development which requires planning permission from the Board in both “V” and “AGR” zones, relevant departments would be consulted to ensure the proposed development under application would not pose adverse sewage impact to the surrounding environment.</p>
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#### 4.3.6 *Planning Procedure*

Major Grounds	FRs
<p>(1) The Board has taken a wrong procedural route in allowing only 3 weeks for the public to inspect and to make representation to the Proposed Amendment pursuant to s.6D(2) of the Ordinance. The Proposed Amendment extends well beyond the scope of the “Initial Amendment Items” (i.e. Items A and B of the draft Pak Lap OZP No. S/SK-PL/3) in terms of scope and area affected, and would result in significant changes to the statutory land use zoning framework and planning intentions for Pak Lap. Such material amendment should be subject to the full and proper plan making process. The 3-week commenting period is insufficient to allow proper representations. Indigenous villagers affected by the Proposed Amendment had not been notified beforehand and cannot be properly consulted within the time provided. As a matter of fairness, the Proposed Amendment should be allotted at least the same 2-month consultation time as in the case pursuant to s.7 of the Ordinance. Any decision in respect of the Proposed Amendment, if ever reached, will be tainted with procedural irregularity.</p>	<p><b>F1</b></p>
<p>(2) It must also be noted that the majority of representations made during the two-month public inspection period and comments were not relevant to the “Initial Amendment Items” but rather on unrelated issues. When the Board considered these representations and comments, it did not have a balanced view from all locals who had not submitted any representations in respect of the “Initial Amendment Items” which were minor in nature and not affecting their future rights.</p>	<p><b>F1</b></p>
<p>(3) The Board has acted unreasonably and arbitrarily in adopting</p>	<p><b>F1</b></p>

the Proposed Amendment when it has not sufficiently discharged its <i>Tameside</i> duty and there remains substantial doubt as to the basis of the Proposed Amendment.	
<b>Responses</b>	
<p>(a) In response to (1) and (2), the Board has complied with the statutory procedure in publishing the Proposed Amendment for FR under s.6C(2) (instead of s.6D(2) as claimed in the FR) of the Ordinance. It should be noted that while the “Initial Amendment Items” have already taken immediate statutory effect upon gazettal under s.7 of the Ordinance, the Proposed Amendment, gazetted under s.6C(2) of the Ordinance, has no statutory effect yet. The initiating step behind s.6C(2) publication is s.6B(8) of the Ordinance, which stipulates that proposed amendments to the draft OZP can be made in any one of the following manners: (i) in the manner proposed in the representations; or (ii) in the matter that, in the opinion of the Board, will meet the representations. The Proposed Amendment, which involves reducing areas zoned “V” on the draft OZP, has been made in a manner that in the Board’s opinion would partially meet the 14 representations. The mere fact that the Proposed Amendment involves a more substantial reduction in areas zoned “V” as compared to the Amendment Items under the draft OZP would not justify for a deviation from the required statutory procedure. In any case, the alleged procedural irregularity (i.e. the 3-week period) did not appear to have posed any obstacle for F1 to engage its representatives to prepare a lengthy FR submission to the Board.</p> <p>(b) In response to (2), it should be noted that any person may make representations and/or comments on representations in accordance to s.6(1) and s.6A(1) of the Ordinance. Any person, other than that who has made any representation or comment after consideration of which the Proposed Amendment is proposed, may also make FR to the Board in respect of the Proposed Amendment under s.6D(1) of the Ordinance. The future rights of the indigenous villagers are the subject of opposing FRs submitted which would be duly heard and considered by the Board.</p> <p>(c) In response to (3), as a matter of the plan-making process under s.6F of the Ordinance, the Proposed Amendment would be subject to the hearing of FR and the Board’s deliberation and decision before the Proposed Amendment may take statutory effect. The due process for considering the merits of the Proposed Amendment has yet to take place at the time of the publication of the Proposed Amendment and hence there is no question of the Board not discharging <i>Tameside</i> duty, not to mention insufficiently discharging that duty.</p>	

#### 4.3.7 *Preservation of Country Park Enclave*

Major Grounds	FRs
(1) Pak Lap is encircled by SKECP and linked to the country park environmentally and/or ecologically. The area supports diverse population of different fauna groups and the Board is urged to acknowledge the ecological value of the bird community recorded thereat. There is a need and public	<b>F83 to F85</b>

expectation to protect these areas and prevent any further destruction to the natural and rural environment.	
(2) Individuals of a water fern <i>Ceratopteris thalictroides</i> (水蕨), which is considered to be a “rare and precious plant”, were found in the marsh of the “V” and/or the “AGR” zones in 2014, but “destroy first, build later” activities also occurred there.	<b>F83, F84</b>
(3) The Board shall reiterate the introduction of planning control alone could not fully protect the sites from activities such as unauthorised tree felling and vegetation removal. The authority should consider including Pak Lap into the SKECP following detailed assessments and public consultation.	<b>F84</b>
(4) It is observed that there are UD's and paving of land. An Enforcement Notice was issued on 4.1.2021 because of unauthorised toilets, changing, bathing and storage facilities.	<b>F85, F86</b>
<b>Responses</b>	
<p>(a) In response to (1) and (2), the ecological value of Pak Lap and the surrounding areas have been well recognised. The Board well noted and have already duly considered those points in the previous hearing. A conservation-oriented approach has been adopted in drawing up the draft OZP. The grounds raised by <b>F83</b> to <b>F85</b> above are not related to the Proposed Amendment.</p> <p>(b) In response to (3), designation of Country Park is under the jurisdiction of the Country and Marine Parks Authority governed by the Country Parks Ordinance (Cap. 208) which is outside the purview of the Board.</p> <p>(c) In response to (4), the Planning Authority has been taking planning enforcement actions against UD's in Pak Lap, including the FR Site as detailed in paragraph 3.1.2 above.</p>	

## 5. Departmental Circulation

The following government departments have been consulted and their comments have been incorporated in the above paragraphs and **Annex IV**, where appropriate:

- (a) District Lands Officer/Sai Kung, LandsD;
- (b) Director of Agriculture, Fisheries & Conservation;
- (c) Director of Environmental Protection;
- (d) Chief Engineer/Mainland South, Drainage Services Department;
- (e) Chief Engineer/Construction, Water Supplies Department;
- (f) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau;
- (g) District Officer (Sai Kung), Home Affairs Department;
- (h) Chief Town Planner/Urban Design and Landscape, PlanD; and
- (i) Chief Town Planner/Central Enforcement and Prosecution, PlanD.

## 6. Planning Department's Views

- 6.1 The supportive views of **F83 to F86** are noted.
- 6.2 Based on the assessments in paragraph 4 above, and for the following reasons, PlanD does not support F1 to F81 and the adverse views stated in **F82 to F86** and considers that the draft OZP should be amended by the Proposed Amendment:

### Genuine Need for Small House Development

- (a) to follow up the Court's Judgment on the JR, a review on the genuine need for Small House development has been undertaken and the best available information has been provided to the Board for consideration, with which the Board has sufficiently acquainted (**F1**);

### Reduction in the "Village Type Development" Zone

- (b) the designation of the "V" zones is considered appropriate and a host of planning factors, including but not limited to the 'village environs', local topography, existing settlement pattern, number of approved and outstanding Small House applications, Small House demand forecast, availability of road access and infrastructure, areas of ecological and landscape importance, site specific characteristics, as well as the representations and comments on the draft OZP, have been taken into account. An incremental approach has been adopted for designating the "V" zone with an aim to confining Small House development to the existing village cluster to minimise adverse impact on the natural environment (**F1 to F36**);

### Designation of the "Agriculture" Zone

- (c) the designation of "AGR" zone on the OZP, including the FR Site, is considered appropriate as such areas under this zoning possess a potential for agricultural rehabilitation. The proposed "AGR" zoning would not affect the permitted use of the land and the rights under the lease (**F2 to F80**);
- (d) there is sufficient control under the statutory planning regime over developments within the "AGR" zone. Development proposals requiring planning permission would be considered by the Board on their individual merits to ensure any potential impacts are properly mitigated. Conservation zonings, such as "CA", "GB(1)" or "AGR(2)" for the FR Site are not justified from the nature conservation perspective (**F81 to F86**);

### Provision of Buffer to the Existing Stream and Sewage Impact

- (e) having considered a host of planning considerations and the advice of expert departments, it is considered appropriate to rezone the FR Site from "V" to "AGR" for provision of a buffer to the stream (**F1**);



- (f) there are established mechanisms exercised through the Small House grant application system to ensure the design and construction of STS systems for any developments would not entail unacceptable impacts on the surrounding environment (**F85 and F86**);

Planning Procedure

- (g) the procedures adopted by the Board in the making and publishing of the Proposed Amendment is considered legally and procedurally proper (**F1**);

Preservation of Country Park Enclave

- (h) the ecological value of Pak Lap and the surrounding areas is well recognised and has been duly considered by the Board during the previous hearing on the draft OZP (**F83 to F85**); and
- (i) designation of Country Park is under the jurisdiction of the Country and Marine Parks Authority governed by the Country Parks Ordinance (Cap. 208) which is outside the purview of the Board (**F84**).

**7. Decision Sought**

- 7.1 The Board is invited to give consideration to the FRs taking into consideration the points raised in the hearing, and decide whether to amend the draft OZP by the Proposed Amendment or by the proposed amendment(s) as further varied during the hearing.
- 7.2 Members are also invited to agree that the draft OZP (amended by the Proposed Amendment or the proposed amendment(s) as further varied), together with their respective Notes and the updated Explanatory Statement (ES), are suitable for submission under section 8 of the Ordinance to the CE in C for approval.

**8. Follow-up Action**

- 8.1 Should the Board decide to amend the draft OZP by the Proposed Amendment or the proposed amendment(s) as further varied, such amendment(s) shall form part of the draft Pak Lap OZP No. S/SK-PL/3. In accordance with section 6H of the Ordinance, the OZP shall thereafter be read as including the amendment(s). The amendment(s) shall be made available for public inspection until the CE in C has made a decision in respect of the draft OZP in question under section 9 of the Ordinance.
- 8.2 Administratively, the Building Authority and relevant government departments will be informed of the decision of the Board and will be provided with a copy/copies of the amendment(s).

**9. Attachments**

<b>Annex I</b>	Draft Pak Lap OZP No. S/SK-PL/3 (reduced size)
<b>Annex II</b>	Schedule of the Proposed Amendment, proposed amendments to the ES and the Amendment Plan of the draft OZP
<b>Annex III</b>	List of Further Representers
<b>Annex IV</b>	Summary of Further Representations and PlanD's Responses
<b>Plan FH-1</b>	Location Plan of Further Representation Site
<b>Plan FH-2</b>	Aerial Photo
<b>Plan FH-3</b>	Proposals of Further Representers
<b>Plans FH-4a and 4b</b>	Site Photos

**PLANNING DEPARTMENT  
APRIL 2021**