RNTPC Paper No. Y/I-MWN/1 For Consideration by the Rural and New Town Planning Committee On 9.12.2022

<u>APPLICATION FOR AMENDMENT OF PLAN</u> UNDER SECTION 12A OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. Y/I-MWN/1

<u>Applicant</u>	: Mr. Paul Melsom represented by Designing Hong Kong Limited
<u>Site</u>	: Government Land in D.D.1 Mui Wo and D.D.2 Mui Wo
<u>Site Area</u>	: $21,312 \text{ m}^2 \text{ (about)}$
Land Status	: Government Land
<u>Plan</u>	: Approved Mui Wo North Outline Zoning Plan (OZP) No. S/I-MWN/2 (currently in force)
	Draft Mui Wo North OZP No. S/I-MWN/1 (at the time of submission)
<u>Zoning</u>	: "Green Belt" ("GB") [the zoning and development restrictions of the Site remain unchanged]
<u>Proposed</u> <u>Amendment</u>	: To rezone the application site from "GB" to "Conservation Area" ("CA")

1. <u>The Proposal</u>

- 1.1 The applicant proposes to rezone the application site (the Site) from "GB" to "CA" (**Plan Z-1**) with an intention to impose a higher level of conservation zoning on the Site. By rezoning the Site to "CA", the applicant considers that all relevant parties shall be able to avoid carrying out any works/activities that would adversely affect the regenerated forest, thereby allowing the native trees as well as the associated naturally recovered wider ecosystem to further develop and become mature.
- 1.2 The applicant submits a tree survey in the Supplementary Planning Statement (Appendix Ia). There is no development proposal nor technical assessment submitted to support the application. The rezoning boundary of the Site and a series of aerial photos showing the development of the Site submitted by the applicant are at Drawings Z-1 and Z-2.

(a) Application Form received on 21.9.2022

(Appendix I)

(b) Supplementary Planning Statement

(Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Section 8 of the Supplementary Planning Statement at Appendix Ia. They are summarised as follows:

Accelerating and transforming the forest regeneration pattern - a local showcase of 'Ecological Restoration Area'

The applicant and his volunteers started in around 20 years ago, during the years of (a) 1999, 2002 and 2003⁽¹⁾, for afforestation at the Site. The Site has been gradually turned into a flourishing secondary woodland comprising many native and rare species. In the verification survey conducted by the experts of Kadoorie Farm and Botanic Garden (KFBG) in 2022, a total of 86 species of native trees/shrubs are identified within the Site and 20 of them are considered to be species of conservation concern, such as Ormosia pachycarpa (茸莢紅豆) and Castanopisis concinna (華南錐) which cannot be easily planted in many other places. The diversity and ecological value of the trees within the Site are remarkable and are far greater than those common species found in Hong Kong.

A living seed bank of plant diversity deserving robust protection

(b) This developing young forest is ecologically functional as many of the species are already setting seed and reproducing. If the trees within the Site are well-protected, which will allow them to become more mature in the future. They would produce many more seeds, in terms of both quantity and diversity. Therefore, the Site should be well protected.

A better buffer to the Lantau North (Extension) Country Park and the current tree planting area

(c) The Site is adjacent to the country park, and the existing tree planting area(s) within the Site would be buffered and protected as the control on "CA" zone would be more stringent, e.g. through the mechanism of Environmental Impact Assessment Ordinance (EIAO) (Cap. 499) and thus more consideration can be given to protect this area.

An easily accessible area for future studies

(d) The Site is easily accessible through existing footpaths which provides an excellent opportunity for educational purposes (e.g. for university and school students,

⁽¹⁾ The applicant states that the reforestation project has been shifted north and east into the Country Park area since 2004.

environmental managers, local villagers, hikers and tourists). It can help enhance the overall educational value of the area including the adjoining country park.

In line with the planning intention and the Government's initiative

(e) The general planning intention of the Mui Wo North is to 'conserve its landscape and ecological value in safeguarding the natural habitats and to maintain the unique and rural character and cultural heritage of the Area'. The rezoning application could also echoe the overarching principle of 'Conservation for the South' embraced in the Sustainable Lantau Blueprint.

3. <u>Compliance with the "Owner's Consent/Notification" Requirements</u>

As the Site involves government land only, the "owner's consent/notification" requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owners Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) are not applicable to the application.

4. <u>Background</u>

- 4.1 The Site was first designated as "Unspecified Use" on the draft Mui Wo North Development Permission Area Plan No. DPA/I-MWN/1 (the DPA Plan) gazetted on 8.1.2021. On 27.8.2021, the draft Mui Wo North OZP No. S/I-MWN/1 was gazetted, which replaces the DPA Plan.
- 4.2 The Site is zoned "GB" on the draft Mui Wo North OZP No. S/I-MWN/1. It is the subject of a representation/comment (i.e. Representation No. 10 and Comment No. 5) on the draft Mui Wo North OZP No. S/I-MWN/1 previously submitted by the applicant who proposed to rezone the woodlands in Wo Tin from "GB" to "CA" but covering a much larger area than the current one (about $66,692m^2$ vs $21,312m^2$ (i.e. about 32% of the representation site) (Plan Z-1). Upon consideration of the representation and comment, among others, on 29.4.2022⁽²⁾, the Town Planning Board (the Board) decided not to uphold the representation mainly on the consideration that the designation of "GB" zone on the OZP was considered appropriate for protecting the natural habitats such as woodlands, marshes, mangroves and natural streams in the Mui Wo North area while at the same time reflecting the existing site conditions where human settlements and activities were taking place. Besides, Members in general considered the information submitted and presented by the representer inadequate to justify the rezoning of the Site from "GB" to "CA". Notwithstanding that, Members considered that the rezoning proposal would be worth studying further by the relevant government departments and further amendment to the OZP might be submitted to the Board for consideration in future if considered appropriate.

⁽²⁾ The relevant TPB Paper No. 10821 and minutes of the said TPB meeting are available at the Board's website: <u>https://www.info.gov.hk/tpb/en/meetings/TPB/Agenda/1268_tpb_agenda.html</u> <u>https://www.info.gov.hk/tpb/en/meetings/TPB/Minutes/m1268tpb_e.pdf</u>

4.3 On 13.9.2022, the Chief Executive in Council approved the draft Mui Wo North OZP. On 23.9.2022, the approved Mui Wo North OZP No. S/I-MWN/2 was exhibited for public inspection under section 9(5) of the Town Planning Ordinance. The zoning and development restrictions⁽³⁾ of the Site remain unchanged on the current OZP.

5. <u>Previous Application</u>

There is no previous application at the Site.

6. <u>Similar Application</u>

There is no similar application involving rezoning from "GB" to "CA" on the OZP.

7. <u>The Site and its Surrounding Areas</u> (Plans Z-1, Z-2, aerial photo on Plan Z-3 and site photos on Plans Z-4a to Z-4d)

- 7.1 The Site is:
 - (a) bounded by Lantau North (Extension) Country Park to its north and east, and an area zoned "GB" to its south and west;
 - (b) mainly occupied by vegetation and woodland, with an abandoned house (**Plan Z-4b**) located within the Site;
 - (c) located to the northeast of Wo Tin and Pak Ngan Heung, and to the northwest of Wang Tong; and
 - (d) accessible via footpaths leading from Wo Tin and Pak Ngan Heung as well as Wang Tong (**Plan Z-1**).
- 7.2 The surrounding areas have the following characteristics:
 - (a) to the southeast is a permitted burial ground (**Plan Z-1**); and
 - (b) the villages of Wo Tin and Wang Tong (**Plan Z-1**) are located about 310m and 540m away from the Site respectively.

⁽³⁾ According to the Notes of the OZP for the "GB" zone, any diversion of stream, filling of land/pond or excavation of land, including that to effect a change of use to any of those specified in Columns 1 and 2 or the uses or developments always permitted under the covering Notes (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works), shall not be undertaken or continued on or after the date of the first publication in the Gazette of the notice of the draft development permission area plan without the permission from the Board under section 16 of the Town Planning Ordinance.

The planning intention of 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.

9. <u>Comments from Relevant Government Departments</u>

9.1 The following government departments have been consulted and their views are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Islands, Lands Department (DLO/Is, LandsD):
 - (a) the Site comprises (i) certain unleased and unallocated Government land in D.D.1 Mui Wo and D.D.2 Mui Wo; (ii) the areas of three government land licences (GLLs), i.e. GLLs No. C7248, C8982 and C12245, for residential and agricultural purposes (Plan Z-2); and (iii) the respective areas of seven squatter structures under the Squatter Control Policy;
 - (b) the two graves (Plan Z-2) mentioned in the Supplementary Planning Statement (Appendix Ia) are within the licence areas of GLLs No. C7248 and C8982 respectively, while the abandoned house is within the licence area of GLL No. C8982;
 - (c) in the event that the redevelopment control for the proposed "CA" zone is stipulated on the OZP, the existing rights of the licencees of the GLLs, and the right of the owners or the occupants of the squatter structures for domestic purposes to repair and/or rebuild their domestic squatter structures may be affected. The licensees of the GLLs and the owners/occupants of the squatter structures may object to the rezoning proposal if their rights will be adversely affected by the proposed rezoning; and
 - (d) LandsD will not take up the maintenance responsibilities of those trees planted or proposed to be planted by other parties on government land. Tree planting may involve excavation. Except obtaining prior approval of the relevant authority, a person shall not make or maintain any excavation on government land. Any person who makes or maintains an excavation in Government land shall be liable on conviction to a fine and imprisonment under the Land (Miscellaneous Provisions) Ordinance (Chapter 28).

Nature Conservation

- 9.1.2 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
 - (a) the Agriculture, Fisheries and Conservation Department (AFCD) has studied the tree survey in the Supplementary Planning Statement (Appendix Ia) and conducted site inspections;
 - (b) in terms of plant species within the Site recorded in the tree survey, it is generally consistent with those observed by AFCD in recent site inspections;
 - (c) AFCD has no strong view on the application from the nature conservation perspective but considers that the trees within the Site, although mainly of native species, are still fairly young. Besides, regarding the status of the 20 species of conservation concern reported in the Supplementary Planning Statement, DAFC has the following comments:
 - (i) for the three species (Cyclobalanopsis hui (雷公青岡), Ilex chapaensis (沙壩冬青) and Elaeocarpus nitentifolius (絹毛杜英) that are marked as 'very rare'/'rare', they have also been recorded in other places in Hong Kong in addition to Lantau Island; and
 - (ii) for the 13 species that are marked as 'restricted', except *Fraxinus griffithii* (光蠟樹) which has only been recorded on Lantau Island (including Sunset Peak, Keung Shan, Tong Fuk, Lantau Peak), the others are naturally found in different places throughout Hong Kong;
 - (d) regarding the concerns raised in the public comments received, DAFC has the following comments:
 - (i) the Convention on Biological Diversity (CBD) is an international treaty on the conservation of biodiversity, the sustainable use of its components, and fair and equitable sharing of benefits deriving from the use of genetic resources. In general, Parties to the CBD are required to adopt measures for protecting biodiversity with regard to the CBD's provisions as far as possible and as appropriate in light of specific local circumstances. Hong Kong has been adopting a nature conservation policy and a wide range of measures in line with the objectives of the CBD;
 - (ii) apart from the Site, the woodland areas in the vicinity of the Site also provide butterfly habitats;

- (iii) any "Site of Specific Scientific Interest" ("SSSI")⁽⁴⁾ proposals should be assessed according to established mechanism; and
- (iv) some species mentioned in the public comments are not considered rare in Hong Kong [e.g. Cyclobalanopsis edithiae (華南青岡) and Castanopsis fissa (黧蒴錐)]. Besides, Ormosia pachycarpa (茸莢紅豆) is neither listed in the International Union for Conservation of nature and Natural Resources Red List nor protected under the "Protection of Endangered Species of Animals and Plants Ordinance" (Cap 586).

Landscape Aspect

9.1.3 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

with reference to the aerial photo of 2021, the Site is located in an area of uplands and hillsides landscape dominated by woodland, streams, footpath, open space and graves (**Plan Z-1**). There would not be any change to the landscape resources and character as proposed by the applicant. She has no strong view on the subject application from landscape planning perspective.

Urban Design and Visual Aspects

9.1.4 Comments of the CTP/UD&L, PlanD:

she has no specific comment from urban design and visual impact perspectives.

Environmental Aspect

- 9.1.5 Comments of the Director of Environmental Protection (DEP):
 - (a) as the proposed rezoning from "GB" to "CA" is to protect the habitat at the Site and no specific development proposal is put forward, she has no comment on the application; and
 - (b) the purpose of the EIAO is to avoid, minimise and control the adverse impact on the environment of certain projects i.e. designated projects as specified in the EIAO, through the application of the EIAO process and the environmental permit system. Designated projects cover projects that are within and/or in the vicinity of ecological sensitive areas such as "CA" zone. According to the applicant, the Site is a

^{(4) &}quot;SSSIs" are land or marine-based sites by reason of their biological and/or geological importance. In general, AFCD is responsible for assessing their scientific importance. Proposals for biological SSSIs are assessed against the major criteria: (i) its naturalness, uniqueness or rarity in a territory-wide context; (ii) its scientific value in a territorial or regional context; and (iii) whether it is representative or typical of its kind.

flourishing secondary woodland comprising many native species. The consideration for rezoning to "CA" is a land use/ nature conservation matter.

Water Supply

- 9.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department:
 - (a) the Site is not within any water gathering grounds; and
 - (b) he has no objection to the rezoning application from water supply system planning point of view.

Sustainable Lantau Development

- 9.1.7 Comments of the Head of Sustainable Lantau Office, Civil Engineering and Development Department (H(SLO), CEDD):
 - the Sustainable Lantau Blueprint (Blueprint) promulgated in June (a) 2017 embraces the overarching principle of "Development in the North; Conservation for the South". The predominant part of Lantau would be conserved for its natural and cultural resources. Major development at sites of natural and cultural heritage importance and their surrounding areas should be avoided wherever possible. Where appropriate, low-impact leisure and recreational uses would be developed for public enjoyment. Based on the principle adopted in the Blueprint and the characters of different parts of Lantau, the Lantau Conservation and Recreation Masterplan (the Masterplan) was formulated in December 2020 to provide a framework guiding the conservation and recreation initiatives, and orchestrate public and private projects better for achieving synergy in conservation of Lantau. Mui Wo as a major rural township in Lantau with rich history, amazing nature and delightful attractions is themed for "Rural Township Improvement" under the Masterplan;
 - (b) conserving areas in Lantau of high ecological value is in line with the Blueprint and Masterplan; and
 - (c) there is no particular view on the zoning provided that the zoning could help conservation.

Geotechnical Aspect

9.1.8 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

noting that the rezoning application from "GB" to "CA" does not involve any development proposal, he has no geotechnical comment on the application.

Local Views

- 9.1.9 Comments of the District Officer/Islands, Home Affairs Department (DO/Is, HAD):
 - (a) she has no adverse comment on the application from project point of view; and
 - (b) her office has received two objections to the application. One objection is from the Chairman of Islands District Council (IsDC) (**Appendix IV**) stating that the "GB" zoning is sufficient to reflect the current planning circumstances. The other objection is from the Indigenous Inhabitant Representative (IIR) of Wo Tin mainly raising concern on deprivation of private property right (**Appendix VIe**) (the same was also submitted to the Board as mentioned in paragraph 10 below).
- 9.2 The following government departments have no objection to/no comment on the application:
 - (a) Commissioner for Transport; and
 - (b) Chief Engineer/Hong Kong & Islands, Drainage Services Department.

10. <u>Public Comments Received During Statutory Publication Period</u>

- 10.1 On 30.9.2022, the application was published for public inspection. During the statutory publication period, 42 public comments were received, including 37 supporting comments from Green Power, The Conservancy Association, Green Sense Hong Kong Ltd., Save Lantau Alliance and individuals (with four in standard letters) (samples at **Appendices Va** to **Vd**), and five opposing comments from the Mui Wo Rural Committee (MWRC), IIR of Wo Tin (with 24 signatures) and individuals (samples at **Appendices VIa** to **VIe**). A full set of public comments is deposited at the Board's Secretariat for Members' inspection.
- 10.2 The major views of the public comments received are as follows:

Supporting Views

- (a) the reforestation efforts and rezoning the Site for conservation purpose are supported;
- (b) the area is of well-vegetated with high diversity of native trees and species of conservation significance. Some of the species already setting seed and reproducing and some of them cannot be planted or self-sustained in other sites. Therefore, the rezoning is good for the environment and conservation;
- (c) the proposed rezoning to "CA" would bring additional safeguards for endangered habitats and help leading to more conservation in vicinity, elsewhere on Lantau and the territory;
- (d) the "CA" zoning would combat climate change and biodiversity loss, help the Hong Kong BSAP and its commitments on protected areas towards CBD;
- (e) the woodland within the Site brings benefits to the butterflies, birds and

mammals in the area;

- (f) the rezoning will create a good place for scientific and environmental studies and new green jobs in conservation, eco-practices, eco-tourism and eco-education;
- (g) the rezoning will provide a partial protection buffer between "GB" zone and the Country Park;
- (h) the Site is adjacent to Lantau North (Extension) Country Park and could safeguard the wildlife corridor from Lin Fa Shan, Pak Ngan Heung fung shui woodland and Wo Tin; and
- (i) the Site is of high conservation value and could be rezoned to "CA", "Coastal Protection Area" or "SSSI".

Objecting Views

- (a) the procedures of the approved OZP have just completed and the Board should be consistent in its decision and reject the application;
- (b) approval of the current rezoning application would impede future land uses of the Site and the area, depriving private property right;
- (c) rezoning to "CA" is inappropriate; and
- (d) "GB" zoning is sufficient to provide protection to the area.

11. Planning Considerations and Assessments

11.1 The Site is the subject of a representation/comment on the draft Mui Wo North OZP No. S/I-MWN/1 submitted by the applicant of the subject application. In the representation, the applicant proposed to rezone a larger area (including the Site) from "GB" to "CA" (Plan Z-1). In considering the representation/comment, the Board had taken into account relevant planning consideration including the site conditions and its surroundings, conservation value of the concerned area, views of relevant government departments including DAFC. It was concluded that there was no mature woodland nor ecologically important stream (EIS) found in the area and the "GB" zoning was appropriate for the area (including the Site) to render protection of the natural habitats and at the same time to reflect the existing site conditions where human settlements and activities were taking place. In the current application, the applicant proposes to rezone the Site from "GB" to "CA". The applicant claims that the Site has unique conservation importance and the proposed rezoning is intended to demarcate the area of high conservation value as well as to avoid different parties to carry out any works/activities that would adversely affect the regenerated forest.

Planning Intention

11.2 The planning intention of "GB" zone on the Mui Wo North OZP 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. Except agricultural use and some uses compatible with the natural environment, development in "GB" zone will be strictly controlled and require planning permission from the Board (**Appendix II**). While there is no "CA" zone on the Mui Wo North OZP and the applicant has not proposed a set of Notes for the "CA" zone, according to the Master Schedules of Notes for "CA" zone (**Appendix III**),

the planning intention of "CA" zone is 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 "SSSI" or country park from adverse effects of development.

11.3 As stipulated in the Notes of the OZP for conservation zones, including both "GB" and "CA" zones, there is a general presumption against development. Under both "GB" and "CA" zonings, only a few uses that are related to preserving the natural resources and compatible with the natural environment are allowed, and most of the uses/developments require permission from the Board. Furthermore, as for diversion of stream, filling of land/pond or excavation of land which may cause adverse drainage and environmental impacts on the adjacent areas and the natural environment, permission from the Board is required for such works except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works. According to the covering Notes of the OZP, redevelopment of New Territories Exempted House (NTEH) or replacement of an existing domestic building by a NTEH is always permitted in the "GB" zone. This is normally not applicable to the "CA" zone. It should, however, be noted that the Site falls entirely on Government land and the Government has control on any works, activities and/or development at the Site. In fact, there is neither house lot nor NTEH within the Site.

Nature Conservation

- 11.4 In the preparation of statutory town plans, the wide implications of conservation zones have been considered. The preparation of the draft Mui Wo North OZP has duly reflected the overarching principle of "Development in the North; Conservation for the South" embraced in the Sustainable Lantau Blueprint promulgated in 2017 to conserve the unique rural and natural characters of the Mui Wo North area. The designation of the conservation zonings on the OZP has taken into account the landscape and ecological values of particular sites or areas.
- 11.5 In general, "CA" and "GB" are both conservation-related zonings of different levels of control on land use and development. As mentioned above, these zones have a general presumption against development. Amongst them, "CA" zone is usually used for covering areas with considerable ecological significance, such as fung shui woodland and EIS. For other common natural habitats and vegetated areas, "GB" zone is generally adopted. As such, designation of "GB" zone on the Site is considered appropriate.
- 11.6 The applicant has submitted a tree survey and intended to demonstrate that the trees within the Site are unique with significant ecological value for conservation. However, based on the advice from DAFC on the condition of the site and the status of individual tree species, the current "GB" zoning is considered appropriate for the area at large including the Site.

Technical Aspects

11.7 Other government departments including DEP, CTP/UD&L of PlanD, H(GEO) of CEDD and H(SLO) of CEDD have no objection to or no adverse comment on the

rezoning application on technical aspects and sustainable Lantau development perspective.+

Public/Local Views

11.8 There are two comments conveyed by DO/Is and 42 public comments received as summarised in paragraphs 9.1.9(b) and 10 above. Regarding the views that the Site is part of Wo Tin and/or private land, it should be noted that the Site involves government land only. It is not within any village 'environs' nor permitted burial ground (**Plan Z-1**). With regard to the supporting views, the departmental comments in paragraph 9 and the assessments in paragraphs 11.1 to 11.7 above are relevant.

12. <u>Planning Department's Views</u>

12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comments mentioned in paragraphs 9.1.9(b) and 10, the Planning Department <u>does not support</u> the application for the following reason:

the applicant fails to provide strong justifications in the submission to support the proposed rezoning. The current "Green Belt" zone for the application site, which is also a conservation zoning with a general presumption against development, is considered appropriate and should be retained.

12.2 Alternatively, should the Committee decide to agree/partially agree to the application, the proposed amendments to the approved Mui Wo North OZP No. S/I-MWN/2, together with the revised Notes and Explanatory Statement, would be submitted to the Committee for approval prior to gazetting under the Town Planning Ordinance.

13. <u>Decision Sought</u>

- 13.1 The Committee is invited to consider the application and decide whether to agree, partially agree, or not to agree to the application.
- 13.2 Should the Committee decide not to agree to the application, Members are invited to advise what reason(s) for the decision should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 21.9.2022
Appendix Ia	Supplementary Planning Statement
Appendix II	Notes for "GB" zone on the Mui Wo North OZP
Appendix III	Master Schedule of Notes for "CA" zoning
Appendix IV	Local comment conveyed by DO/Is, HAD
Appendices Va to Vd	Samples of supporting comments
Appendices VIa to VIe	Samples of objecting comments

Drawing Z-1	Location Plan
Drawing Z-2	Historic Aerial Photos in the past 20 years
Plan Z-1	Location Plan
Plan Z-2	Site Plan
Plan Z-3	Aerial Photo
Plans Z-4a to Z-4d	Site Photos

PLANNING DEPARTMENT DECEMBER 2022