

TOWN PLANNING BOARD

TPB Paper No. 10953

**For Consideration by
the Town Planning Board on 2.2.2024**

DRAFT MA ON SHAN OUTLINE ZONING PLAN NO. S/MOS/27

CONSIDERATION OF REPRESENTATIONS NO. TPB/R/S/MOS/27-R1 TO R6

DRAFT MA ON SHAN OUTLINE ZONING PLAN (OZP) NO. S/MOS/27
CONSIDERATION OF REPRESENTATIONS NO. TPB/R/S/MOS/27-R1 TO R6

Subject of Representations (Amendment Items)	Representers (No. TPB/R/S/MOS/27-)
<p><u>Amendment to the Plan (Item A)</u> Incorporation of strips of land located to the south of Chevalier Garden along Mui Tsz Lam (MTL) Road and near MTL Village into the planning scheme area and zoning them as “Green Belt” (“GB”).</p> <p><u>Amendments to the Notes</u></p> <p>(a) Revision of the covering Notes of the OZP to form Part A of the covering Notes of the draft OZP and incorporation of a new set of Part B of covering Notes of the draft OZP.</p> <p>(b) Revision of ‘House’ to ‘House (other than rebuilding New Territories Exempted House (NTEH) or replacement of existing domestic building by NTEH permitted under covering Notes)’ under Column 2 of “Government, Institution or Community” (“G/IC”) and “GB” zones.</p> <p>(c) Revision of the Remarks for “GB” zone to incorporate planning permission requirement for diversion of stream, filling of land/pond or excavation of land (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works).</p> <p>(d) Revision of ‘Agricultural Use’ to ‘Agricultural Use (other than Plant Nursery)’ under Column 1 of “Conservation Area” (“CA”) zone.</p> <p>(e) Revision of the Remarks for “CA” and “Site of Special Scientific Interest” (“SSSI”) zones to introduce exemption clause for public works co-ordinated or implemented by Government on filling or excavation of land.</p> <p>(f) Removal of ‘Government Refuse Collection</p>	<p><u>Total: Six</u></p> <p><u>Support Item A and/or Revision to the Notes (4)</u> R1: Kadoorie Farm & Botanic Garden Corporation R2: Designing Hong Kong Limited R3: Individual R4: Individual</p> <p><u>Oppose Item A and Support/Oppose Revision to the Notes (1)</u> R5: Individual</p> <p><u>Provide Views (1)</u> R6: Smart Wish Development Limited represented by Llewelyn-Davies Hong Kong Limited</p>

Subject of Representations (Amendment Items)	Representers (No. TPB/R/S/MOS/27-)
Point’ and ‘Public Convenience’ from Column 2 and addition of these uses under Column 1 of “Village Type Development” (“V”) zone.	

Note: The names of the representers are attached at **Annex III**. Soft copy of the submissions is sent to Town Planning Board Members via electronic means; and is also available for public inspection at the Board’s website at https://www.tpb.gov.hk/en/plan_making/S_MOS_27.html and the Planning Enquiry Counters of the Planning Department in North Point and Sha Tin. A set of hard copy is deposited at the Board’s Secretariat for Members’ inspection.

1. Introduction

- 1.1 On 15.9.2023, the draft Ma On Shan Outline Zoning Plan No. S/MOS/27 (the draft OZP) at **Annex I** was exhibited for public inspection under section 5 (s.5) of the Town Planning Ordinance (the Ordinance). The Schedule of Amendments setting out the amendments is at **Annex II** and the location of the amendment to the Plan is shown on **Plan H-1**.
- 1.2 During the two-month statutory exhibition period, a total of six valid representations were received. On 15.12.2023, the Town Planning Board (the Board) agreed to consider all the representations collectively in one group.
- 1.3 This Paper is to provide the Board with information for consideration of the representations. The list of representers is at **Annex III**. The representations are at **Annex IV**. The representers have been invited to attend the meeting in accordance with section 6B(3) of the Ordinance.

2. Background

Item A –

Proposed incorporation of areas into the Planning Scheme Area and zoning them as “GB”

- 2.1 In recent years, the proliferation of landfilling and other land uses causing environmental damage to rural areas has become a rising concern. Some of these areas with ecological values are subject to development pressure and risk of environmental degradation. According to section 20(2) of the Ordinance introduced in 1991, the Board shall not designate an area that has already been included in an OZP as a development permission area (DPA). As the first Ma On Shan OZP was exhibited in 1991, the enforcement provision under DPA is not applicable to Ma On Shan and hence the Planning Authority could not undertake enforcement actions against unauthorized development before. The enforcement of zonings mainly rested with the control under building plan, land lease and various licensing regimes.

- 2.2 To strengthen the planning enforcement power under the Ordinance, the Legislative Council (LegCo) passed the Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022 incorporating amendments to the Ordinance, among others, on 13.7.2023 to empower the Secretary for Development (SDEV) to designate any area in New Territories which has been included in an OZP but has not been designated as a DPA to be a “Regulated Area” (RA) so as to enable the Planning Authority to take enforcement and prosecution actions against unauthorized developments for the purposes of nature conservation and/or protecting certain areas from environmental degradation.
- 2.3 MTL together with Mau Ping is one of the twelve Priority Sites for Enhanced Conservation identified under the New Nature Conservation Policy promulgated in 2004 for enhanced conservation. With the Town Planning (Amendment) Ordinance 2023 coming into operation on 1.9.2023, about 33 hectares (ha) of land located to the south of Chevalier Garden along MTL Road and near MTL Village was designated as Mui Tsz Lam Regulated Area (MTLRA) No. RA/MOS/MTL/1¹ on 15.9.2023 such that the Planning Authority is empowered to take enforcement actions against unauthorized developments. However, the designation of RA does not form part of the subject OZP amendment.
- 2.4 In considering the designation of MTLRA, it was observed that some vegetated areas to the south of Chevalier Garden along MTL Road and near MTL Village were neither covered by the OZP nor the Ma On Shan Country Park (the Country Park). In order to provide necessary statutory planning control to conserve their rural character and the natural landscape resources and habitats, a directive was granted by SDEV under the power delegated by the Chief Executive (CE) on 8.8.2023, pursuant to section 3(1)(a) to include these areas (about 1.94 ha) into the planning scheme area of the Ma On Shan OZP. The areas concerned incorporated into the planning scheme area of the OZP are zoned “GB” (**Item A**), thereby forming part of the larger “GB” zone in the adjoining area.

Amendments to the Notes of the Plan

- 2.5 In connection with the above amendment, amendments to the Notes of the Plan have also been made accordingly:-

Covering Notes

- in relation to the designation of MTLRA, the covering Notes have been amended to illustrate the provisions of Part A for land which is not within the boundaries of MTLRA, while a new section for Part B for land within the boundaries of MTLRA is included in the revised covering Notes of the OZP. Part A sets out the general provisions of the OZP with reference to the urban covering Notes, with suitable amendments to allow rural uses; whereas Part B was drawn up based on the rural covering Notes, with enforcement provisions provided;

“G/IC” and “GB” zones

- since ‘rebuilding of NTEH’ and ‘replacement of an existing domestic building by a NTEH’ are always permitted on land falling within the boundaries of the

¹ MTLRA No. RA/MOS/MTL/1 is enclosed in the Explanatory Statement of the draft OZP.

OZP in both Part A and Part B of the covering Notes of the draft OZP, ‘House’ under Column 2 for “G/IC” and “GB” zones has been revised as ‘House (other than rebuilding NTEH or replacement of existing domestic building by NTEH permitted under covering Notes)’;

“V” zone

- opportunity has been taken to remove ‘Government Refuse Collection Point’ and ‘Public Convenience’ uses which are common in village areas serving the needs of villagers and visitors, from Column 2 and to add these uses in Column 1 in the Notes for “V” zone, with a view to incorporating such amendments in future Master Schedule of Notes (MSN) review; and

Technical Amendments

- corresponding technical amendments to incorporate the revised MSN agreed by the Board on 6.8.2021 have also been made to the Notes, including inclusion of a remark requiring planning permission for diversion of stream, filling of land/pond or excavation of land (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works) under the “GB” zone. Details of the technical amendments are at **Annex II**.

The draft OZP

- 2.6 On 11.9.2023, the Rural and New Town Planning Committee (the Committee) agreed that the above proposed amendments to the approved Ma On Shan OZP No. S/MOS/26 were suitable for exhibition under s.5 of the Ordinance for public inspection. The relevant RNTPC Paper No. 6/23 is available at the Board’s website² and the extract of minutes of the RNTPC meeting is at **Annex V**. Accordingly, the draft Ma On Shan OZP No. S/MOS/27 was gazetted on 15.9.2023.

3. Local Consultation

- 3.1 Members of Sha Tin District Council (STDC) and Sha Tin Rural Committee (STRC) were notified on 15.9.2023 that members of the public could submit representations on the amendments in writing to the Secretary of the Board during the exhibition period of the draft OZP.
- 3.2 Planning Department (PlanD) consulted the Development, Housing, Environment and Health Committee (DHEHC) of the STDC and STRC on 19.9.2023 and 28.9.2023 respectively on the amendments incorporated into the draft OZP. PlanD explained the amendments to the OZP in connection with the designation of MTLRA and relevant enforcement provisions at the meetings. Both STDC and STRC had no adverse comments on the proposed amendments. The minutes summarizing the views from DC members and PlanD’s responses at the DHEHC meeting on 19.9.2023 are attached at **Annex VI**.

² The RNTPC Paper No. 6/23 is available at the Board’s website at:
https://www.tpb.gov.hk/en/meetings/RNTPC/Agenda/726_rnt_agenda.html

4. The Representation Sites and the Surrounding Areas

4.1 Item A (Plans H-1, H-2, H-3, H-4a to H-4c)

- 4.1.1 Item A sites with a total area of about 1.94 ha are zoned “GB”. The extended areas concerned are natural in character, densely vegetated and ecologically connected with the Country Park. Their characters are similar to those of the adjoining land under the same “GB” zone.

4.2 Planning Intention

- 4.2.1 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.

5. The Representations

5.1 Subject of Representations

- 5.1.1 During the two-month exhibition period, a total of six representations were received, of which four support Item A. Among the supportive representations, two were submitted by green groups (**R1** and **R2**) and two (**R3** and **R4**) were submitted by individuals with one of them (**R4**) also providing views.
- 5.1.2 One representation (**R5**) submitted by an individual opposes Item A and also indicates support on or objection to the amendments to the Notes.
- 5.1.3 One representation (**R6**) submitted by Smart Wish Development Limited represented by Llewelyn-Davies Hong Kong Limited provides views on the designation of RA and the associated amendments to the Plan and Notes.
- 5.1.4 The major grounds and views of the representations as well as the alternative proposal and PlanD’s responses in consultation with relevant government bureaux/departments (B/Ds), are summarized in paragraphs 5.2.1 to 5.4.3 below.

5.2 Major Grounds of and Responses to Supportive Representations

- 5.2.1 **R1** to **R4** support Item A while **R3** also supports the incorporation of a new set of Part B of the covering Notes of the draft OZP for the area covered by MTLRA. **R5**, although objecting to Item A, supports incorporation of a new set of Part B of the covering Notes for the area covered by MTLRA and revision to the Notes for “G/IC” and “GB” zones. Their major views and PlanD’s responses are summarized as below.

5.2.2 Item A

Major Ground(s) / View(s)	Representation No.
(1) Supports Item A to include parts of MTL area into the OZP for better protection as MTL falls within one of the twelve Priority Sites for Enhanced Conservation under the New Nature Conservation Policy.	R1
(2) Supports Item A as MTL has high ecological value but is suffered from high development pressure and unauthorized activities. Item A can ensure necessary statutory planning control to conserve the rural character and the natural landscape resources and habitats and connect with the existing “GB”.	R2
(3) Supports Item A as the area is compatible with the neighbouring “GB” zone and is a natural expansion of the “GB” zone, which would allow greater flexibility for different types of passive recreational activities in the urban fringe.	R3
(4) Supports Item A as MTL area contains unique ecological values and unauthorized developments are found in the MTL area.	R4
Responses	
(a) In response to (1) to (4): The supportive views are noted.	

5.2.3 Amendments to the Notes

Major Ground(s) / View(s)	Representation No.
(1) R3 supports the incorporation of a new set of Part B of the covering Notes for the area covered by MTLRA as it provides the power to PlanD to enforce against unauthorized development in order to protect the area from environmental degradation and conserve the natural environment. R5 would support the revision to the covering Notes if it provides better protection to ecological sensitive areas.	R3 and R5
(2) Supports revision of ‘House’ to ‘House (other than rebuilding NTEH or replacement of existing domestic building by NTEH permitted under covering Notes)’ under Column 2 of “G/IC” and	R5

“GB” zones as it is common to all rural OZPs.	
Responses	
(a) In response to (1) and (2): The supportive views are noted.	

5.3 **Major Grounds of and Responses to Adverse Representations**

5.3.1 **R5** objects to Item A and suggests an alternative proposal. It also objects to the amendments to the Notes. The major views and PlanD’s responses are summarized as below.

5.3.2 **Item A**

Major Ground(s) / View(s)	Representation No.
(1) Objects to Item A as “GB” zoning offers no protection as demonstrated in the many rezoning cases approved by the Board in recent years. MTL area will be rezoned if the Administration decides that it suits its agenda for large public housing developments. The land strips bordering the Country Park should be zoned “CA” instead.	R5
Responses	
(a) In response to (1): The strips of land under Item A are remnant pieces of land abutting the “GB” zone with similar rural and natural character as the adjoining “GB” zone. Incorporating these pieces of land into the OZP boundary and zoning them as “GB” to form part of the larger “GB” zone is considered appropriate to ensure proper development control. Any development proposals within the zone have to be fully justified by technical assessments and subject to the scrutiny of the Board through the planning application mechanism under the Ordinance.	

5.3.3 **Amendments to the Notes**

Major Ground(s) / View(s)	Representation No.
(1) Objects to all agricultural uses in “CA” zone which should be put under Column 2.	R5
(2) Objects to the exemption of public works co-ordinated or implemented by Government from planning permission requirement if these works involve diversion of stream, filling of land/pond or	

excavation of land under “GB”, “CA” and “SSSI” zones.	
(3) Objects to the removal of ‘Government Refuse Collection Point’ and ‘Public Convenience’ from Column 2 and addition of these uses under Column 1 of “V” zone, as requirement of planning permission for these uses would ensure the location and design of these facilities are not intrusive, bulky or being an eye sore.	
Responses	
<p>(a) In response to (1) :</p> <p>‘Agricultural Use (other than Plant Nursery)’ is not incompatible with the planning intention of the “CA” zone, and the inclusion of this use in Column 1 in the Notes for the “CA” zone is in line with the latest MSN adopted by the Board. Moreover, for agricultural structures involving land filing or excavation, planning permission is required from the Board to ensure no unacceptable impact on the area. There is no strong justification in the representation to support moving the use as Column 2 use of the “CA” zone.</p>	
<p>(b) In response to (2):</p> <p>On 6.8.2021, the Board agreed to a set of revised MSN with incorporation of the exemption clause for ‘public works co-ordinated or implemented by Government’ in the remarks for “GB”, “CA” and “SSSI” zones in order to streamline the planning application process for minor government works with no major adverse impact. Therefore, the amendments are to reflect the latest MSN and are technical in nature.</p>	
<p>(c) In response to (3):</p> <p>Refuse collection points (RCP) and public toilets operated by government are limited in scale and common in village areas to serve local residents. The purpose of putting these uses under Column 1 is to streamline the provision of these essential facilities to meet the needs of villagers and visitors. As advised by Food and Environmental Hygiene Department (FEHD), the provision of RCP and public toilets has to follow relevant design guidelines as stated in ‘Handbook on Standard Features for RCPs’ and ‘Handbook on Standard Features for Public Toilets’ to ensure the design could blend in well with surrounding environment and avoid causing nuisance to the area.</p>	

5.4 **Major Grounds of and Responses to Representations providing Views**

- 5.4.1 Both **R4** and **R6** provide views on the subject related to the amendment items and also matters related to designation of MTLRA or matters other than the subject of the amendment items. Their views and PlanD's responses are summarized below.

Major Ground(s) / View(s)	Representation No.
(1) The existing village and village 'environ' (VE) are included in MTLRA. Originally, temporary uses of 5 years or less were always permitted provided that they comply with any other relevant legislation, the conditions of the government lease concerned and any other government requirements. After the current OZP amendment, only a few specific temporary uses that are 2 months or less will be always permitted with the same pre-requisites applied. It becomes unreasonably and unnecessarily stringent given that other relevant legislation /regulations/requirements and government leases have already governed the possible temporary uses. The reduction of allowable period for temporary uses from 5 years to 2 months also appears to be arbitrary. Upgrading or improvement works for underground utilities, waterworks, drainage works and environmental improvement works particularly within private lots may only be carried out after obtaining planning permission.	R6
(2) A mechanism should be established between relevant departments to ensure a balance between environmental protection and local needs can be achieved on the OZP.	R4
Responses	
<p>(a) In response to (1) and (2):</p> <p>While the existing MTL Village does not fall within MTLRA, only about half of the VE zoned "GB" is included in MTLRA (Plan H-5).</p> <p>The subject "GB" zone within MTLRA, which falls within one of the 12 Priority Sites identified under the New Nature Conservation Policy promulgated in 2004 for enhanced conservation, has landscape and ecological value. Temporary uses, if not controlled, may induce adverse impact on the area. In this regard, similar to other rural OZPs, temporary uses within the subject "GB" zone not exceeding three years require planning permission from the Board.</p> <p>Any local upgrading/improvement works and public works co-</p>	

ordinated or implemented by Government are always permitted as stated in Part B of the covering Notes. Any building, engineering and other operations incidental to and all uses directly related and ancillary to the permitted uses and developments including those within the private lots, provided that no diversion of stream, filling of land/pond or excavation of land is involved, are also always permitted.

The OZP has already set out a statutory framework to guide land uses and developments within the area for relevant government departments and stakeholders and has struck a balance between conservation and local needs.

5.4.2 MTLRA Designation (does not form part of the OZP amendment)

Major Views / Comments	Representation No.
(1) The area covered by MTLRA has already been covered by OZP to ensure proper development control in accordance with the respective zonings and development restrictions. It should be noted that any illegal land filling and fly-tipping are already regulated by various pieces of legislation. With the number of enforcement and controls currently in force, it appears not necessary from development control point of view to adopt an additional control, overlapping with the miscellaneous pieces of legislation already enforced by various government departments under their respective purview.	R6
(2) The designation of MTLRA under the “GB” zone which is in close proximity to Ma On Shan New Town will impose monotonous constraints to any appropriate and less-sensitive sites within the whole elongated area in future. Only remedial types of works are always permitted in the MTLRA but not even minor upgrading works. The planning direction of the OZP amendment has set up significant constraints to the entire site and is not consistent with the intention of the “Guide to Application for Pilot Conservation Proposals under Private-Private partnership (PPP)” under the Nature Conservation Policy which facilitates the use of less ecologically portion to fund the conservation portion. The less-sensitive sites within the “GB” zone is now with more stringent requirements than the other “GB” zones in the territory.	

Responses
<p>(a) In response to (1) and (2):</p> <p>Designation of RA does not form part of the OZP amendment and is not subject to representation. The rationale for the designation of RA as stated in paragraphs 2.1 to 2.3 and the responses set out in paragraph 5.4.1(a) are also relevant.</p> <p>Any development proposals within the subject “GB” zone including those under the initiative of PPP has to be fully justified by technical assessments and subject to the scrutiny of the Board through the planning application mechanism under the Ordinance.</p>

5.4.3 **R4** provides views on the Schedule of Uses for “GB” and “V” zones which are not the subject of amendment items as summarized below.

Schedule of Uses for “GB” and “V” zones

Major Views / Comments	Representation No.
(1) Opposes agricultural use in Column 1 of “GB” and “V” zones as MTL has special ecological values. Additional remarks are required to specify the nature, size or other relevant criteria of agricultural activities to control the ‘Agricultural Use’ in Column 1 within “GB” and “V” zones.	R4
(2) ‘Field Study/Education Centre’ should not be in Column 2 of “GB” zone but Column 1 with clear remarks for limiting the size and height.	
Responses	
(a) In response to (1) and (2): The subject matter does not form part of the OZP amendment and is not subject to representation. For agricultural use in “GB” and “V” zones, responses set out in paragraph 5.3.3(a) are also relevant. ‘Field study/Education Centre’ use which may attract visitors and generate potential traffic, environmental or infrastructural impacts is considered appropriate to be put under Column 2 of the “GB” zone for development control through planning applications.	

6. Departmental Consultation

6.1 The following B/Ds have been consulted, and their comments, if any, have been incorporated into the above paragraphs where appropriate:

- (a) Secretary for Development;
- (b) Director of Agricultural, Fisheries and Conservation;
- (c) Commissioner for Transport;
- (d) District Lands Officer/Shan Tin, Lands Department;
- (e) Director of Environmental Protection;
- (f) Director of Food and Environmental Hygiene;
- (g) Chief Engineer/Construction, Water Supplies Department;
- (h) Chief Engineer/Mainland North, Drainage Services Department;
- (i) Chief Highway Engineer/New Territories East, Highways Department;
- (j) Project Manager/North, Civil Engineering and Development Department;
- (k) Chief Town Planner/Central Enforcement and Prosecution, Planning Department;
- (l) Chief Town Planner/Urban Design and Landscape, Planning Department; and
- (m) District Officer (Shan Tin), Home Affairs Department

7. Planning Department's Views

- 7.1 The supportive views provided in **R1** to **R4 (part)** and **R5 (part)** and other views provided in **R4 (part)** and **R6** are noted.
- 7.2 Based on the assessments in paragraph 5.3 above, PlanD does not support **R5 (part)** in relation to Item A and amendments to the Notes and considers that the OZP should not be amended to meet the representation for the following reasons:
 - (a) the “GB” zoning for areas under Item A which is similar in character with the adjoining “GB” zone is considered appropriate to ensure development control to conserve the natural landscape resources and habitats of the area;
 - (b) agricultural use is not incompatible with the planning intention of “CA” zone. Amendments to the Notes for “GB”, “CA”, and “SSSI” zones are in line with the latest MSN agreed by the Board. The exemption clause for public works co-ordinated or implemented by Government could help streamline minor government works with no major adverse impact ; and
 - (c) including ‘Government Refuse Collection Point’ and ‘Public Convenience’ under Column 1 of the “V” zone will streamline the provision of these common and essential facilities in village areas and such provisions will have to follow relevant design guidelines.

8. Decision Sought

- 8.1 The Board is invited to give consideration to the representations taking into consideration the points raised in the hearing session, and decide whether to propose/not to propose any amendments to the draft OZP to meet/partially meet the representations.
- 8.2 Should the Board decide that no amendment should be made to the draft OZP to meet the representations, Members are also invited to agree that the draft OZP, together with its respective Notes and updated Explanatory Statement, are suitable for submission

under section 8 of the Ordinance to the Chief Executive in Council for approval.

9. Attachments

Annex I	Draft Ma On Shan OZP No. S/MOS/27 (reduced size)
Annex II	Schedule of Amendments to the Approved Ma On Shan OZP No. S/MOS/26
Annex III	List of Representers
Annex IV	Submissions of Representers
Annex V	Extract of Minutes of RNTPC Meeting held on 11.9.2023
Annex VI	Extract of Minutes of STDC Meeting held on 19.9.2023 (in Chinese)
Annex VII	Provision of Major Community Facilities and Open Space in Ma On Shan OZP
Plan H-1	Location Plan of Amendment Item A
Plan H-2	Site Plan of Amendment Item A
Plan H-3	Aerial Photo of Amendment Item A
Plans H-4a to H-4c	Site Photos of Amendment Item A
Plan H-5	Mui Tsz Lam Regulated Area and Village Environ of Mui Tsz Lam

**PLANNING DEPARTMENT
FEBRUARY 2024**