

**SCHEDULE OF PROPOSED AMENDMENT TO
THE DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3
MADE BY THE TOWN PLANNING BOARD
UNDER THE TOWN PLANNING ORDINANCE (Chapter 131)**

I. Amendment to Matter shown on the Plan

- Item A – Rezoning of an area to the east of the village cluster at Pak Lap from
“Village Type Development” to “Agriculture”.

Town Planning Board

22 January 2021

**Proposed Amendments to the Explanatory Statement of
the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/3
in relation to Amendment Plan No. R/S/SK-PL/3-A1**

(This does not form part of the proposed amendment to
the draft Pak Lap Outline Zoning Plan No. S/SK-PL/3)

Paragraphs 7.1.2, 9.1, 9.3 and 9.3.2 of the Explanatory Statement are proposed to be amended:

7. OPPORTUNITIES AND CONSTRAINTS

7.1 Opportunities

7.1.2 Agriculture Potential

The northern parts of the Area which are once the subject of excavation works were previously used for agricultural use. With the cessation of excavation works, the fallow agricultural lands are now overgrown with grass and shrubs and are considered in good quality with good potential for agricultural use. *The central part of the Area comprises vacant land with agricultural infrastructure and possesses potential for rehabilitation for cultivation and other agricultural purposes.*

9. LAND USE ZONINGS

9.1 “Village Type Development” (“V”) : Total Area ~~0.95~~ **0.50** ha

9.3 Agriculture (“AGR”) : Total Area ~~2.39~~ **2.83** ha

9.3.2 Fallow arable land *and vacant land* with *agricultural infrastructure and* potential for rehabilitation for cultivation and other agricultural purposes is found in the north-western *and central* parts of the Area. They are worthy of preservation from agricultural point of view.

**List of Further Representers in respect of
the Draft Pak Lap Outline Zoning Plan (OZP) No. S/SK-PL/3**

Further Representation No. (TPB/R/S/SK-PL/3-)	Name of 'Further Representer'
F1	Master Mind Development Limited
F2	劉伯安
F3	何連嬌
F4	劉劍芳
F5	周有嬌
F6	劉天來
F7	林月鄉
F8	麥美華
F9	劉土興
F10	劉王玉英
F11	劉漆發
F12	鄺秀芬
F13	劉伯佑
F14	劉明光
F15	官美玲
F16	劉伯華
F17	Chan Lai Yin
F18	Chen Che Fung
F19	Cheung Ka Mang Joice
F20	Chiu Wah
F21	Chow Wing Hang
F22	Kan Kin Wing
F23	Kwan Chung Wai
F24	Kwok Sau Kuen
F25	Lai Chin Yung
F26	Lee Ka Sing
F27	Leong Hoi Yan
F28	Leung Man Kin
F29	Leung Wai Lim
F30	Ma Man Yee
F31	Ng Yu Chun Elise
F32	Tang Ching Han
F33	Wai Man Kit

Further Representation No. (TPB/R/S/SK-PL/3-)	Name of 'Further Representer'
F34	Wong Fung Tai
F35	Wong Lai Yin Natalie
F36	Wong Miu Ting
F37	Chak Kiu
F38	Chan Chi Fai
F39	Chan Fu Shing
F40	Chan Ka Ming
F41	Cheung Lui Lui
F42	Cheung Suk Yee
F43	Chik Chung Leung
F44	Chow Tat Chi
F45	Chu Yin On
F46	Lam Ho Yan
F47	Dorcas Fok
F48	Fan Tsz Chun
F49	Ko U Chong
F50	Kwok Man Kit
F51	Lam Cheuk Kwan
F52	Lau Hang Yee
F53	Law Chun Pan
F54	Lee Wing Kin
F55	Leung Wai Sing
F56	Li Ching Fai
F57	李安寧
F58	Suen Sau Ming
F59	Sung Yuen Shan
F60	Tam Siu Kong Terence
F61	To Wai Lim William
F62	Tong Kit Ping
F63	Wolfe Ian Brown
F64	Wong Chik Lim
F65	Wong Ho Fung
F66	Wu Jia Ling
F67	Wu Kit Ling
F68	Yeung King Ching

Further Representation No. (TPB/R/S/SK-PL/3-)	Name of 'Further Representer'
F69	Yu Ying Chee
F70	Yuen Cheuk Kei Edmond
F71	陳志偉
F72	洪志堅
F73	劉志雄
F74	蕭和平
F75	黃國民
F76	Cham Kam Sang
F77	Chong Tung Fai
F78	Ho Sze Wing
F79	Tsang Kwok Chuen
F80	Yuen Chun Keung
F81	Ng Hei Man
F82	Nip Hin Ming
F83	Woo Ming Chuan
F84	Wong Suet Mei
F85	Wong Wan Kei Samuel
F86	Paul Zimmerman



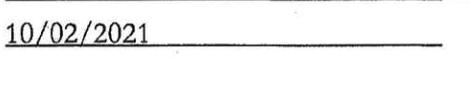

TPB/R/S/SK-PL/3-
F2

RECEIVED

11 FEB 2021

Town Planning
Board

就草圖的建議修訂作出進一步申述

圖則編號 : S/SK-PL/3
「進一步申述人」全名 : 劉伯安先生
香港身份證號碼 : 
通訊地址 : 
電郵地址 : 
電話號碼(可選擇提供) : 
日期 : 10/02/2021

進一步申述性及理由

有關事項

A 項 — 把一幅位於白腊村落群以東的土地由「鄉村式發展」地帶改劃為「農業」地帶。

性質

• 反對

理由

白腊村是一條有 300 年歷史的古村，村民當年是以埔魚和耕種維持生計。但由於地處火山灰口，土壤是酸性，黏性土壤對根部會做成腐爛，故從未有經濟價值之農作物在此生長。白腊村居民年紀老邁，根本無勞動力去從事耕種。沒有農業發展潛力，那有城市規劃委員所指的優質農地？現盲推「農業」地帶，根本是缺乏常識及科學性。因此，本人強烈反對改劃為不能發展的規劃用途。

白腊交通不便，政府並無提供水陸交通配套設施。談何容易從有經濟效益的農業。而來白腊海灘遊玩的大部份是香港市民，無酒店及餐廳，消費疏落。把「鄉村式發展」地帶改劃為「農業」地帶，進一步削減預留給鄉村居民發展小型屋宇和新界豁免管制屋宇的土地，根本是剝奪鄉村居民的發展權益。

城市規劃委員不能只聽取環保團體之所謂意見，而剝奪其他人的權利。城市規劃委員亦需尊重新界原居民的合法傳統權益，保留「鄉村式發展」地帶是不會對生態環境造成不良影響。

上一輩村民往外謀生，已達退休年齡，決定回鄉定居，落葉歸根。今取消「鄉村式發展」地帶，長者於村內建居所的機會都幻滅。規劃署的做法，對村民極不公允。

就草圖的建議修訂作出進一步申述

圖則編號 : S/SK-PL/3
 「進一步申述人」全名 : Ms. CHAN Lai Yin
 香港身份證號碼 :
 通訊地址 :
 電郵地址 :
 電話號碼(可選擇提供) :
 日期 : 10/02/2021



進一步申述性及理由

有關事項

A 項 – 把一幅位於白腊村落群以東的土地由「鄉村式發展」地帶改劃為「農業」地帶。

性質

• 反對

理由

現時白腊的土地用途地帶中，「農業」地帶總面積為 2.39 公頃，「自然保育區」地帶面積為 3.43 公頃，而「鄉村式發展」地帶總面積卻只有 0.95 公頃。

白腊的「農業」地帶並無用於耕種，因為冬天不夠水，夏天則水浸，缺乏灌溉，穩定水源不可為。白腊現已有足夠的土地用作農業及自然保育用途。若再縮減「鄉村式發展」地帶至 0.45 公頃的話，不但漠視村民對「鄉村式發展」地帶的真正需要，亦會打擊鄉村發展。而保留「鄉村式發展」地帶，則可持續發展並產生協同效應。村民回歸居住，有新勞動力，可將白腊發展生態旅遊，在環境、社會和經濟的需求之間取得平衡，確保土地有合理發展。

就草圖的建議修訂作出進一步申述

圖則編號 : S/SK-PL/3
 「進一步申述人」全名 : Ms. CHAK Kiu
 香港身份證號碼 :
 通訊地址 :
 電郵地址 :
 電話號碼(可選擇提供) :
 日期 : 10/02/2021



進一步申述性及理由

有關事項

A 項 — 把一幅位於白腊村落群以東的土地由「鄉村式發展」地帶改劃為「農業」地帶。

性質

• 反對

理由

假如業權人有意把較低價值的「農業」地帶改劃為較高價值的「鄉村式發展」地帶，政府必定要求業權人繳付一大筆補地價費。相反，城市規劃委員會現建議作出修訂，把較高價值的「鄉村式發展」地帶改劃為較低價值的「農業」地帶，但卻沒有向業權人作出任何補償。這是一個不合理和不平等的做法，政府此舉是入侵私人土地，等同是強搶民產。

如果城市規劃委員會可隨意把任何較高價值的地帶改劃為較低價值的地帶，本人憂慮為會立下不良先例，從而剝削業權人的土地權益。

For Official Use Only 請勿填寫此欄	Reference No. 檔案編號	TPB/R/S/SK-PL/3- F1
	Date Received 收到日期	

- The further representation should be made to the Town Planning Board (the Board) before the expiry of the specified plan exhibition period. The completed form and supporting documents (if any) should be sent to the Secretary, Town Planning Board, 15/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong.
進一步申述必須於指定的圖則展示期限屆滿前向城市規劃委員會（下稱「委員會」）提出，填妥的表格及支持有關進一步申述的文件（倘有），必須送交香港北角渣華道 333 號北角政府合署 15 樓城市規劃委員會秘書收。
- Please read the "Town Planning Board Guidelines on Submission and Publication of Representations, Comments on Representations and Further Representations" before you fill in this form. The Guidelines can be obtained from the Secretariat of the Board (15/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong - Tel.: 2231 4810 or 2231 4835) and the Planning Enquiry Counters of the Planning Department (Hotline: 2231 5000) (17/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong and 14/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories), or downloaded from the Board's website at <http://www.info.gov.hk/tpb/>.
填寫此表格之前，請先細閱有關「根據城市規劃條例提交及公佈申述、對申述的意見及進一步申述」的城市規劃委員會規劃指引。這份指引可向委員會秘書處（香港北角渣華道 333 號北角政府合署 15 樓 - 電話：2231 4810 或 2231 4835 及規劃署的規劃資料查詢處（熱線：2231 5000）（香港北角渣華道 333 號北角政府合署 17 樓及新界沙田上禾輦路 1 號沙田政府合署 14 樓）索取，亦可從委員會的網頁下載（網址：<http://www.info.gov.hk/tpb/>）。
- This form can be downloaded from the Board's website, and obtained from the Secretariat of the Board and the Planning Enquiry Counters of the Planning Department. The form should be typed or completed in block letters, preferably in both English and Chinese. The further representation may be treated as not having been made if the required information is not provided.
此表格可從委員會的網頁下載，亦可向委員會秘書處及規劃署的規劃資料查詢處索取。提出進一步申述的人士須以打印方式或以正楷填寫表格，填寫的資料宜中英文兼備。倘若未能提供所需資料，則委員會可把有關進一步申述視為不曾提出論。

1. Person Making this Further Representation (known as "Further Representer" hereafter)
提出此宗進一步申述的人士（下稱「進一步申述人」）

Full Name 姓名 / 名稱 (~~Mr./Ms./~~Company/Organisation* 先生/女士/公司/機構*)

Master Mind Development Limited

(Note: for submission by person, full name shown on Hong Kong Identity Card/Passport must be provided)
(注意：若個人提交，須填上與香港身份證／護照所載的全名)

2. Authorised Agent (if applicable) 獲授權代理人(如適用)

Full Name 姓名 / 名稱 (~~Mr./Ms./~~Company/Organisation* 先生/女士/公司/機構*)

Townland Consultants Limited

(Note: for submission by person, full name shown on Hong Kong Identity Card/Passport must be provided)
(注意：若個人提交，須填上與香港身份證／護照所載的全名)



3. Details of the Further Representation 進一步申述詳情

Draft plan to which the further representation relates (please specify the name and number of the draft plan to which the proposed amendments is make)
與進一步申述相關的草圖（請註明建議修訂的草圖名稱及編號）

Draft Pak Lap OZP No. S/SK-PL/3

* Delete as appropriate 請刪去不適用者

Please fill in "NA" for not applicable item 請在不適用的項目填寫「不適用」

3. Details of the Further Representation (Continued)(use separate sheet if necessary) [#] 進一步申述詳情(續)(如有需要,請另頁說明) [#]		
Nature of and reasons for the further representation 進一步申述的性質及理由		
Subject matters 有關事項 [@]	Are you supporting or opposing the subject matter? 你支持還是反對有關事項?	Reason 理由
Amendment Item A to the Draft Pak Lap OZP No. S/SK-PL/3 as shown on Amendment Plan No. R/S/SK-PL/3-A1	<input type="checkbox"/> support 支持 <input checked="" type="checkbox"/> oppose 反對	Please refer to Further Representation Letter
Proposed Amendments to the Explanatory Statement of the Draft Pak Lap OZP No. S/SK-PL/3 in relation to Amendment Plan No. R/S/SK-PL/3-A1	<input type="checkbox"/> support 支持 <input checked="" type="checkbox"/> oppose 反對	Please refer to Further Representation Letter
	<input type="checkbox"/> support 支持 <input type="checkbox"/> oppose 反對	
	<input type="checkbox"/> support 支持 <input type="checkbox"/> oppose 反對	

[#] If supporting documents (e.g. colour and/or large size plans, planning studies and technical assessments) is included in the further representation, 90 copies (or 40 hard copies and 50 soft copies) of such information shall be provided.
若進一步申述附有支持其論點的補充資料(例如彩色及/或大尺寸的圖則、規劃研究及技術評估),則須提供 90 份複本(或 40 份印文本和 50 份電子複本)。

[@] Please specify the amendment item number provided in the Schedule of Amendments.
請註明在修訂項目附表內的修訂項目編號。

Please fill "NA" for not applicable item 請在不適用的項目填寫「不適用」。

MASTER MIND DEVELOPMENT LIMITED
智生發展有限公司

8 February 2021

Townland Consultants Limited
18/F, 101 King's Road,
North Point,
Hong Kong

Attn.: K. R. Seddon, Chief Executive Officer



Dear Madam,

SECTION 6D(1) REPRESENTATION
TOWN PLANNING ORDINANCE (CHAPTER 131)

FURTHER REPRESENTATION IN RESPECT OF THE
DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3

We are pleased to appoint Townland Consultants Limited (TOWNLAND) as the Planning Consultant to prepare and submit the Captioned Further Representation on our behalf. TOWNLAND is hereby authorised to liaise, correspond and attend meetings with all relevant Government Departments and other bodies in respect to the Representation.


Should you have any queries, please feel free to contact us at 2750 3199.

Yours faithfully,

For and on behalf of

Master Mind Development Limited

For and on behalf of
MASTER MIND DEVELOPMENT LIMITED
智生發展有限公司


.....
Authorized Signature(s)

Wong Sung King Dorothy
Managing Director

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

The Secretary, Town Planning Board
c/o Planning Department
15/F North Point Government Offices
333 Java Road, North Point, HONG KONG

Dear Sir / Madam

SECTION 6D(1) REPRESENTATION TOWN PLANNING ORDINANCE (CHAPTER 131)

FURTHER REPRESENTATION IN RESPECT OF THE DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3

We are hereby instructed by Master Mind Development Limited (the "Further Representer") to submit this Representation to Amendment Item A of the Draft Pak Lap Outline Zoning Plan ("OZP") No. S/SK-PL/3 ("Draft OZP") as shown on Amendment Plan No. R/S/SK-PL/3-A1 and associated Amendments to the Statutory Notes of the OZP under s.6D(1) of the Town Planning Ordinance (the "Ordinance").

As a "concerned friend of the Village" who seeks holistic preservation of Pak Lap through environmental and cultural stewardship, the Further Representer wishes to lodge their **STRONG OBJECTION** to the Amendments on several grounds, which we outline in this Further Representation. We respectfully urge the Town Planning Board ("TPB") **not to adopt** Amendment Plan No. R/S/SK-PL/3-A1 and associated Amendments to the Explanatory Statement ("ES") on the basis of reasons given.

1. OVERVIEW

- 1.1 On 03 March 2020, the TPB decided to agree to Proposed Amendments to the Draft Pak Lap OZP No. S/SK-PL/1 incorporating amendments shown on Plan No. R/S/SK-PL/1-A2 (to be renumbered as S/SK-PL/3 upon exhibition) as well as to the associated revisions to the Statutory Notes and the ES of the OZP. The Proposed Amendments were in relation to the following:

城
市
規
劃
願
望

MAIN HONG KONG OFFICE :
1801, 18th Floor, 101 King's Road, North Point, Hong Kong
Telephone : (852) 2521 2911 Facsimile : (852) 2521 6631
E-mail address : tcld@townland.com Website : www.townland.com

CHINA OFFICE
Room 803, North Wing, Cangsong Building, Tailan 6th Road, Chegongmiao,
Fujian District, Shenzhen City, PRC. Postal Code 518040
Telephone : (86)[755] 8369 0780
E-mail address : tcld@townland.com

INDIA OFFICE :
CRD Samarth, 3rd Floor, B6 S.V. Road, Khar (W),
Mumbai, 400 052, India
Telephone : (91 22) 2600 0583
E-mail address : tcpl@townland.com

INDONESIA OFFICE :
Gedung Menara Anugrah, Lantai 21
Kantor Taman E.3.3, Jl. DR. Idris Anak Agung Gde Agung Lot.8.6-8.7
Kawasan Mega Kuningan, Jakarta Selatan 12950
Telephone : (62 21) 2941 0621
E-mail address : tcjkt@townland.com

ASSOCIATED COMPANIES :

TOWNLAND CONSULTANTS (INTERNATIONAL) LIMITED (International)

TOWNLAND CONSULTANTS (SHENZHEN) LIMITED (China)

TOWNLAND CONSULTANTS PVT. LIMITED (India)

PT TOWNLAND INTERNATIONAL (Indonesia)

HOWARD & SEDDON PARTNERSHIP (United Kingdom)



ISO 9001: 2015
Certificate No.: CC844

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- 1) the Rezoning of an area (about 0.03 ha) to the south of the Village cluster at Pak Lap from "Village Type Development" ("V") to "Government, Institution or Community (1)" ("G/IC(1)") with maximum building height of 2 storeys, or the height of the existing building, whichever is the greater ("**Amendment Item A**"). This area covers the existing recently developed 2-storey village office and a relocation site for a planned Government refuse collection point and a public convenience; and
 - 2) the Rezoning of an area (about 0.02 ha) to the further south of the Village cluster at Pak Lap from "G/IC" to "Conservation Area" ("CA") ("**Amendment Item B**"). This area, which is partly covered by trees, was originally reserved for the Government refuse collection point and public convenience.
- 1.2 The Proposed Amendments above are hereinafter collectively referred to as the "**Initial Amendment Items**".
- 1.3 The Draft OZP showing the Initial Amendment Items was exhibited under s.7 of the Ordinance for Public Inspection for a period of two months from 3 April 2020 to 3 June 2020. During the two-month statutory exhibition period, a total of 17 valid Representations were received. On 16 June 2020, the Representations were published for public comments and in the first three weeks of the publication period, a total of 61 valid Comments were received.
- 1.4 On 13 November 2020, after giving consideration to the Representations and Comments, the TPB decided to propose Further Amendment to the Draft OZP to partially meet Representations by further reviewing the "V" zone with a view to reducing its area and providing a buffer area between the "V" zone and a 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.
- 1.5 On 22 January 2021, Proposed Amendment to the Draft OZP under Amendment Plan No. R/S/SK-PL/3-A1 was exhibited for Public Inspection for a period of three weeks until 16 February 2021. **Item A** of the Proposed Amendment (being the only Amendment Item) seeks to rezone an area (about 0.45 ha) to the east of the Village cluster at Pak Lap from "V" to "**Agriculture**" ("AGR") (the "**Subject Site**") with corresponding changes to the relevant sections of the ES of the OZP ("**the Proposed Further Amendment**").

2. NATURE OF OBJECTION

- 2.1 The Further Representer expresses their **STRONG OBJECTION** to the arbitrary nature of the Proposed Further Amendment for reasons summarised below:
- The Proposed Further Amendment extends well beyond the scope of the Initial Amendment Items in terms of scope and area affected, and would result in **significant changes to the overall 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**.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- The 3-week commenting period currently allowed for the Proposed Further Amendment is insufficient to allow for proper representations and commenting on such a material change in the Planning Framework. Public Engagement allowed under the Statutory Planning Framework is **significantly reduced**, thus restricting the ability for aggrieved stakeholders to prepare representations or comments on the representations. Not least, because many of the Indigenous Villagers directly affected by such change had not been notified beforehand of the proposal and cannot be properly consulted within the time provided.
- Information presented so far to the TPB cannot constitute a comprehensive review on the genuine need for Small House development, and as such, its decision on reducing available land intended and zoned for "V" is both **arbitrary and premature**.
- It is **inappropriate** for Planning Department ("PlanD") to reduce the "V" zone while acknowledging potential demand for "V" in the future. This uncertainty demonstrates that the Proposed Amendment is **not based on a sound planning approach** and is highly inappropriate and against the long term Vision and responsibilities to make future provisions in a responsible manner that is Town Planning.
- While PlanD opines that there is flexibility to allow Small House development through Planning Permission, the rezoning to "AGR" will in effect alter the Planning Intention in respect of the Subject Site and will frustrate **future Small House Development as it is "contrary to the Planning Intention"** as stated in the OZP. The "AGR" zone also creates greater administrative and financial burdens and uncertainty for Indigenous Villagers hoping to implement their Small House rights by requiring Section 16 ("S16") Planning Approval in addition to application to Lands Department.
- The Proposed Further Amendment neglects the long History of Pak Lap Village. The 300 year history of **Pak Lap Village would be significantly and adversely affected if the zoning discourages consolidated development, Village renewal and Villagers' ability to improve living standards**. Villagers are in effect being discouraged from returning to their roots and home.
- While the Further Representer has landholdings in the area in question, rather than "wearing a developer hat", the Further Representer has recognised the importance of Village enhancement and ecological conservation, and has a Mission of supporting the local Village in repair and restoration works to bring the Village back to its former glory. The Further Representer's efforts to re-inject life into the Village and improve local infrastructure are made in a socially, environmentally and financially sustainable manner to make the area more inhabitable. The "AGR" zone will seriously curtail the Further Representer's efforts in supporting Village growth and achieving comprehensive ecological enhancement.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- The TPB's view on the need to provide a buffer between the "V" zone and the stream is unsubstantiated. There is an established approval framework for Small House Applications to ensure no adverse environmental impacts. There is also no strong evidence demonstrating adverse environmental or ecological impacts as a result of Village development as compared with "AGR" use.
- 2.2 This Further Representation will clearly demonstrate that the Proposed Further Amendment in respect of the Subject Site is inappropriate, premature and against established norms relating to Village development.
- 3. PREMATURE AND ARBITRARY DECISION ON REDUCING AVAILABLE LAND TO MEET VILLAGE DEVELOPMENT**
- 3.1 On 18 February 2015, a Judicial Review application ("*CHAN KA LAM v CHIEF EXECUTIVE IN COUNCIL and TOWN PLANNING BOARD*") (HCAL 28/2015)) (the "JR") was lodged against (i) the decision of the Chief Executive in Council ("CE-in-C") on 3 February 2015 to approve three Draft OZPs for Pak Lap, Hoi Ha and So Lo Pun; and (ii) the decision of the TPB on 19 December 2014 to submit the three Draft OZPs to the CE-in-C for approval. The Court of First Instance ("CFI") allowed the JR on 24 November 2017 quashing the said decisions of the CE-in-C and the TPB with a direction that all three OZPs be remitted to the TPB for reconsideration.
- 3.2 In response to the CFI judgement, PlanD had conducted a review on the genuine need for Small House development in Pak Lap, taking into account (a) the principles for designating the "V" zone; and (b) information for assessing the Small House need of Indigenous Villagers.
- 3.3 Among various planning factors, existing settlement pattern, approved applications for Small House development and outstanding Small House applications, the Small House demand forecast was analysed. According to information presented in TPB Paper No. 10624, additional information pertaining to 1) actual number of Small House applications; and 2) the 10-year Small House demand forecast were provided to the TPB to assess the Small House development need of the Indigenous Villagers of Pak Lap.
- 3.4 Based on said information, PlanD made the following major observations/findings:
- Small House Applications
- No Small House application submitted to Lands Department ("LandsD") since 2010.
 - 2 Small House applications processed by LandsD over the past 10 years.
 - 4 outstanding Small House applications under processing.
- 10-Year Small House Demand
- The 10-year Small House demand forecast for Pak Lap in 2013 and 2014 was 72 and 70 respectively (*No LandsD's standard proforma was submitted by the IIR in 2010-2012 and 2017-2018; while the figure was marked as "unknown" or specific figures was not indicated on the form by IIR*).

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- The IIR indicated on the standard proforma in January 2020 for Pak Lap, that there are 118 male indigenous villagers aged 18 or above (16 residing in Hong Kong and 102 overseas) and 4 male indigenous villagers to be aged 18 or above in the coming 10 years (2 residing in Hong Kong and 2 overseas). Information regarding how many of these male indigenous villagers will apply for Small House grants was not provided nor is forecast demand known.
- 3.5 A decision based on a snapshot in time cannot constitute a comprehensive review on the long-term genuine need for Small House development, and as such, TPB's proposal to reduce available land intended and zoned for "V" is both arbitrary and premature.
 - 3.6 The "V" zone on the OZP reflects a natural extension of the existing Village cluster and is intended to identify suitable land for village expansion, as necessary. There is no evidence of consideration on the long-term rights of Indigenous Villagers to apply for building Small Houses. Specifically, TPB/PlanD did not account for whether or not male Indigenous Villagers (regardless of age or location) would wish to apply for Small Houses beyond the 10 year window. Indigenous Villagers have a right to apply for building a Small House under the Small House Policy and the Basic Law (subject to the availability of a suitable piece of land) without time restriction and regardless of where they are currently residing.
 - 3.7 Assumptions on the need for Small House development should not be made on just the number of applications currently made or referencing past records to predict future demand, but should be based on a host of considerations, including the actual number of Indigenous Villagers who are eligible. While it may not be possible to reserve sufficient land to cater for all Indigenous Villagers, this should not hinder the TPB in considering the possibility of greater demand/ applications in the future. And where suitable land has already been reserved for this use, it should not be arbitrarily deleted from the statutory Planning Intention.
 - 3.8 Recognising the limitations of the Small House demand forecast provided on the standard proforma by the IIRs, there is a significant information gap that prevents the TPB from making an informed decision. Thus it is inappropriate and premature for the TPB to reduce land intended for Village Development within the known Village Environ of the Pak Lap Village based on the scant information presented.
 - 3.9 Furthermore, according to TPB Paper No. 10624, PlanD recognises that there is certain demand for Small House development in the area and that the current land zoned "V" on the Draft OZP is not excessive in terms of the number of Small Houses (i.e. 16 houses) that could be provided. Given that the vacant land within "V" zone has been cleared and is considered suitable for Small House development in accordance with the "V" zone, allowing the Subject Site to remain "V" does not deviate from the conservation-oriented approach on Country Park Enclave ("CPE"). PlanD / TPB have already years ago, considered a balance between enhancing the nature conservation of the Area and meeting the needs of Villagers for Small House development in determining the existing "V" zone on the Subject Site, with relevant Government Bureaux and Departments having no objection in this regard.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

4. UNFAIR PLANNING PROCESS

- 4.1 Under the Statutory Plan Making Process, amendments to Draft OZPs are required to be exhibited for two months for public inspection, during which any Member of the Public may make representation (either supportive or adverse) to the TPB. All representations received by the TPB during the two months exhibition period will be published for public inspection. During the first 3 weeks of the public inspection period of the representations, any person may make comment on the representations (either supportive or adverse) to the TPB. The TPB will hold a Hearing to consider the representations and comments received where Members of the Public who have submitted representations or comments may attend the Hearing and be heard by the TPB. The TPB can then decide whether to propose amendments to the Draft OZP to meet the representations.
- 4.2 In respect of the Draft Pak Lap OZP, PlanD briefed the TPB on 03 March 2020 in respect of the CFI judgement on the JR and on the Initial Amendment Items. According to TPB Paper No. 10624, *"opportunity is taken to review the land use zonings on the draft OZP taking into account of the latest circumstances. It is noted that the vacant land within "V" zones has been cleared and is ready for development. A 2-storey village office has recently been developed to the south of the existing village cluster. The existing "G/IC" zone on the OZP covers a temple located at the southeast of the Area and a site reserved for the provision of a government refuse collection point and a public convenience. In view that the "G/IC" site (0.02 ha) reserved for the government refuse collection point and public convenience is currently partly covered by trees, it is proposed to relocate it to the vacant and cleared government land to the adjoining west of the village office. The relocated site and the existing village office to the south of the existing village cluster (0.03 ha) is therefore proposed to be rezoned from "V" to "G/IC(1)", whilst the original "G/IC" site is proposed to be rezoned to "CA" to form part of the wooded area."*
- 4.3 The Initial Amendment Items were proposed to reflect the existing situation and/or are considered minor in nature. As no local rights were affected, there was no need for local stakeholders to submit any representations. Yet a number of individuals and Green Groups raised representations on issues completely unrelated to the Initial Amendment Items. After going through two months Public Inspection followed by statutory representations and commenting periods (from 3 April 2020 to 13 November 2020 when the Representation and Comments were heard by the TPB), the TPB decided to propose Further Amendment to the overall Statutory Land Use Zoning Framework and Planning Intentions for Pak Lap instead of refocusing the deliberations on the matters and scope of the Initial Amendment Items. As a result, locals whose rights are being affected are denied due process to have their concerns and future Small House needs properly considered.
- 4.4 Under normal process, the proposal to rezone such a large area of land from "V" to "AGR" would be expected to be subject to the full Plan Making Process – this would include notification / consent of landowners in the case of a Section 12A ("S12A") Planning Application, or prior consultation with Village Representatives in the case of plan amendment under s.5 of the Ordinance. Subsequently, the plan amendment should be subject to 2 months of public inspection followed by statutory representation and commenting periods. However, under the current situation, only 3 weeks is allowed for comments on the Proposed Further Amendment which does not allow sufficient time for affected parties to prepare their case. The 3 weeks is particularly problematic in this

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

case given the extra time needed to consult with the 100+ Indigenous Villagers of Pak Lap recognized as living overseas whose rights will be affected.

- 4.5 In accordance with the Ordinance, the Plan Making Process is designed to allow the Public to be actively involved and engaged through the systematic preparation of Statutory Plans. The established Planning Framework enables the TPB to consider representations from Members of the Public on the proposed amendments and comments from other Members of the Public on the representations. Furthermore, the Representers and Commenters are allowed to present their views in person to the TPB at a Hearing. This is a fundamental part of Hong Kong's Planning Process. Only by allowing the TPB an opportunity to consider views from both Government and Members of the Public (both supporting and objecting) can the TPB form a balanced decision that addresses the needs of all parts of Society. There are only a number of other opportunities in Hong Kong where this level and form of public discussion can take place within a legal framework and the process must be safeguarded.
- 4.6 If TPB allows the Proposed Further Amendment which significantly deviates from the Initial Amendments to become part of the Draft OZP, Public Engagement enshrined under the established Planning Framework will be jeopardised, and aggrieved Members of the Public will be deprived of the two-months / three-weeks to prepare Representations / Comments and opportunity to be heard by the TPB.
- 4.7 In accordance with s.6D(1) of the Ordinance, Members of the Public who have already made Representation or Comment on the Initial Amendments can no longer make Further Representation on the Proposed Further Amendment. While this is normally acceptable when the Proposed Further Amendments are made pertaining to the original Amendment Items, adopting the same procedures on significant deviations from the Initial Amendments Items to the Draft OZP is not fair or reasonable.
- 4.8 It must also be noted that while the TPB decided to propose Further Amendment to the Draft OZP to partially meet representations after giving consideration to the Representations and Comments, the majority of Representations made during the two-months public inspection period and comments were NOT relevant to the Initial Amendment items, but rather on unrelated issues such as doubt as to Genuine Need for Small House Development, Environmental Impact on Existing Stream, Designation of "AGR" Zone, Preservation of Country Park Enclave ("CPE"), etc. Thus, when the TPB considered these Representations and Comments they did not have a balanced view from all locals who had not submitted any Representation in respect of the Initial Amendment items which were minor in nature and not affecting their future rights. The scope of the Proposed Further Amendment being well outside the scope of the Initial Amendment Items and being subject to a 3 week consultation period only, has thus denied fair and due process to all affected persons.

5. UNDERMINING OF THE PLANNING INTENTION IN RESPECT OF THE OZP

- 5.1 Pak Lap, a Country Park Enclave ("CPE"), covers existing Indigenous Village clusters, where consideration is given to designating "V" zone on the OZP to reflect the existing Village clusters and identify suitable land for village expansion, as necessary. In this regard, the majority of Pak Lap, and specifically, the existing "V" zone, albeit already significantly reduced since the Pak Lap OZP No. S/SK-PL/1 exhibited on 27 September 2013, falls within the Village Environs ("VE") of Pak Lap.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- 5.2 *Under the "V" zone, the Subject Site is intended "to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial and community uses may be permitted on application to the Town Planning Board."*
- 5.3 An incremental approach has already been adopted when designating the "V" zone with an aim to confining Small House development to the existing Village cluster and the adjoining suitable land and to minimize adverse impact on the natural environment. The Subject Site is cleared vacant land that was deemed suitable for Small House development in accordance with the provision of the "V" zone on the current OZP.
- 5.4 Recognising that demand for Small Houses in the existing VE of Pak Lap can be anticipated, land already intended for village expansion should be preserved.
- 5.5 While PlanD opines that there is flexibility to allow the Small House development through planning permission, as allowed under the proposed "AGR" zone, it should be clear that the Planning Intention in respect of the "AGR" zone is *"intended 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."*
- 5.6 This in effect would normally preclude future Small House development as it is "contrary to the Planning Intention". From a preliminary search on TPB's Statutory Planning Portal, approx. 431 Section 16 Planning Applications for 'House' in "AGR" zones were rejected by the TPB since 2010, predominantly on the basis that the propose development was not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes and that there is no strong planning justification in the submission for a departure from the planning intention.
- 5.7 According to TPB Paper No. 10705, PlanD opines that *"If land within the "V" zone is not sufficient to meet the need for Small House development in future, there is flexibility to allow the Small House development through planning permission, or if considered appropriate, to rezone suitable land upon future land use review."* This clearly demonstrates that PlanD acknowledges the possibility that the reduced "V" zone may not be sufficient to meet the need for Small House development in future, even recognising that rezoning to suitable land to cater for Small Housing development in the future can be considered. PlanD's acknowledgment on potential demand for "V" and that a "U-turn" may be necessary on the zoning demonstrates that the Proposed Amendment is not a sound Planning Approach and highly inappropriate and against the long term Vision and responsibilities to make future provisions in a responsible manner that is Town Planning.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

- 5.8 Also, while it is easy to say S16 Planning Applications for Small Houses may be allowed with permission from the TPB in the "AGR" zone, the reality creates greater administrative and financial burdens and uncertainty for Indigenous Villagers, most of whom are not familiar with the Planning System. Not only will any development applications be frustrated at the outset due to departure from the statutory Planning Intention, but TPB / Government may request for information beyond that normally expected for Small House Application to Lands Department and/or impose various approval conditions beyond the ability of any individual or group of Applicants.

6. NEGLECTING THE SIGNIFICANT HISTORY OF PAK LAP VILLAGE

- 6.1 Pak Lap Village is situated inside Pak Lap Wan which has an over 300-year history. This Hakka Village features a silky beach with a temple which is used for traditional blessing. Pak Lap Village is located within the Leung Shuen Wan Territory, which has been a strategic stronghold of Hong Kong since ancient times. Since the Jiajing period of the Ming dynasty (1522-1566), the island (before construction of High Island Reservoir linking it to the mainland) has been a stronghold for coastal defence at the mouth of the Pearl River. The island's population is mainly made up of Tanka and Hakka people. During the eighteenth century, Hakka people farmed and fished along the island's coast, while boats on which families resided were berthed on a long-term basis close by. Today, their descendants residing overseas still return to participate in celebrations and ceremonies.
- 6.2 By restricting the area designated for "*existing recognized villages and areas of land considered suitable for village expansion*", the TPB is neglecting the long History of Pak Lap Village and will significantly and adversely affect Pak Lap Village by curtailing their development and ability to improve living standards. Indigenous Villagers are in effect being discouraged from returning to their roots and home.

7. DEPRIVING SUSTAINABLE VILLAGE SURVIVAL AND ECOLOGICAL CONSERVATION

- 7.1 The Further Representer recognises the importance of Village enhancement and ecological conservation, and has a Mission of supporting Pak Lap Village in repair and restoration works to bring the Village back to its former glory. Innovation, not restriction, is the best way to support Village growth and achieve comprehensive ecological enhancement.
- 7.2 Responding to comments made by some Representatives (R4, R5(part) and R6(part)) that land in the "V" zone has been sold and that the "V" zone might facilitate the abuse of the Small House Policy, PlanD has noted that land ownership should not be a material planning consideration on the designation of the land use zones as ownership could change over time. The current landholding does not preclude Villagers from developing Small Houses in the future, nor undermine the real demand for Village expansion. Moreover, landholding is a matter to be dealt with by LandsD or Home Affairs Department ("HAD") and not by the TPB.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

8. RATIONALE ON THE NEED FOR BUFFER BETWEEN "V" ZONE AND STREAM IS UNSUBSTANTIATED

- 8.1 While public concern regarding sewage treatment arrangements and water quality impacts from Pak Lap Village is understood, there is no strong evidence demonstrating detrimental environmental or ecological impacts as a result of Village development. The Village in fact is maintained to a relatively high standard with the support of the Further Representer.
- 8.2 According to TPB Paper No. 10705, PlanD opines that the rezoning of the Subject Site to "AGR" would provide *"a greater buffer distance between the section of stream running in north-south direction across the Pak Lap area to Pak Lap Wan and the existing village cluster and the "V" zone. The revised "V" zone with reduced area would also be away from the beach area of Pak Lap Wan"*. The TPB's view on the need for providing a buffer from the "V" zone and the stream is unsubstantiated.
- 8.3 There is an established approval framework for Small House Applications to ensure no adverse environmental impacts are caused. LandsD, when processing Small House grant applications, will consult relevant Government Departments including Drainage Services Department ("DSD"), Environmental Protection Department ("EPD"), Agriculture, Fisheries and Conservation Department ("AFCD") and PlanD to ensure that all relevant Departments would have adequate opportunity to review and comment on the applications. The design and construction of on-site Sewage Treatment Systems for any development proposals/submissions need to comply with relevant standards and regulations, such as EPD's Practice Note for Professional Person ("ProPECC PN") No. 5/93 *"Drainage Plans subject to Comment by the Environmental Protection Department"*.
- 8.4 It should be noted that the TPB had opined that there was sufficient control in the current administrative system to ensure that individual Small House development and Sewage Treatment Systems within the "V" zone would not entail unacceptable impacts on the surrounding environment. As indicated by DSD and EPD, no suspected illegal discharge case/complaint was received in the Pak Lap locality in the past 3 years. Regarding the pipeline outlets at the stream, EPD also advised that they did not find any suspected illegal wastewater discharge along the stream during the site inspections in June and July 2020. Therefore, no violation of environmental legislation was noted during the site inspections. LandsD advised that there is no record of any proposed Small House development related to the discharge pipes. If drainage discharge for Small House development is required through Government land, LandsD would consult DSD before giving relevant approval for the works on Government land.
- 8.5 Furthermore, under the Remarks to the "V" zone of the Draft OZP, *"Any diversion of streams or filling of pond including that to effect a change of use to any of those specified in Columns 1 and 2 above 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 Town Planning Board under section 16 of the Town Planning Ordinance."* The TPB has discretion in the approval of any major diversion of streams or filling of pond including that to effect a change of use for Small House development under the Regulatory Planning Framework.

Our Reference: PLSK/4/VIN/02
Date: 11 February 2021

Town Planning Board

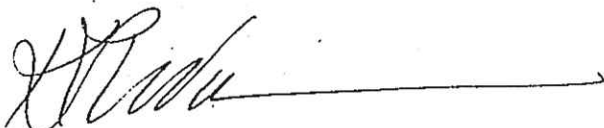
8.6 It should also be noted that the rezoning to "AGR" does not necessarily or definitively ensure that there would be no impacts to the stream. For instance, the leakage of fertilizer from active farmland would cause eutrophication to the stream.

9. REMEDY

9.1 The Further Representer would like to reiterate their **STRONG OBJECTION** to the Proposed Further Amendment. Indeed the Further Representer's Legal Grounds for Objection which are touched on in this Written Representation are consolidated as an ANNEX for the TPB's further consideration. Given the reasons of Objection as detailed in this Further Representation and its ANNEX, the Further Representer strongly urges TPB to not adopt the Proposed Amendment as part of the Draft Pak Lap OZP. The Subject Site should in all reasonableness remain zoned for "V".

The Further Representer thanks you for your attention and trusts that the TPB / Members will fully consider all matters raised. Should you have any queries, please do not hesitate to contact the undersigned, Ms. Cindy Tsang, or Mr. Vincent Lau.

Yours faithfully
FOR AND ON BEHALF OF
TOWNLAND CONSULTANTS LIMITED

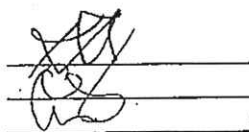


K. R. Seddon
Chief Executive Officer

KRS/CT/VIN/yv

cc CLIENT/Team

Approved & Reviewed by: K. R. Seddon
Edited by: Cindy Tsang
Prepared by: Vincent Lau
File Ref: PLSK/4
Date: 11 February 2021



ANNEX: The Legal Grounds for Objection presented by Wong Poon Chan Law & Co. on behalf of the Further Representer.

黃浦陳維律師行
WONG POON CHAN LAW & CO.

Solicitors, Notaries & China-Appointed Attesting Officers
In Association with Grandway Law Offices
In association with Alan Lam, Yam & Pe
In association with Chow & Partners
In association with YTL LLP
In association with AH Lawyers
In association with M.C.A. Lai Solicitors LLP
In association with Choy Yung & Co.

ANNEX

國際公證人及中國委託公證人

北京國楓(香港)律師事務所聯營

林、任、白律師行聯營

周潔霞律師行聯營

梁延達律師事務所有限法律責任合夥聯營

何升偉律師事務所聯營

賴文俊(有限法律責任合夥)律師行聯營

蔡蔚律師事務所聯營

006231

Your Ref.
貴司編號:

S/SK-PL/3

Our Ref.
本行編號:

1-1-39558-20(85)

Contact Person
聯絡人:

Mr. C. M. Wong /

Mr. David Liang

Date
日期:

10th February 2021

Partners
合伙人

Wong Che Ming
黃志明 *#^

Alan H. B. Lin
連凱斌 ^

Karen K. H. Chow.
周潔霞 ^

Consultants
顧問律師

Alan M. B. Lam
林文彬 #^

Alfred Y. T. Leung
梁延達

Brian Y. F. Chan
陳旭輝 ^

Dominic H. S. Chung
鍾厚成

Solicitors
律師

Pat B. Y. Ho
賀英 *

David J. W. Liang
梁杰維

Registered Foreign
Lawyers (PRC)

註冊中國律師

Wincent X. F. Zhang
張祥發

China-Appointed
Attesting Officer
中國委託公證人

* Notary Public
國際公證人

^ Civil Celebrant of
Marriages
婚姻證人

香港總行:
香港中環干諾道中 64 號
廠商會大廈 4 樓
電話: (852) 2521-4268
傳真: (852) 2810-6408, 2596-0665, 2815-2996
電郵: wpcl@wpcl.hk
網址: www.wpcl.hk
文件交換: DX-9163-C1

Town Planning Board Secretariat
15/F, North Point Government Offices
333 Java Road, North Point, Hong Kong

**BY ENCLOSURE TO
FURTHER REPRESENTATION**

Dear Sirs,

**Re: Proposed Further Amendment to the Draft Pak Lap
Outline Zoning Plan No. S/SK-PL/3 and Associated
Amendments to the Explanatory Statement ("Proposed
Further Amendment")**

We act as legal counsel for Master Mind Development Limited, the registered owner of the land lots as set out in the table annexed hereto ("Private Lands") in regard to the captioned matter.

The Planning Grounds against the Proposed Further Amendment and Remedy have been set out in detail in the Further Representation submitted by Townland Consultants Limited to which this letter is annexed and we do not repeat the same here. Unless specified otherwise, we adopt the terms as defined in the Further Representation.

We are instructed to oppose the Proposed Further Amendment on the following grounds:

GROUND#1: PROCEDURAL UNFAIRNESS

1. As you are aware, ss.5 to 8 of the Ordinance impose a statutory duty on the TPB to conduct public consultation in respect of the draft OZP prepared. Once a statutory body embarks on a consultation exercise, it must carry out such duty properly and to ensure that there is procedural fairness during the course of exercise: *PCCW-HKT Telephone Ltd v Telecommunications Authority* [2008] 2 HKLRD 282, at para.12 *per* Le Pichon JA;
2. The TPB has taken a wrong procedural route in allowing only 3 weeks for the public to inspect and to make representation to the Proposed Further Amendment pursuant to s.6D(2) of the Ordinance, depriving the aggrieved

Head Office:
4th Floor, C. M. A. Building,
64 Connaught Road Central, Hong Kong
Tel.: (852) 2521-4268
Fax: (852) 2810-6408, 2596-0665, 2815-2996
E-mail: wpcl@wpcl.hk
Website: www.wpcl.hk
Interchange: DX-9163-C1

Sai Kung Office:
Ground Floor, 1796-B Po Tung Road,
Sai Kung, New Territories.
Tel.: (852) 2792-9811 Fax: (852) 2792-9742
E-mail: saikung@wpcl.hk
西貢分行: 西貢普通道 1796 號 B 地下
電話: (852) 2792-9811 傳真: (852) 2792-9742
電郵: saikung@wpcl.hk

stakeholders and all other members of the public of a fair and proper opportunity to consider and mark response to the Proposed Further Amendment;

3. The substance of the Proposed Further Amendment is to rezone about 0.45 ha of the Subject Site from V zone land to AGR zone land. If approved, the V zone land in Pak Lap will be further reduced, bearing in mind that in the OZP No. S/SK-PL/1, 2.37 ha or around 34.85% out of the total Planning Scheme Area were allocated to V use and only 0.95 ha of the V zone land now remains after approval of the Initial Amendment Items. The question of whether the Proposed Further Amendment be approved or not will inevitably have a substantial impact on the V zone land and also on the rights of the indigenous villagers in respect of their Small House development in Pak Lap. As evidenced in para.8.1 of the Explanatory Statement, to make provision for future Small House development is one of the Planning Intentions under the "V" Zoning;

4. Given the further downsizing of the V zone land in Pak Lap, the 3-week period is clearly disproportional in terms of consultation time. In the Initial Amendment Items where only about 0.03 ha of the V zone land was affected, their public inspection period somehow lasted for 2 months pursuant to s.7 of the Ordinance. Natural justice demands like cases be treated alike. As a matter of fairness, the Proposed Further Amendment should be allotted at least the same 2 months. As a matter of fact, the Proposed Further Amendment is regarded as a substantial deviation from the OZP No. S/SK-PL/3 and a full plan making process, e.g. pursuant to s.5 of the Ordinance for public inspection of 2 months, is justified on the basis of procedural fairness;
5. For the above reasoning, any decision in respect of the Proposed Further Amendment if ever reached will be tainted with procedural irregularity as, *inter alia*, 3 weeks is manifestly insufficient for a proper public consultation as demanded by the laws. The TPB has circumvented the necessary and relevant notice and consultation requirement that allows the public, including our client, to have a fair and proper opportunity to inspect, consider, investigate and make representation related to the Proposed Further Amendment;

GROUND#2: UNREASONABLENESS

6. It is set out clearly in s.3(2) of the Ordinance, the TPB is expected to make all such inquiries and arrangement for the preparation of the draft outline zoning plans. It is also well established that the *Tameside* duty of inquiry requires the TPB to ask itself the right question and take reasonable steps to acquaint itself with the relevant information to enable it to answer it correctly: *Hong Kong Resort Company Limited v Town Planning Board* [2020] HKCFI 1956, at

paras.99 and 100 *per* Hon Au JA;

7. The TPB has however acted unreasonably and arbitrarily in adopting the Proposed Further Amendment when it has not sufficiently discharged its *Tameside* duty and there remains substantial doubt as to the basis of the Proposed Further Amendment. The TPB has also 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;
8. In the current rezoning exercise, there are mainly two issues in question that the TPB should take steps to answer, namely (1) whether the V zone land in Pak Lap could meet the need of Small House development in the area and (2) whether a proper balance between Small House development and agriculture preservation could have been maintained in the OZP No. S/SK-PL/3. Until and unless these issues are properly answered after the TPB acquaints itself with all relevant information, it is unlikely that any rational and well-rounded amendment can be formulated or proposed;
9. In taking the view that the 10-year forecast for Small House application is unknown but the current and future need of the Small House development at Pak Lap could somehow have been met by further reducing V zone land in Pak Lap, the TPB only relied on the information provided to the Lands Department by the Indigenous Inhabitant Representative ("IRR") in January 2020, without resorting to any other available measures and information that Planning Department / Government could have taken;
10. Contrary to the TPB's view that there is no practical means available to determine the genuine need for Small House Development at the planning stage, there are in fact options available to overcome or assist to overcome the information cap. To name but a few of these options, the TPB may conduct its own forecast by using relevant data, external or internal, government or non-government, and make comparative analysis to area or region that shares similar geographical and demographic characteristics with Pak Lap. Independent third party experts may also be instructed to conduct survey and regional census in respect of, for instance, the population growth of the indigenous villagers and/or Small House development trend in Pak Lap. The TPB should have taken (but has failed to take) into account results from its independent investigation and/or expert opinion in coming up with the Proposed Further Amendment. It is only when all practical means are exhausted could the TPB safely conclude that the 10-year forecast for Small House application is unknown and could it possibly discharge its *Tameside* duty;

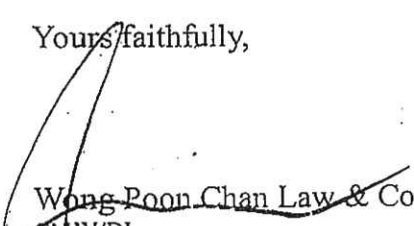
11. Even if the TPB wished to act upon the information provided by IRR, it ought first to have verified such information and have investigated whether and how the view taken in respect of the Proposed Further Amendment would be justified. It however appears that the TPB has not adopted any measures to verify the information or to investigate the issues in question. Instead, the TPB blindly relied on the information from IRR, which could only mean that the Proposed Further Amendment is very likely an uninformed and/or arbitrary decision;
12. Other than tackling the informative deficiency in the Proposed Further Amendment, Planning Department should have taken a more proactive approach and considered alternative proposals that can genuinely strike a proper balance between Small House development and agricultural rehabilitation in Pak Lap;

Conclusion

13. In light of the above, we are of the view that the manners in which the Proposed Further Amendment being publicly inspected and consulted are unfair and the basis upon which it was reached is irrational. If these procedural and substantive irregularities are not rectified in time and the Proposed Further Amendment becomes final, any such decision will likely be successfully challenged in the future; and
14. We urge that your esteemed Board should take serious consideration of the Further Representation and conclude that the Further Proposed Amendment should not be adopted.

Meanwhile, all our client's rights are hereby expressly reserved.

Yours faithfully,


Wong Poon Chan Law & Co.

CMW/DL

Encl:

- (a) Table of Land Lots in D.D. 368, Pak Lap, Sai Kung Held by Master Mind Development Limited;
- (b) *PCCW-HKT Telephone Ltd v Telecommunications Authority* [2008] 2 HKLRD 282; and
- (c) *Hong Kong Resort Company Limited v Town Planning Board* [2020] HKCFI 1956.

cc. Client

WONG POON CHAN LAW & CO.

Solicitors & Notaries, China Appointed Attesting Officers

Page 5

**Appendix: Table of Land Lots in D.D. 368, Pak Lap, Sai Kung
Held by Master Mind Development Limited**

D.D.	Lot No.	Area of Land	
		acre	sq. ft.
368	255	0.02	871.20
368	256	0.03	1,306.80
368	257	0.01	435.60
368	271 A*	0.04	1,525.30
368	271 B*	0.03	1,451.00
368	271 RP*	0.05	2,250.80
368	272	0.14	6,098.40
368	273	0.04	1,742.40
368	274	0.04	1,742.40
368	275 A*	0.03	1,169.00
368	275 B*	0.01	375.70
368	275 RP*	0.04	1,939.70
368	276 A*	0.01	311.10
368	276 RP*	0.01	559.70
368	277	0.02	871.20
368	279 A*	0.03	1,233.60
368	279 B*	0.03	1,282.00
368	279 C*	0.03	1,330.40
368	279 RP*	0.11	4,865.30
368	280 A*	0.03	1,505.90
368	280 RP*	0.07	2,855.70
368	281 A*	0.03	1,320.70
368	281 RP*	0.07	3,034.40
Total Area:		0.92	40,078.30

Remarks

* Surveyed area

Page 5 of 5

CACV 60/2007

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL**

**CIVIL APPEAL NO. 60 OF 2007
(ON APPEAL FROM HCAL NO. 112 OF 2006)**

BETWEEN

PCCW-HKT TELEPHONE LIMITED

Applicant

and

THE TELECOMMUNICATIONS AUTHORITY

Respondent

and

HONG KONG CSL LIMITED

1st Interested Party

NEW WORLD PCS LIMITED

2nd Interested Party

Before: Hon Le Pichon, Cheung JJA and Stone J in Court

Date of Hearing: 6 September 2007

Date of Judgment: 6 September 2007

Dates on Further Submissions on Costs: 7, 11 and 13 September 2007

Date of Handing Down Reasons for Judgment: 18 September 2007

REASONS FOR JUDGMENT

Hon Le Pichon JA:

1. This is an appeal from the order dated the 13 February 2007 of Reyes J dismissing the application of PCCW-HKT Telephone Ltd ("PCCW") for judicial review. At the conclusion of the appeal hearing, the appeal was dismissed for reasons to be handed down, which we now do.

2. The application for judicial review arose out of the consultation process following the publication by the Telecommunications Authority ("the Authority") of a (second) Consultation Paper entitled 'Deregulation of Fixed-Mobile Convergence' on 14 July 2006 ("the Second Consultation Paper") seeking views on whether to withdraw existing regulatory guidance governing the payment of interconnection charges by mobile network operators to fixed network operators. PCCW accused the Authority of apparent bias and by letter dated 31 August 2006 PCCW requested the Authority to discontinue the consultation and to reconstitute it. On 11 October 2006, the Authority rejected the allegation of apparent bias and, instead, announced a two-week extension of the consultation period, in effect, rejecting PCCW's request. The judicial review application was made shortly thereafter.

Background

3. The Authority is charged with regulating the telecommunications industry in Hong Kong. PCCW is the largest fixed network operator in Hong Kong.

4. The regulatory guidance in place in Hong Kong since the early 1980s is an arrangement known as 'Mobile Party's Network Pays' ("MPNP") under which the costs of connecting calls between a fixed network and a mobile network - known as "Fixed-Mobile Interconnection Charges" ("FMIC") - should always be met by the mobile network operator and never by the fixed network operator. The fixed network operators collectively receive approximately \$600 million a year under that arrangement and PCCW, being the largest of them, receives a substantial portion of that sum annually.

5. Technological advances in recent years have resulted in distinctions between fixed and mobile networks and services becoming

increasingly blurred, giving rise to a phenomenon that is commonly described in the industry as "Fixed-Mobile Convergence" ("FMC"). In April 2005 the Authority announced its intention to review FMC-related regulatory issues. On 21 September 2005, the Authority issued a "Consultation Paper on Revision of Regulatory Regimes for Fixed-Mobile Convergence" ("the First Consultation Paper") which indicated that the MPNP arrangement would be reviewed. Since any change would involve "a redistribution of benefits between fixed and mobile network operators, and ultimately consumers", it was made clear that a consultancy study would first be commissioned to assess "consumer benefit and economic efficiency associated with such a change". The Authority indicated that the public would be consulted on "whether and how the interconnection charging arrangement should be modified" following the assessment.

6. The consultants Ovum Ltd were commissioned to undertake the study in December 2005 and produced their report on 28 April 2006. The report was critical of the existing regime and recommended a number of ways in which it could be changed.

7. On 14 July 2006, the Authority issued the Second Consultation Paper "to solicit views from the public and the industry on its proposal of updating the regulatory approach". Simultaneously, a press conference was held to introduce the Second Consultation Paper and a press release issued.

8. In this court, PCCW's case on apparent bias was based on (1) statements made by the Authority at the press conference and (2) an article, published in November 2006, entitled "Possibilities for deregulation: a case study of Hong Kong". The article was written by Mr M H Au who, at all relevant times until his retirement in mid-2007, was the Authority. It was said that a fair-minded observer would conclude from those materials that it appears

that there was a real possibility that the Authority had already made a decision to abolish MPNP and not merely a proposal which was subject to consultation.

The statutory framework

9. Section 6C of the Telecommunications Ordinance, Cap. 106 ("the Ordinance") gives the Authority a discretion to consult with (a) persons who may be directly affected or (b) the public before exercising any power under the Ordinance. Under section 6D(1), the Authority may issue guidelines for the purpose of providing practical guidance in relation to the provisions of the Ordinance. Section 36A enables the Authority to determine the terms and conditions of interconnection between telecommunications systems and services.

10. Whilst in general whether or not a consultation should be conducted is discretionary, where guidelines are to be issued setting out principles governing the criteria for any determination under section 36A, section 6D(4)(b) requires the Authority to "carry out such consultation with the telecommunications industry as is reasonable". So where section 6D(4) applies, consultation is not a matter of discretion.

11. The consultation generated by the Second Consultation Paper raised 24 questions to which interested parties were invited to respond. 16 of these related to FMIC. They included (1) whether MPNP should be withdrawn by being phased out over a transitional period, (2) the length of the transitional period, (3) failing any agreement reached by the parties concerned prior to the expiration of the transitional period, whether new guidelines should be introduced on the "last-resort" charging arrangement that may be adopted in the event of the Authority having to make a section 36A determination, and

(4) if new guidelines were to be adopted, the principles by reference to which such new guidelines should be formulated.

12. Although the Authority has, as yet, taken no decision on the question whether there should be new guidelines to replace the MPNP guidance, as recorded in paragraph 42 of the judgment, the judge proceeded on the basis that the consultation undertaken was mandatory. Pausing here, I would observe that once the Authority embarks on a consultation exercise, it must be carried out properly. Whether or not the Authority was compelled by law to undertake the consultation would not affect his duty to ensure that there is procedural fairness in the conduct of the consultation. Although Mr Barlow SC who appeared for the Interested Parties submitted that in the absence of any statutory obligation to consult, procedural fairness would not attach to the consultation exercise, he cited no authority in support. In fact there is authority to the contrary: see *Regina v North and East Devon Health Authority, Ex parte Coughlan* [2001] QB 213 at §108.

This appeal

13. Three issues are said to arise on this appeal. They are stated in the skeleton submissions of Mr Green QC, who appeared for the Authority, as follows:

- (1) whether the judge erred in his analysis of perceived bias;
- (2) whether the judge should also have found in the Authority's favour upon the basis that the principle of perceived bias only applies to decisions of an "adjudicative" or "justiciable" nature which determine civil rights as obligations and there was no such decision in the present case; and

- (3) whether the judge erred in his conclusion that the application was, in any event, premature.

The first issue raises a question of law. The question for this court is whether on all the relevant materials, there was or was not a real likelihood of apparent predetermination on the part of the Authority. If this court were to conclude (which it has) that there was not, that would be dispositive of this appeal and it would not be necessary to consider the other two questions said to arise.

Apparent bias

14. As noted above, in this court, PCCW's case on apparent bias was confined only to (1) statements made by the Authority at the press conference and (2) the article written by Mr Au. Other matters had been relied on below but they are no longer being pursued. Specifically, it is no longer said that the content of the Second Consultation Paper itself showed a real risk of apparent predetermination.

15. It is common ground that the applicable test is that laid down by Lord Hope in *Porter v Magill* [2002] 2 AC 357 at paragraph 103:

"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [decision-maker] was biased."

The crux of the appeal is whether or not the *Porter* test had been correctly applied to the facts. PCCW contends that the fair-minded and informed observer would conclude that there was a real possibility that the Authority had predetermined the matter.

16. The attributes of the fair-minded observer have been considered in cases such as *Johnson v Johnson* (2000) 201 CLR 448 at §53. A fair summary appears in paragraph 46 of the judgment below:

“46. The observer is taken to be a reasonable person, who adopts a balanced approach and is neither complacent nor unduly sensitive or suspicious. In arriving at any conclusion of bias or the absence of it, the observer is assumed to be fully informed of all facts capable of being known to the general public in relation to the relevant decision-making process.”

17. Mr Pannick QC relied on three matters in support of his case on apparent bias. The first is that the natural meaning of the language used by the Authority appears to express a concluded view that the current regime “distorts” the market and needs to be “dismantled”. The second is said to be the absence of any prefatory remarks similar to those to be found in paragraph 8 of the Second Consultation Paper. The third is said to be a ‘stark contrast’ between the Authority’s statements on the substantive question of whether the current MPNP regime distorts the market and needs to be dismantled in the interest of the consumer, and the distinct question of whether fresh guidelines should be issued to address the problem.

18. I now turn to consider the materials on which PCCW relies.

Statements made at the press conference

19. The press conference which was conducted in Cantonese was recorded. There is an agreed 14-page English transcript of the recording. The Authority’s introductory remarks took up a little over a third of transcript.

20. Mr Pannick identified six passages in the transcript in support of his first point:

- (1) “I think, if the fixed operators actually lose the \$600 million under the new arrangement after the transitional period, they can adjust their business plan to explore new sources of income. That is the objective of our proposed transitional period...thus, we think the impact of this change to Hong Kong generally, the industry and the consumers will be positive.” (*Transcript p. 4*)

- A
- B
- C
- D
- E
- F
- G
- H
- I
- J
- K
- L
- M
- (2) "I hope we do not need to intervene because today we are dismantling regulation..." (*Transcript p. 9*)
- (3) "There is 2 year transitional period. The two-year means basically no change to the status quo. Within 2 years if there is a determination request, it is possible that we follow the existing one way payment of MPNP... After two years when the regulation is dismantled, we hope that we can reach a commercial settlement. Otherwise, depending on the circumstances, we will make a determination in accordance with the most appropriate settlement mechanism..." (*Transcript p. 10*)
- (4) "...I think a regulation which was not designed on a technology neutral basis has in today's environment started to distort market competition..." (*Transcript p. 3*)
- (5) "The distortion is that the current regime dictates one network technology pay in one direction to the other network technology and this is not consistent with our technology neutral regulation. You asked whether we have decided already or not. Of course there is no decision otherwise we don't need to consult here! I hope that via the consultation we pointed out the reasons for dismantling the existing regulation and welcomed the views from the industry and will decide after considering the industry's submission..." (*Transcript p. 11*)
- (6) "...a message today is. I mean to the citizens is that this change in interconnection charge arrangement is not related to usage based charge..." (*Transcript pp. 13-14*)

N

O

It is to be noted that the passages set out at (1) and (4) formed part of the introductory remarks. The remaining passages were from answers given in response to questions posed by reporters at the press conference.

P

Q

R

S

T

U

V

21. Mr Pannick accepted that what was said at the press conference has to be seen in context. The immediate context necessarily included the Second Consultation Paper which was being introduced. As a preliminary matter, I would observe that to the extent that the responses in passages (2) (3) (5) and (6) reflected the actual language used in the questions posed, they must be read in the context of the questions themselves. In the case of the statement made in passage (2), the recording did not even capture the relevant question. Absent

A the immediate context, one should be slow to infer simply from the language of
B the response that the Authority was expressing any concluded view.

C 22. As already stated, it is no longer suggested that the Second
D Consultation Paper itself showed apparent bias. The purpose of the conference
E was for the Authority to brief the press on the content of the Second
F Consultation Paper and the transcript shows that those present at the press
G conference were so informed.

H 23. It is clear from Mr Au's introductory remarks that he was
I proceeding on the basis that the audience had the requisite background
J knowledge of FMC, a topic that had been the subject of discussion since
K September 2005 when the First Consultation Paper was published. Reference
L was then made to the consultant's report (which was published on OFTA's
M website the same day) regarding the regulatory measures that would need to be
N revised in a convergence environment. Mr Au singled out the FMIC
arrangement between fixed and mobile operators as the focus of his briefing
since he considered that to be an issue that affected the industry and the
customers most.

O 24. Having made those preliminary observations, Mr Au began his
P detailed introduction to the FMIC issue. Right at the outset he said this:

Q "The *proposal* in our consultation paper is to remove current FMIC
regulation. We *propose* to remove this regulation." (Transcript p. 2)
(*italics added*)

R The reasons for the proposal followed. Mr Au explained that the FMIC
S regulation had been introduced 20 years ago at a time when mobile network
T technology was nascent and the market for mobile telephony (which was then
U regarded as a luxury) undeveloped. He further explained that the regulatory
V principle for imposing regulation in an undeveloped market was to assist market

development while protecting consumer interest. As the survival of mobile telephony was then dependent on the fixed network service, the FMIC regulation required operators of mobile network technology to pay the operators of the fixed network technology.

25. A quarter of a century later, in the environment of a developed market for mobile network technology, Mr Au considered that

"We should review whether the regulation is worth maintaining. We have to ask one question: today, if there is no such regulation, can the market still operate as normal? If the answer is yes, i.e. the removal of regulation will not be to market failure, then this means the regulation does not need to exist. According to the information that we collected from the market, we have no evidence to show that there will be market failure if we now remove the FMIC regulation."
(Transcript p. 3)

The statements PCCW relies on were made against that backdrop.

26. On the question of whether they show perceived bias, it cannot be gainsaid but that the FMIC regulation was introduced at a time when the market for fixed network technology was a developed market but that the same could not be said of the market for mobile network technology. As already noted, the survival of the latter was then dependant on the former. In the current environment, that clearly is no longer the case. Available data showed that mobile network customers outnumbered fixed network customers by more than two to one.

27. The FMIC regulation thus was formulated at a stage when the two technologies and their respective markets were at significantly different stages of development. It required mobile networks operators to pay interconnection charges to fixed network operators. The statement that the FMIC regulation was not designed on a technology neutral basis is therefore unexceptionable and cannot convey to the fair-minded observer any likelihood of perceived bias.

A
B The same can be said of the statement that in the current environment a
C regulation not designed on a technology neutral basis would distort market
D competition. If the reason for market intervention in favour of fixed network
E operators no longer exists, the logical consequence of continued intervention
F would be market distortion.

G 28. Mr Pannick QC candidly acknowledged that had the words
H 'dismantling', 'dismantled' and 'change' in the passages to which exception had
I been taken been prefaced by word "proposed", there would be no complaint.
J In this connection, I would observe, first, that throughout the transcript, one
K finds the Authority's statements qualified by "if" and "whether" the FMIC
L regulation were to be withdrawn. Second, the introductory remarks set out in
M paragraphs 24 and 25 above make it clear beyond peradventure that what was
N being put forward by the Authority (i.e. the withdrawal of the FMIC regulation)
O was merely a proposal and the point of the consultation was to solicit views
P regarding, *inter alia*, that proposal. That is reinforced by the 16 questions
Q posed in the Second Consultation Paper relating to the FMIC issue which
R included the following:

N "Question (3): What is the effect of the existing regulatory guidance in
O favour of the MPNP arrangement on competition, including
P competition between fixed and mobile network operators?

P Question (4): Should the current intervention on FMIC, based on a
Q regulatory guidance in favour of the MPNP arrangement, be phased
R out in view of Hong Kong's market conditions, fair competition
S principles and the prospect of FMC? Please elaborate.

Q Question (5): Would the absence of regulatory intervention lead to
R market failure, to the detriment of competition and consumer interest?
S If yes, please substantiate your claim with credible evidence."

S 29. Those questions plainly provided those espousing views different
T from those articulated by the Authority an opportunity to state them and, where
U appropriate, to provide the supporting evidence. It has to be borne in mind that
V the purpose of the press conference was to introduce the Second Consultation

Paper. To ignore what is in that Paper itself would not be a proper approach. It is very much part of the context. In any event, given the introductory remarks mentioned, the absence of prefatory remarks in the terms of paragraph 8 of the Second Consultation Paper is neither here nor there. There is thus nothing of substance in Mr Pannick's second point about the absence of prefatory remarks.

30. I agree with Mr Green QC who appeared for the Authority that the Authority as regulator should candidly articulate his thinking and provisional views: it is not only unobjectionable, it is good administrative practice. If the Authority holds strong views regarding a proposal, I see nothing wrong in his making that fact transparent; indeed, the forcefulness of his views may well serve to elicit responses from persons holding different views who might otherwise not be inclined to contribute to the debate. In this connection, I do not consider that the decision of the High Court of Australia in *Antoun V. R* (2006) 224 ALR 51 relied on by PCCW precludes the expression of forthright views. In that case the trial judge said that a submission of no case to answer would be rejected without knowing what form that submission would take and without knowing in even the broadest outline what was said to be its basis. And having said that the submission would be rejected, the trial judge, after the case had been adjourned overnight, went out of his way when the case resumed to emphasise to counsel that he meant what he had said. (See per Hayne J at § 56.) But whether a forceful expression of views by a decision maker whose statutory obligations also require him to propose policy for consultation is an expression of a concluded view must depend on the particular facts. As Kirby J stated at § 29:

"A line is drawn between forthright and robust indications of a trial judge's tentative views on the point of importance in the trial and an impermissible indication of prejudgement that has the effect of disqualifying the judge from further conduct of the proceedings."

A In *Antoun* it was held that that line had been crossed. But in the present case
B whether that line had been crossed is precisely the issue that falls for
C determination. I do not read *Antoun* as authority for precluding a decision
D maker from expressing forthright views so long as those views remain tentative.

E 31. The 'stark contrast' point Mr Pannick sought to make is in essence
F the *Antoun* point. If the Authority held no strong views about issuing fresh
G guidelines, it is hardly surprising that his treatment of that issue is different.
H But as I have said the use of forthright language in itself is unobjectionable
provided it is clear from the context that the views expressed are provisional.

I 32. In my view, fairly read in their proper context, the passages
J identified do not go anywhere near establishing an appearance of
predetermination.

K *The article*

L 33. The passage to which exception was taken read as follows:
M

N "The current asymmetric arrangement is obsolete and would not be
O sustainable in the environment of 'fixed mobile convergence' (FMC),
P as user terminals served by the same network operator may be fixed at
some times and moving at others. Interconnection rules based on the
distinction on whether the user is fixed or mobile would become
unenforceable. OFTA has therefore initiated the review on the
appropriate interconnection charging arrangement in the FMC
environment."

Q Mr Pannick QC relied on this passage as 'confirming' that the language used,
R i.e. "obsolete", "would not be sustainable" and "would become unenforceable"
S was such that a fair-minded observer would conclude that there was a real risk
T that Mr Au had already made up his mind on changing the current asymmetric
U arrangement.
V

34. But the fair-minded observer would note that OFTA had initiated a review on the appropriate interconnection charging arrangement. Details of the review followed immediately after the passage quoted above:

"The first question to be addressed in the review is whether any market failure is expected when the existing regulation imposing the asymmetric arrangement is withdrawn. If not, it should indeed be withdrawn."

Implicit in those remarks is that if the converse were shown to be the likelihood i.e. that if, contrary to the view of Mr Au, there was evidence to show the likelihood of market failure, the existing regulation would not be withdrawn. Such evidence might well have emerged in the course of the consultation. That would inevitably cause a rethink. So how can it be said that there was a real likelihood that the Authority had predetermined the issue? Indeed, the article (at p. 317) referred to the proposed withdrawal of the existing regulation as a "potential" change. For my part, there is nothing in the article that assists PCCW's submission of apparent bias.

35. I should mention that Mr Pannick QC and Mr Green QC disagreed on whether Lord Hope did decide in *Porter* that the absence of an improper motive is a highly relevant and even a decisive consideration. I do not propose to resolve that conflict as I have come to the firm view that no case has been made out of apparent bias on the materials on which PCCW relies and the appeal falls to be dismissed for that reason. It also becomes unnecessary for me to address the other two issues, and I do not propose to do so.

Costs

36. So far as the costs of the Authority are concerned, PCCW accepted that these must follow the event. As the Authority wished to reserve its position as to the basis upon which costs should be awarded, at the conclusion of the hearing, an order *nisi* was made of costs in favour of the Authority.

37. So far as the costs of the Interested Parties are concerned, directions were given for the filing of written submissions. The issue is whether PCCW should be made to bear two sets of costs.

38. In *Bolton MDC v Secretary of State for the Environment* [1995] 1 WLR 1176 at 1178F-1179A, the House of Lords set out the proper approach to be adopted. In summary, whilst the court has discretion to award costs, an interested party has to demonstrate that there is a separate issue on which he was entitled to be heard or that he had an interest which required separate representation before he is entitled to his costs. This approach was approved by this court (differently constituted) in *Shiu Wing Steel Ltd v Director of Environmental Protection & Airport Authority of Hong Kong (Interested Party)*, unreported, CACV 350 of 2003, 18 March 2005, at §§ 156-159 (reversed [2006] 3 HKLRD 487 not affecting this point).

39. It is clear from *Bolton* (at 1178H) that by the time a case reaches the Court of Appeal the issues should have crystallised and the extent to which there are indeed separate interests should have been clarified. A second set of costs is thus more likely to be awarded at first instance than in the Court of Appeal. Moreover, even where there is a separate interest, that does not of itself warrant the grant of a second set of costs unless that separate interest requires separate representation, for example, because it is a conflicting interest. See *R (Bedford) v London Borough of Islington* [2002] EWHC 2044 (Admin) at § 296. The question for determination on appeal was whether there was an appearance of predetermination on the part of the Authority. In my view, the Interested Parties did not have an interest that required separate representation.

40. Insofar as the Interested Parties were served with a notice of appeal, I will proceed on the basis they were parties "directly affected by the appeal" for the purposes of RHC O.59 R.3. However, they did not have to appear,

there being no separate issue arising that entitled the Interested Parties to be heard. Nor do I accept that they had a separate interest that needed separate representation. Accordingly, I do not consider that there should be a second set of costs. I would therefore order that there be no order as to costs as between PCCW and the Interested Parties.

Hon Cheung JA:

41. I agree with the judgment of Le Pichon JA.

Hon Stone J:

42. I agree with the judgment of Le Pichon JA.

43. In the arena of apparent bias, context is crucial, and in the circumstances revealed on this evidence and when the issue is looked at in the round, I fail to see why the 'fair minded and informed observer' could or would have taken the view that the Authority had given the appearance of predetermination of the matters the subject of the consultation process.

44. For my part I see no reason why the Authority should not have provided a clear indication of his prevailing views, which in the circumstances could not fairly be regarded as being set in stone irrespective of that which resulted from the consultation; in this connection I agree with the observation of Mr Green QC that it is the "quintessence" of his function that the Authority should have (and express) strong views, the better for such to be measured against the responses from consultation participants within an industry which over the past two decades has undergone the most extraordinary technical advance and change.

A

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

45. In my view this appeal had little merit, and only the forensic skill of Mr Pannick QC invested the argument with some semblance of respectability.

46. I can discern no reason which would justify departure from the clear and considered judgment of Reyes J in the court below.

(Doreen Le Pichon)
Justice of Appeal

(Peter Cheung)
Justice of Appeal

(William Stone)
Judge of the
Court of First Instance

Mr David Pannick QC & Mr Roger Beresford, instructed by Messrs Clifford Chance for the Applicant/Appellant

Mr Nicholas Green QC & Mr Johnny Mok SC, instructed by Messrs Slaughter & May, for the Respondent/Respondent

Mr Barrie Barlow SC, instructed by Messrs Mallesons Stephen Jaques, for the 1st & 2nd Interested Parties/Respondents

HCAL 645/2017
[2020] HKCFI 1956

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO 645 OF 2017**

BETWEEN

HONG KONG RESORT COMPANY LIMITED Applicant

and

TOWN PLANNING BOARD Respondent

Before: Hon Au JA (sitting as an additional judge of the Court of First Instance) in Court

Dates of Hearing: 22 - 23 November 2018

Date of Judgment: 7 August 2020

JUDGMENT

A. INTRODUCTION

1. The applicant is the developer owner of the land on which the development known as Discovery Bay situates.

2. Discovery Bay has since 1976 been developed into a self-contained sub-urban residential community compatible with its natural

conservation. Its development is governed by Outline Zoning Plan No S/I-DB/4 ("the DB OZP").

3. By way of an application made under section 12A of the Town Planning Ordinance (Cap 131) ("the TPO") ("the Application")¹, the applicant asked the respondent ("the TPB") to amend the DB OZP by rezoning Area 6f ("Area 6f") therein from "Other Specified Uses" annotated "Staff Quarters (5)" (OU(SQ)) to "Residential (Group C)(12)".

4. The Application was considered by the TPB² at a meeting held on 23 June 2017 ("the Meeting")³. By its decision ("the Decision") of the same date⁴, the TPB refused to approve the Application.

5. The TPB gave the following two reasons for the Decision:

(1) There is scope for further residential development under the DB OZP as the total maximum domestic gross floor area ("GFA") allowed has yet to be realised ("the Unused GFA"). No strong justification has been provided for rezoning Area 6f. I will refer this as the "Unused GFA Reason".

(2) Approval of the Application would set an undesirable precedent for other similar rezoning applications, the cumulative impact of which would further depart from the original development concept and overstrain infrastructure

¹ Under section 12A(1) of the TPO, any person may apply to the TPB for consideration of any proposal in relation to an original approved plan for the purposes of this section.

² More precisely, it was considered by the Rural and New Town Planning Committee ("the RNTPC") of the TPB.

³ Under section 12A(23) of the TPO, upon consideration of an application at a meeting, the TPB may accept (in full or in part) or refuse the application.

⁴ The Decision was communicated to the applicant by a letter dated 14 July 2017.

capacities. I will refer this as the "Undesirable Precedent Reason".

6. In this judicial review, the applicant in seeking to quash the Decision has raised five grounds to challenge it. They are in short these:

- (1) The TPB took into account an irrelevant consideration, namely, the Unused GFA factor ("Ground 1")⁵.
- (2) The TPB failed to take into account relevant facts and planning considerations ("Ground 2")⁶.
- (3) The TPB failed to discharge its *Tameside* duty to investigate whether the proposed increase in the total planned population by 1,190 would be consistent with the planning intention of the Discovery Bay ("Ground 3")⁷.
- (4) The TPB has misapplied the concept of "undesirable precedent" to the Application ("Ground 4")⁸.
- (5) The TPB has abdicated its function by the wholesale copying of the reasons suggested by the Planning Department ("the PlanD") ("Ground 5")⁹.

7. The applicant is represented by Mr Benjamin Yu SC together with Ms Eva Sit, and the TPB is represented by Mr John Litton together with Ms Catrina Lam.

⁵ See Form 86, paragraphs 46 - 54.
⁶ See Form 86, paragraphs 55 - 63.
⁷ See Form 86, paragraphs 64 - 75.
⁸ See Form 86, paragraphs 76 - 79.
⁹ See Form 86, paragraphs 80 - 83.

8. Before I elaborate on the grounds of challenge and deal with them, it is pertinent to set out the uncontroversial background fact relevant to this application first. This is mostly taken from Mr Yu's skeleton submissions and the Affirmation of Lung Siu Yuk ("the Affirmation of Lung") filed on behalf of TPB.

B. RELEVANT BACKGROUND

B1. Discovery Bay development control

9. ~~Discovery Bay is a self-contained sub-urban residential~~ development comprising mainly low-density private housing planned for an estimated total population of about 25,000 with supporting retail, commercial and community facilities and recreational uses. It is primarily a car-free development having evolved from the original concept of holiday resort approved in 1973¹⁰. The development has been constructed in a manner that is compatible with its natural environment and offers a wide range of recreational and leisure facilities for locals and visitors.

10. The applicant is the sole owner of the land on which Discovery Bay situates. Everything in Discovery Bay was built by the applicant from scratch and at its own cost, including (in addition to buildings) walls, banks, watercourses, drains and channels, roads, marine structures and pier, water supplies, refuse treatment, fire station, police

¹⁰ When the Government granted approval for the development of Discovery Bay in 1973, the original development concept of Discovery Bay was for a holiday resort featuring golf courses, a wide range of recreational facilities with resort accommodation and some commercial elements to serve visitors as well as local residents.

station and public primary school, indoor recreation centre and neighbourhood community centre.

11. Historically, development on Discovery Bay was controlled by the Master (Layout) Plan ("the MP") which was subject to approval by the Lands Department, imposed as a lease condition. It was not until 2001 that the first outline zoning plan for Discovery Bay was directed to be prepared by the TPB. The DB OZP is the approved version of the outline zoning plan.

12. Thus, since 2001 development on Discovery Bay is subject to the dual control of:

- (1) the DB OZP, by the TPB; and
- (2) the applicable MP, by the Lands Department.

13. Prior to 2001 development control over Discovery Bay, including domestic GFA¹¹, was exercised through the MP by the Lands Department. In this regard:

- (1) In the 1980s, domestic GFA was gradually increased to 559,510m² in MP5.4.
- (2) At that time, the area now known as Area 6f had no separate existence, but was part of an area now largely falling within Area 6b and was zoned for "housing".

¹¹ The MP uses "gross building area" but it is common ground that it is for present purposes the same as GFA: the Affirmation of Lung, footnote 1.

(3) In 1994, the applicant paid HK\$126 million for additional GFA of 8,400m² for staff quarters in Areas 1c, 6f and 19b. That was when Area 6f first came into existence.

(4) In other words, Area 6f has always been zoned for residential purpose, in one form or another.

(5) In February 2000, the domestic GFA was increased to 758,365m² (upon payment of premium of HK\$1.65 billion and undertaking obligations to construct various public facilities) in the approved MP6.0E1.

(6) In September 2000, the applicant, upon securing informal approval to increase the domestic GFA by 17,423m² submitted a draft MP to the Lands Department to reflect the same. The Lands Department only offered terms to the applicant in 2012, assessed premium in 2015 (which the applicant accepted immediately), and the revised MP (MP6.0E7) was only issued in 2016, with a total domestic GFA of 775,655m². The whole process therefore had taken some 16 years to complete¹².

14. In 2001, during the preparation of the first draft OZP for Discovery Bay, the Government also agreed in principle to the applicant's proposed additional residential GBA of 124,000m² (equivalent to GFA of 124,000m²) in Discovery Bay North (shown as "Potential Housing Development Area" on the then draft MP but had not been included in MP6.0E7h(a) approved in March 2016). The first OZP for Discovery Bay under preparation at that time has incorporated the additional domestic

¹² During which the applicant issued various chasers to no avail. See also CHK-3 [1/13/150-157].

A
B GFA of 124,000m² as well as minor adjustments in other areas¹³. The
C total domestic GFA permitted in the first draft Discovery Bay OZP
D No S/I-DB/1 published on 14 September 2001 is therefore 900,683m²,
E which has remained unchanged in the subsequent OZPs including the
F approved OZP (ie, the DB OZP).

F 15. Shortly thereafter, in June 2002, the applicant submitted draft
G MP7.0A to the Lands Department to incorporate the 124,000m² domestic
H GFA already agreed upon and reflected in the DB OZP. That draft MP
I remains unapproved by the time of this hearing. Given that development
J in Discovery Bay is subject to both the DB OZP and the MP, the applicant
K has not been able to undertake any development utilizing the 124,000m²
L domestic GFA already granted in 2001. This 124,000m² is the "Unused
M GFA" that the TPB took into account in the Unused GFA Reason in the
N Decision.

M 16. Under the DB OZP, Discovery Bay is expected to be
N developed in accordance with local conditions and the capacity of the
O existing and planned infrastructure with a total planned population of about
P 25,000 and a maximum domestic GFA of 900,683m² upon full
Q development. Any further increase in population would have to be
R considered in the context of the general planning intention for the area and
S subject to detailed feasibility investigations on infrastructure and
T environmental capacities.

¹³ Involving 1,028m² domestic GFA located in the "Residential (Group C)7" zone covering the existing residential developments in the headland between Tsoi Yuen Wan and Nim Shue Wan, namely Crestmont Villa, Coastline Villa and Peninsula Villa.

17. The land area planned for residential development in Discovery Bay mainly falls within various "R(C)" and "Other Specified Uses" ("OU") zones on the approved OZP. The land use zonings and development intensity as incorporated in the OZP has taken into consideration the development character, availability of infrastructure, the need to conserve the natural environment, the contents of the MP as well as the relevant height restrictions set out in the Deed of Restrictive Covenant of Hong Kong Disneyland.

B2. Site selection and the Application for Area 6f

18. It is the applicant's case that, in response to the Government's call for additional housing stock, the applicant entered into discussion with the Government and was informed that the applicant should undertake a review of its own to that end: See Minutes of the Meeting ("the Minutes") at paragraphs 7(c) - (d).

19. Following that, the applicant submitted two proposed concept plans to the Government and revised the same taking into account the comments from the Government. Area 6f was identified after this process.

20. As to Area 6f:

(1) Its physical attributes are that:

(a) It is a very small area (0.12%) in Discovery Bay¹⁴.

¹⁴ Form 86 at paragraph 22.

(b) It is situated in the middle of a much larger area (Area 6b) zoned and already built for residential use (Parkvale Village).

(c) The site has been formed (man-made), ready for development, and is left vacant: RNTPC Paper No Y/I-DB/2D ("2nd RNTPC Paper")¹⁵ at paragraph 7.1(b).

(d) It is located on a slope at the back-end of the built-up area.

(2) In terms of user, it has always been zoned for residential use, initially as housing and since 1994 as staff quarters.

(3) As to its purpose as staff quarters, it is not in dispute that such purpose has become spent, as increased traffic connectivity in the North Lantau region means that it is no longer necessary for staff to live *in situ*: 2nd RNTPC Paper at paragraph 2(d). As a matter of fact, it has become spent for a long time, as Area 6f has never been built on.

21. The applicant thereafter identified Area 6f as a suitable site for rezoning given:

(1) It does not involve any destruction of natural habitat and is compatible with its surrounding setting: 2nd RNTPC Paper at paragraph 2(b).

(2) It involves replacement of the intended staff quarters (no longer needed) with residential buildings — both residential uses: 2nd RNTPC Paper at paragraphs 2(c) - (d).

¹⁵

This is a paper prepared by the PlanD for the purpose of the Meeting. See [28] below.

- (3) It is a logical location for residential development since it is in the middle of Area 6b which has already been developed to that end, and is already served by existing transport network because of that: 2nd RNTPC Paper at paragraph 2(c).

22. The proposed development upon rezoning consists of two mid-rise residential buildings of 18 storeys providing 476 flats, for an estimated additional population of 1,190: 2nd RNTPC Paper at paragraph 1.2. Under such development:

- (1) The PlanD has indicated that there is adequate infrastructure provision to cater for the same¹⁶; and

- (2) It is the applicant's representation that the characteristics and resort elements of Discovery Bay would not be affected: Minutes at paragraph 8(c).

23. The application to rezone Area 6f under section 12A of the TPO was submitted on 25 January 2016 (ie, the Application).

B3. Area 10b

24. Later, the applicant also submitted an application to rezone Area 10b on 26 February 2016 ("Area 10b Application").

25. As can be seen from the DB OZP, Area 10b is a long strip of land to the north of Nim Shue Wan. It consists of a mishmash of "Other Specified" and "Government, Institution or Community" uses, including

¹⁶ See 2nd RNTPC Paper at paragraph 2(e) - (l); also Minutes at paragraph 20(a).

service areas, refuse collection, telephone exchange, petrol stations and two pockets for staff quarters¹⁷.

26. The reason for seeking to rezone Area 10b was because it has become largely defunct and an eyesore: Minutes at paragraph 11(c).

27. However, as a result of technical problems to be resolved, the Area 10b Application had already been withdrawn on 7 April 2017 *before* the Meeting at which the Application was considered¹⁸. The applicant made clear that if the technical issues could not be resolved, it would *not* make the Area 10b Application again¹⁹.

B4. The Meeting and the Decision

28. As consideration of the Application was deferred on a number of occasions, two papers had been prepared by the PlanD for the TPB. For present purposes the following matters are pertinent:

- (1) In RNTPC Paper No Y/1-DB/2C prepared for the TPB meeting on 17 February 2017 ("1st RNTPC Paper"), although the Unused GFA was noted (at paragraph 11.5), the PlanD did not consider that to be relevant to the rezoning application, and did not recommend that as a reason for refusing the Application (at paragraph 2.1). Instead, the PlanD considered that the Application should be rejected on the grounds of (a) failure to demonstrate no infrastructural,

¹⁷ See the DB OZP compared against MP6.0E7.

¹⁸ See 2nd RNTPC Paper at paragraph 1.5, and transcript of the Meeting [Bundle 1/11/110-111].

¹⁹ See Transcript in Chinese at [1/11/110-111], which reveals a different emphasis in the applicant's answer compared to the TPB Minutes paragraph 20(b) in English.

environmental and geotechnical impacts; and (b) undesirable precedent.

- (2) By the time of the Meeting on 23 June 2017, all technical issues had been satisfactorily resolved by the applicant: Minutes at paragraph 28. In the 2nd RNTPC Paper, the PlanD put forth the position, for the first time, that "the [Unused GFA] should be implemented first before new sites are proposed to be rezoned for additional residential development" (see paragraph 11.5), and that this be used as a reason to reject the Application (see paragraph 12.1).

29. At the Meeting, the Senior Town Planner of the PlanD gave a detailed presentation on, among other things, the background to the Application, the Applicant's proposal, the departmental comments, the public comments and the PlanD's views as detailed in the 2nd RNTPC Paper. The applicant's representative and consultant also attended to present to the TPB and answer questions²⁰.

30. The questioning centred on three areas²¹:

- (1) The applicant's intention with respect to the five other staff quarter zones in Discovery Bay — the applicant explained that (a) the site nature and conditions were different; and (b) three of the other sites had already been developed as staff quarters and would be retained, one could not be developed as the GFA had already been taken up, and the remaining one was located on the hill top and there was no intention to rezone (See Minutes at paragraphs 11, 19(b), 20(b)).

²⁰ See PowerPoint [2B/9/99-146]; Minutes paragraphs 7 - 8.

²¹ See Minutes at paragraphs 10 - 21.

(2) Tree compensation and urban biodiversity – these were accepted as satisfactory and no issue arose out of that.

(3) Unused GFA (see Minutes at paragraphs 17 - 18).

31. As shown in the Minutes at paragraphs 23 - 29, at the deliberation session of the Meeting:

(1) The Chairman directed the TPB to focus on (a) unique background of comprehensive development concept in Discovery Bay; (b) Unused GFA; and (c) cumulative impact of approving similar rezoning proposals once a precedent was established (see paragraph 23).

(2) There were views against approving the Application, on the basis that (paragraphs 25, 27):

(a) Discovery Bay was not recommended as a strategic growth area. Given its unique background of comprehensive development concept, the proposed development would have cumulative impacts on the overall planning of the area, and developments in Discovery Bay should be assessed comprehensively.

(b) The applicant had indicated intention for further residential development. There was still Unused GFA. Other than for providing more housing units, there was no strong justification for rezoning.

(c) Approval would set an undesirable precedent for similar applications for OU(Staff Quarters) or other zones in Discovery Bay.

(3) There were also views in favour of granting the Application (see paragraph 26).

32. The TPB then made the Decision. Its reasons have been set out at paragraph 29 of the Minutes as follows:

"29. After further deliberation, the Committee decided not to agree to the application for the following reasons:

(a) there is scope for further residential development under the current Outline Zoning Plan as the total maximum domestic gross floor area allowed has yet to be realised. No strong justification has been provided by the applicant for rezoning the application site for residential use; and

(b) approval of the application would set an undesirable precedent for other similar rezoning applications, the cumulative impact of which would further depart from the original development concept of Discovery Bay and overstrain the existing and planned infrastructure capacities for Discovery Bay area."

33. There is no dispute that paragraph 29 of the Minutes indeed adopted word-for-word the reasons for rejection recommended by the PlanD in the 2nd RNTPC Paper at paragraph 12.1.

34. The applicant thereafter applied for leave to judicially review the Decision. Leave was granted on paper by this court.

C. *THIS JUDICIAL REVIEW*

35. As mentioned above, the applicant has raised five grounds of judicial review to challenge the Decision. I will look at them in turn.

C1. Grounds 1 and 2

36. These two grounds are advanced by Mr Yu together. As pointed out by counsel, they are closely related, and seek in particular to challenge the Unused GFA Reason.

37. Under Ground 1, the applicant contends that in relying on the Unused GFA as a material factor to reject the Application, the TPB had taken into account an irrelevant consideration. This is so as this is not a factor of a planning nature and has nothing to do with the general planning intention and the relevant criteria as explained in the Explanatory Statement ("the Explanatory Statement") for the DB OZP.

38. Further, under Ground 2, in looking at the Unused GFA as a basis for rejecting the Application, the TPB had also failed to take into account matters relevant to the general planning intention as it should have done so.

39. The main thrust of the arguments in support of these grounds can be summarized as follows.

40. Mr Yu says for the present purposes, it is common ground²² that in considering the Application:

- (1) The TPB should assess whether the proposed rezoning of Area 6f is consistent with the planning intention and the criteria as set out and explained at paragraph 7 of Explanatory Statement.

²² See the TPB's skeleton, paragraphs 8 - 11 and 39, and the Affirmation of Lung, paragraph 48.

(2) The TPB should only take into account matters that are proper planning considerations. Planning considerations are only those which are related to the use and development of the land. Whether a factor is a planning consideration is a question of law for the court and may depend on the circumstances of the case: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at 764 and 780, *Stinger v Minister of Housing and Local Government* (1971) 22 P&CR 255 at 269 - 270.

41. Premised on the above, under Ground 1, Mr Yu submits that for the following reasons, the Unused GFA is not a relevant planning consideration.

42. First, it is not in dispute that the planning intention of Discovery Bay is to be ascertained from the Explanatory Statement²³, which has been generally set out at paragraphs 5.4 and 7.1 - 7.3 as follows:

"5.4 The Discovery Bay development is a *self-contained sub-urban residential development comprising mainly low-density private housing planned for a total population of about 25,000 with supporting retail, commercial and community facilities and recreational uses. It is primarily a car-free development evolved from the original concept of a holiday resort approved in 1973. This intention is still maintained by the existing and planned provision of a diversity of recreation facilities including golf courses, sports and recreation clubs, beaches and marina, etc.* Such resort type recreation functions would be further enhanced by the planned open spaces, public recreation facilities and golf course in Yi Pak and the southern upland, reinforcing the area as a leisure place for both local residents and visitors.

²³ *Henderson Real Estate Agency Ltd v Lo Chai Wan* [1997] HKLRD 258 (PC), at 267 per Lord Lloyd.

- A
- B
- C
- D
- E
- F
- G
- H
- I
- J
- K
- L
- M
- N
- O
- P
- Q
- R
- S
- T
- U
- V
- 7.1 In line with the strategic planning context provided by the South West New Territories Development Strategy Review, *the general planning intention of the Area is for conservation of the natural environment and to provide for low-density developments compatible with the surrounding natural setting.* Existing natural features including the undisturbed backdrop of woodland and slopes and the natural coastlines with inlets, bays, beaches at Tai Pak, Yi Pak, Sam Pak and Sze Pak should be conserved. Areas of high conservation value and natural habitats including woodland, stream valleys, streamcourses and stream/tidal lagoons should also be protected.
- 7.2 Having regard to the character of the Area, environmental considerations and the existing and planned infrastructure provision, in particular the limited capacity of external links, the Plan provides *for a planned total population of about 25,000 persons* for the Discovery Bay development. *Any further increase in population would have to be considered in the context of the general planning intention for the Area and subject to detailed feasibility investigations on infrastructure and environmental capacities.* In particular, *the unique sub-urban low-density and car-free character of the development should be maintained in keeping with the surrounding natural setting.* In line with the original concept as a holiday resort, a variety of recreation and leisure facilities are allowed for. Future development at Discovery Bay should also be in keeping with the theme park development and its adjoining uses at Penny's Bay to ensure compatibility in land use, height, visual, and environmental terms. The existing rural settlements at Nim Shue Wan and Cheung Sha Lan would be retained with the planning intention of upgrading or redeveloping the existing temporary domestic structures with the provision of basic infrastructure.
- 7.3 The general urban design concept is to maintain a car-free and low-density environment and to concentrate commercial and major community and open space facilities at more accessible locations. One activity node each around the ferry piers in Tai Pak Wan and Yi Pak Wan have been earmarked. A stepped height approach with low-rise on the headland and coastal lowland and high-rise further inland is adopted. This complements the visual presence of the mountain backdrop and maintains the prominent sea view. Variation in height is also adopted

within individual neighbourhood to add variety in character and housing choice. The interplay of the natural and man-made landscape elements such as beaches, waterfront promenades, parks and golf courses helps integrate developments with the natural surroundings.

7.4 In the designation of various zones in the Area, consideration has been given to the natural environment, physical landform, existing settlement, land status, availability of infrastructure, local development requirements and relevant strategic planning studies and master plans.” (*emphasis added*)

43. It can thus be seen that:

(1) The planning intention for Discovery Bay is to provide a holiday resort with residential and commercial development.

It is to have a sub-urban character and to maintain a car-free and low-density environment. See paragraphs 7.1 to 7.3 of the Explanatory Statement.

(2) Further, under the planning intention, Discovery Bay is to have an estimated total population of 25,000. But this is not a bar to any increase as it is expressly stated that any further increase would have to be considered in the context of the general planning intention and subject to detailed feasibility investigations on infrastructure and environmental capacities. See paragraph 7.2 of the Explanatory Statement.

44. In the premises, the TPB should consider the Application by taking into account matters of a planning nature and matters that are relevant or related to assess whether the proposed rezoning is (a) consistent with the general planning intention, and (b) supported by detailed feasibility investigations on infrastructure and environmental capacities.

45. However, instead of doing so, the TPB took into account and relied on the Unused GFA factor as a basis for rejecting the Application. This is wrong because:

- (1) It is unrelated in any way to the questions of whether the proposed rezoning is consistent with the general planning intention or infrastructure and environmental capacities investigations.
- (2) In any event, the Unused GFA is about when and how the *implementation* of the MP7.0 is to be carried out. It has nothing to do with the proper land use of Area 6f.
- (3) In this respect, matters relating to the implementation of a plan are *not* planning considerations as they are irrelevant to what should be the proper land use of a particular site under the relevant outline zoning plan vis-à-vis its planning intention. See: *Delight World Ltd v Town Planning Appeal Board* [1997] HKLRD 1106, 1115D-I *per* Keith J.
- (4) Mr Yu asks rhetorically, why would the *implementation* of *one* area²⁴ in Discovery Bay be relevant to what is the proper land use of *another* area (Area 6f).
- (5) In the premises, the Unused GFA is neither a proper planning consideration nor is it related to the planning intention and the criteria set out in the Explanatory Statement.

46. Mr Yu therefore says the TPB had taken into account an irrelevant consideration (ie, the Unused GFA) in coming to the Decision.

²⁴ The Unused GFA are mainly located in subareas A, B and C of Residential (Group 2) 2 (ie, R(C)2) zone in Discovery Bay North on the DB OZP. See: the Affirmation of Lung, paragraph 11.

47. For the same reasons, Mr Yu submits under Ground 2 that the TPB had also failed to take into account relevant considerations (ie, matters relating to the planning intention) in making the Decision.

48. In opposition, Mr Litton contends that the Unused GFA is clearly a relevant planning consideration for the purpose of assessing the Application.

49. Mr Litton says whether a factor is of a planning nature and thus a planning consideration must be dependent on the individual circumstances, in particular the specific planning intention of a subject OZP. As observed by Cooke J in *Stinger* at 269:

"It may be conceded at once that the material considerations to which the Minister is entitled and bound to have regard in deciding an appeal must be considerations of a planning nature. I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity. So far as I am aware, there is no authority for such a proposition, and it seems to me to be wrong in principle. *In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within this broad class is material in any given case will depend on the circumstances.* However, it seems to me that in considering an appeal, the Minister is entitled to ask himself whether the proposed development is compatible with the proper and desirable use of other land in the area. For example, if permission is sought to erect an explosives factory adjacent to a school, the Minister must surely be entitled and bound to consider the question of safety. This plainly is not an amenity consideration. The broad nature of the duty of a planning authority in dealing with an application is indicated in the judgment of Widgery J. in *Fitzpatrick Developments Ltd. v. Minister of Housing and Local Government*. Widgery J. said:

It is the duty of the local planning authority in the first instance, and the Minister if the matter comes to him by way of appeal, to plan the area concerned, and an essential feature of planning must be the separation of different uses or

activities which are incompatible the one with the other."
(*emphasis added*)

50. Mr Litton submits that, in relation to the present case, the particular circumstances of the DB OZP are these.

51. As reflected in the Explanatory Statement, the planning intention is to develop Discovery Bay *as a whole* into a holiday resort balanced with residential and commercial developments. Specifically, it is to be developed into a car-free area with low density and low rise residential housing, and compatible with its conservation and natural environment. This intention is achieved and reflected in the DB OZP by adopting an overall and holistic approach in designating in the plan carefully planned and specifically zoned areas over the *entire* Discovery Bay area. These zones include areas specified for residential use²⁵, open space, other specified uses²⁶, green belt, conservation area, coastal protection area, and country park. Further, each of these zones (and their sub-divided zones) are allocated with specific GFAs and specific height and storeys limitation as to the buildings to be erected in these zones. The intention and balance is also to be achieved by adopting an estimated population of 25,000 for the entire Discovery Bay.

52. In other words, the planning intention is a *comprehensive* and holistic development concept, to develop the *entire* Discovery Bay into a self-sustained holiday resort with residential and commercial development,

²⁵ Such as Residential Group C and Residential Group D uses.

²⁶ For examples, such as for "Commercial Complex and Residential Development cum Transport Interchange" only, "Commercial and Public Recreation Development cum Transport Interchange" only, "Hotel" only, "Public Recreation cum Residential Development" only, "Golf Course" only, "Marina" only, "Sports and Recreation Club" only, "Staff Quarters" only, "Pier" only etc.

compatible with its natural environment. This intention is achieved as a matter of planning through the well balanced and comprehensive designated zonings in the DB OZP with designated GFAs.

53. Given this comprehensive and holistic zoning plan for Discovery Bay, it must be open to the TPB in assessing the Application to take the view (as it did) that, for planning purposes, it would be more appropriate to assess the proposed development *with other developments in Discovery Bay as a whole*, than on a piecemeal basis²⁷.

54. Once understood this way, the Unused GFA is plainly a relevant planning consideration and the TPB was justified in taking this into account in assessing the Application.

55. Notwithstanding Mr Litton's persuasive submissions, for the following reasons, I am unable to agree.

56. First, as mentioned above, given what has been stated in the Explanatory Statement, it is common ground²⁸ that the TPB should assess the Application in the context of the general planning intention of the development for Discovery Bay, and the feasibility studies of infrastructure and environment capacities.

²⁷ See paragraphs 25, 27 - 28 of the Minutes; paragraphs 41 and 48 of the Affirmation of Lung.

²⁸ See also: the Affirmation of Lung, paragraph 48; paragraph 6(e)(ii) of the Minutes of the PlanD's view.

57. However, it is clear that the TPB's reliance on the Unused GFA factor has nothing to do with its consideration of any of these criteria.

58. As pointed out by Mr Yu, the TPB did not say in the Decision that the Application was disapproved because it was inconsistent with the planning intention or that it did not meet the infrastructure or environment capacities feasibility studies.

59. In this respect, Mr Yu further emphasizes that the applicant's representative and consultant had made representations at the Meeting as to why the Application would meet all these criteria.²⁹ The TPB did not address any of them in its deliberation and in its reasons in rejecting the Application³⁰. Indeed, the TPB was satisfied that the proposed residential development was *not* incompatible with the surroundings in terms of land use and development intensity and the major technical issues of the proposed development could be resolved³¹. The PlanD had also indicated that there was adequate infrastructure provision to cater for the proposed rezoning development³².

60. Further, as explained by Mr Litton above, the TPB in referring to the Unused GFA factor was rather saying that such proposed rezoning and redevelopment should only be considered and assessed comprehensively together with all other developments in the Discovery Bay as a whole. Hence, at the deliberations, members recommending

²⁹ See paragraphs 7 - 16 of the Minutes and [20] above.

³⁰ See paragraphs 23 - 25 and 27 - 29 of the Minutes.

³¹ See paragraph 42 and 48 of the Affirmation of Lung.

³² See [22] above.

rejecting the Application were recorded at paragraphs 25(a) and (b), 27 and 28 of the Minutes to be saying:

"25. Some Members supported PlanD's recommendation of rejecting the application and had the following major views:

(a) Discovery Bay was not recommended as a strategic growth area. Given the unique background of comprehensive development concept in Discovery Bay, *the proposed development* would have cumulative impacts on the overall planning of the area, *and developments in Discovery Bay should be assessed comprehensively;*

(b) the applicant had indicated intention for further residential developments in Discovery Bay. There was still undeveloped domestic GFA allowed on the OZP. Other than for providing more housing units, there was no strong justification for rezoning the Site for residential use;

(c) ...

27. The Vice-chairman was of view that as site area of the application site was not small and the applicant had indicated intention for further residential developments in Discovery Bay, *it would be more appropriate to assess the application with other developments in Discovery Bay comprehensively.*

28. The Chairman concluded that Members in majority did not support the application. Although the major technical issues of the proposed development had been resolved, the approval of the application would set an undesirable precedent for similar applications. The cumulative impact of approving similar rezoning applications was an important factor for consideration. There was scope for further residential development under the current OZP, and *the proposed development should be assessed with other developments in Discovery Bay comprehensively.*" (emphasis added)

61. In the premises, the TPB in relying on the Unused GFA as a factor to reject the Application did not do so on the basis that the Application failed to meet the planning intention or the criteria set out in

A
B the Explanatory Statement. This shows that the Unused GFA as a factor
C has nothing to do with any of these criteria.

D 62. Second, in coming to the above view, the TPB was indeed
E concerned with the implementation programme of the zoned areas
F allocated with the Unused GFA. This is underlined by the fact that, in
G opposing the Application by reference to the Unused GFA, the PlanD was
H focused on the absence of indication as to the implementation programme
I of those areas:

(1) Thus at paragraph 11.5 of the 2nd RNTPC Paper, the PlanD
stated:

J "It should also be noted that there are some 124,000m²
K domestic GFA allowed in the 'R(C)2' zone (Plan Z-1a) of the
L Discovery Bay OZP which have not been incorporated in the
M prevailing MP and yet to be implemented under the lease.
N In other words, there is scope for further residential
O developments within the planned residential area without
P resorting to rezone the Site. It is considered that the
Q planned residential developments should be *implemented*
first before new sites are proposed to be rezoned for
additional residential development. The applicant has
however not indicated *the implementation programme* of
these further residential developments within the 'R(C)2'
zone, and no justification has been provided by the applicant
on this aspect. As advised by DLO/Is, LandsD,
endorsement by ExCo is required if it is decided that any
development proposal to be incorporated in the MP would
change the development concept of Discovery Bay. While
this would be a lease matter to be followed up by the Lands
Authority, no account has been provided by the applicant on
this aspect." (*emphasis added*)

R (2) Similarly, at paragraph 6(e)(iv) of the Minutes, the PlanD was
recorded to have represented that:

S "there were some 124,000m² domestic GFA allowed in the
T 'Residential (Group C)2' ('R(C)2') zone in Discovery Bay
U North on the OZP which had not been incorporated in the
V prevailing MP and yet to be *implemented*. The planned

residential developments should be *implemented* first before new sites were proposed to be rezoned for additional residential development. The applicant had not indicated the *implementation programme* of the residential developments within the 'R(C)2' zone and no justification had been provided; and" (*emphasis added*)

63. However, as submitted by Mr Yu above, matters concerning implementation of the plan are *not* proper planning considerations. As observed by Keith J in *Delight* at 1115D, there is a "well-settled distinction in planning law between the grant of planning permission and its implementation":

"I cannot go along with this reasoning. It does not follow that because the bypass might cut across the site, therefore the company's application for planning permission had to fail. What the Appeal Board ignored was the *well-settled distinction in planning law between the grant of planning permission and its implementation*. That principle was explained by the House of Lords in *British Railways Board v The Secretary of State for the Environment* [1994] JPL 32 at p.38 as follows:

... there was no absolute rule that the existence of difficulties, even if apparently insuperable, had to necessarily lead to refusal of planning permission for a desirable development. A would-be developer might be faced with difficulties of many kinds ... If he considered that it was in his interests to secure planning permission notwithstanding the existence of such difficulties, it was not for the planning authority to refuse it simply on their view of how serious the difficulties were." (*emphasis added*)

64. This distinction is in my view a valid one. By definition, *planning* concerns the making of *designs or schemes* according to which things are, or are intended to be, arranged or carried out.

65. Hence, when the TPB is to consider whether the proposed rezoning of Area 6f as a *plan* for the use of that piece of land is consistent

A
B with the *planning intention* of the DB OZP as a *plan*, what it should
C consider is whether the proposed rezoning and residential development is
D consistent with the development *design or scheme* set out for the entire
E Discovery Bay. In other words, it is to assess whether the proposed
F amended plan and the existing plan are compatible with each other as a
G *design or scheme*.

H 66. In other words, whether or not certain proposed development
I approved in the original plan has in fact been carried out should not be
J relevant to the question of whether the proposed rezoning *for planning*
K *purposes* is consistent with the original plan as a matter of *design or*
L *scheme*.

M 67. In this respect, Mr Litton's submissions that the planning
N intention for Discovery Bay is a holistic and comprehensive one, although
O initially attractive, does not assist him:

P (1) In the present case, the TPB also did not in fact say, because
Q of the Unused GFA, the proposed rezoning of Area 6f was
R inconsistent with the planning intention. All it was saying
S (relying on the PlanD's similar view) is that, not until the
T Unused GFA was implemented, it could not say what impact
U the proposed rezoning might have on the planning intention.
V See Minutes, paragraph 6(e)(iii) (the PlanD's view), and
paragraphs 25(a) and (b).

(2) In other words, what it effectively said is, it could only assess
whether the proposed rezoning was consistent with the
planning intention *after* the Unused GFA had been made use
of. However, it had not explained why. For example, it did

A
B not even say, *for planning purposes*, what were the matters it
C could not assess to determine whether the proposed rezoning
D was consistent or not with the planning intention unless it
E could have knowledge of the implementation of the Unused
F GFA. The lack of such explanation or analysis highlights the
distinction between matters concerning planning and matters
relating to its implementation. For this, I repeat my
observation at [65] - [66] above.

G
H 68. For all these reasons, I accept Mr Yu's submissions that,
I looking at the way the TPB had taken it into account under the Unused
GFA Reason, it had taken into account an irrelevant consideration.

J 69. The applicant therefore succeeds under Ground 1.

K
L 70. For the same reasons, I also accept Ground 2:

M (1) The applicant's representatives with the aid of PowerPoint
N presentation had addressed the TPB that the Application was
O in line with the general planning intention of the DB OZP and
P that there would be no infrastructure or environmental
capacities issues. See in particular: Minutes,
paragraphs 7(h), (j), (o), 8(c) and (f).

Q (2) Further, it is pertinent to note that it is the PlanD's view that
R there would be no infrastructure or environment capacities
issues. See: paragraphs 2(e) to (l), 9.1.2 to 9.1.12 of the 2nd
RNTPC Paper.

S (3) However, as explained above, these had not been dealt with
T by the TPB in the deliberations on the applicant's
U
V

representations that the proposed rezoning was consistent with the planning intention.

- (4) In such context, I agree with Mr Yu that the TPB in making the Decision had at the least also failed to take into account relevant considerations, viz matters relating to the planning intention.

71. I will therefore quash the Decision on the basis of Grounds 1 and 2³³.

C2. Ground 4

72. It is convenient to consider Ground 4 first as in the way Mr Yu has advanced his submissions.

73. This ground concerns the Undesirable Precedent Reason.

74. The TPB set out this reason at paragraph 29(b) of the minutes as follows:

“approval of the application would set an undesirable precedent for other similar rezoning applications, the cumulative impact of which would further depart from the original development concept of Discovery Bay and overstrain the existing and planned infrastructure capacities for Discovery Bay area.”

³³ Mr Yu has fairly accepted that just because the Application “ticks all the boxes” does not mean it necessarily must be approved. But as submitted by Mr Yu, in the present case, it is not that the TPB acknowledged that the Application satisfied all the prescribed criteria but that in the exercise of its discretion taking into account relevant considerations it considered that the Application should not be approved. The TPB had taken into account irrelevant consideration and failed to take into account relevant consideration in rejecting the Application. In the premises, the Decision should be quashed: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1065A-B; *Capital Rich Development Ltd v Town Planning Board* [2007] 2 HKLRD 155 at [63] - [64].

75. The applicant says under this reason, the TPB was rejecting the Application on the basis that (a) the approval of it would set an undesirable precedent for "other similar applications", which (b) would lead to a "cumulative impact" that would further depart from the original development concept of Discovery Bay and overstrain the existing and planned infrastructure capacities for Discovery Bay Area.

76. This has been further made clear in the Affirmation of Lung at paragraph 51:

"51. I do not agree that approving the rezoning of the Site for residential development would not set an undesirable precedent. The RNTPC was well aware that there are six 'OU(Staff Quarters)' sites in the approved OZP with a total GFA of 3,827m² and a total area of about 2.68 hectares (including the Site) of a similar nature [paragraph 11.4 and Plan Z-7 of RNTPC Paper]. In light of the general planning intention and the unique development concept for Discovery Bay, it is entirely reasonable for the RNTPC to be cautious and concerned as to the impact on the planning intention and the existing and planned infrastructure capacity of Discovery Bay. This is particularly relevant given that approving similar applications within the 'OU(Staff Quarters)' sites on the approved OZP is likely to have a cumulative impact on the overall planning of the area and would further depart from the original development concept of Discovery Bay as a holiday resort and residential/commercial development. In fact, the Applicant has indicated that several pieces of land have been identified for better use [paragraph 8(b) of Minutes] and an intention for further residential developments in Discovery Bay (for example, application No. Y/I-DB/3 which was withdrawn by the Applicant is an application for a comprehensive residential development involving another two 'OU(Staff Quarters)' sites). Thus, if the RNTPC agreed to the Application, it might find it difficult to reject other similar applications involving 'OU(Staff Quarters)' zone in the future. In this regard, RNTPC's decision to approve the Application would be likely to set a precedent that the RNTPC would have to take into account in considering future similar applications, and in the present case, the cumulative effect would be a departure from the original development concept of Discovery Bay and may overstrain the existing and planned infrastructure capacity

for Discovery Bay [paragraph 11.4 of RNTPC Paper and paragraphs 25 and 28 of Minutes]." (*emphasis added*)

77. Mr Yu says this reason is wrong in principle as the TPB had misapplied this concept of "undesirable precedent". His contentions run as follows.

78. First, this reason is inconsistent with the planning intention. Mr Yu emphasizes again that under the planning intention, further increase in population beyond the estimated 25,000 is *permissible* and any application for that purpose would have to be considered with reference to the planning intention and the criteria as explained in the Explanatory Statement.

79. Thus, it is wrong in principle for the TPB to reject the Application on the basis of the possible or speculative "cumulative" effect if there were other future similar applications. Although the approval of the Application may well form a relevant consideration for any future applications, each of those applications would have to be considered on its own merits at the time of the application based on the proposed rezoning and by reference to those criteria.

80. Second, the TPB had wrongly regarded that this application would set an "undesirable precedent" for "other similar applications", presumably referring to the five other sites in Discovery Bay which have been zoned also as "OU(Staff Quarters)".

81. In the DB OZP, there are a total of six sites (including Area 6f) which have been zoned for staff quarters use. However, Mr Yu has pointed out that, in answer to questions raised at the Meeting as to whether the applicant intended to rezone all the six sites, Mr Wilson Cheung (a representative of the applicant) had explained that the other five zoned staff quarters sites were different from the one at Area 6f, and hence the applicant had no present intention to rezone them³⁴. Mr Cheung's explanations are recorded in the Minutes at paragraphs 10 - 11 as follows³⁵:

"10. The Chairman and a Member enquired if the applicant had the intention to rezone all the six 'OU(Staff Quarters)' zones on the OZP for residential use.

11. Mr Wilson Cheung, the applicant's representative, made the following responses:

(a) there were existing staff quarters at three of the 'OU(Staff Quarters)' zones, which were adjacent to Peninsula Village, the fire station and to the south of the golf course respectively. Although the demand for staff quarters was reduced, there was a need to retain such use;

(b) amongst the remaining three undeveloped 'OU(Staff Quarters)' zones, the GFA for the one at the junction of Marina Drive/Discovery Bay Road was already taken up by the one adjacent to Peninsula Village. The one adjacent to Bijou Hamlet was located at the hill top and there was no intention for changing its use. The remaining one was the application site; and

(c) the 'OU(Staff Quarters)' zone with existing staff quarters adjacent to Peninsula Village was included in the application site of the s.12A application (No. Y/I-DB/3) for rezoning to residential development. That rezoning application was not aimed at changing the use of staff quarters. Area 10b, where the application site of Y/I-DB/3 was located, was a barging and services area in Discovery Bay 30 years ago for loading/unloading activities and

³⁴ See the applicant's PowerPoint presentation during the Meeting [Bundle 2B/9/136].

³⁵ See also transcript of the Meeting, pp 100 - 102.

garages. It had been the back-of-house area for Discovery Bay in the past. As barges were no longer required due to availability of road traffic, Area 10b had become an eyesore, and was proposed to be rezoned for a better overall planning. It was a coincidence that some existing staff quarters were located in Area 10b."

82. These representations had not been challenged or disputed at the Meeting, nor had they even been discussed by the members at the deliberation session.

83. In the premises, Mr Yu says there is simply no proper basis for the TPB to form the view that the approval of the Application concerning Area 6f would form an undesirable precedent for "other similar applications", as the TPB had failed to appreciate the difference between the site under the Application and the other sites. One is not comparing like with like in the present case. See: *Smart Gain v Town Planning Board*, (HCAL 12/2006, 6 November 2007, A Cheung J) at [109] - [111]; *Jonnex International Ltd v Town Planning Board* [2018] 1 HKLRD 577, at [63] - [67].

84. I agree.

85. As submitted by Mr Yu, the principle that a previous planning decision may be a relevant consideration in assessing a subsequent planning application is based on the principle of consistency in decision-making³⁶.

³⁶ See: *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] Env LR 34.

86. Hence, for the TPB to come to the conclusion in that the approval of the Application could constitute an undesirable precedent, it had to have proper and reasonable basis (a) to say that the rezoning application of Area 6f was similar to other applications that might follow; and (b) to conclude that approving the Application would constitute a strong basis to require the TPB to approve subsequent similar applications.

87. In the present case, for the following reasons, I agree there is no or no proper basis for the TPB to form those views.

88. Given that the TPB had not dealt with the applicant's representations that the other five staff quarters sites are different from the subject site at Area 6f for technical and other reasons, and that it had no current intention to make any further rezoning application for them, the TPB did not have proper factual or reasonable basis for it to conclude that the present Application to rezone Area 6f would be "*similar*" to any subsequent applications.

89. Further, as submitted by Mr Yu, in the context of the DB OZP and the Explanatory Statement, there are control factors built in to assess each rezoning application which would result in increase in population, they are: (a) a planned estimated total population of 25,000; (b) consistency with stipulated general planning intention; and (c) the infrastructural and environmental capacities. Each individual application would have to be so assessed based on its merits by reference to these factors against the facts as presented at that time of the application.

A
B. 90. As illustrated by Mr Yu, the Application involves an increase
C in the estimated population figure from 25,000 to 26,190 in the proposed
D development after rezoning. The TPB had not questioned or disagreed
E with applicant's representations that the proposed rezoning and
F development could meet the existing infrastructure and environmental
G capacities. In the circumstances, if and when the applicant does make
H another subsequent rezoning application say for another increase of
I 1,000 population, the TPB would then be asked to consider an increase
J from the estimated population of 26,000 to say 27,000 odd. The baseline
K and circumstance would therefore have been changed. That would
L involve *different* considerations as to whether the subsequent proposed
rezoning application with the materials then presented could satisfy these
factors. As said by Mr Yu, if the Application had been successful, all that
means is that a subsequent application, which must still meet those criteria
set out in the Explanatory Statement, would find it harder to meet those
requirements and succeed.

M 91. In the premises, there is also no proper logical basis in the
N present case for the TPB to say that approval of the Application would
O constitute an undesirable precedent for other similar applications.

P 92. Mr Litton has taken me to paragraphs 8 - 11 of the Minutes,
Q and pointed out that, understood properly, all Mr Cheung was saying is that
R the applicant had no "current" intention to apply for their rezoning of the
S staff quarters sites. It does not mean that it had no intention at all to do
T so in the future, in particular when it is the applicant's own case that the
U demand for staff quarters had been much reduced since 2000 given the
V

improved transportation facilities linking Discovery Bay to outside. Counsel points out that the Application itself is a proof of such intention.

93. With respect to Mr Litton, this does not however address the lack of proper basis for the TPB's reason as identified above.

94. Further, Mr Litton also says even if the court accepts that the TPB is erroneous in arriving at the Undesirable Precedent Reason, the court should not exercise its discretion to quash the Decision. This is so as the Undesirable Precedent Reason is clearly separate and a stand-alone reason from the Unused GFA Reason. As such, the result of rejecting the Application is inevitable based on the Unused GFA Reason alone.

95. I am unable to accept this submission.

96. Leaving aside that I have also found that the Unused GFA Reason cannot stand, purely reading from the way these reasons are set out at paragraph 29 of the Minutes, I cannot come to a clear view that the TPB made the Decision on the basis of *either* one of those two reasons. This is particularly so as the TPB used the word "and" in setting out the two reasons for rejecting the Application.

97. Moreover, the Minutes shows that there were also members in the deliberation who were in support of the Application³⁷. In the circumstances, I cannot exclude the possibility that the Undesirable Precedent Reason might have influenced some members to ultimately

³⁷ See paragraph 26 of the Minutes.

decide to reject the application and thus tipped the balance in reaching the Decision.

98. In the premises, I also accept Ground 4, and would quash the Decision on this basis.

C3. *Ground 3*

99. It is well established that the *Tameside* duty of inquiry requires the TPB to ask itself the right question and take reasonable steps to acquaint itself with the relevant information to enable it to answer it correctly. However, it is generally for the TPB in discharge of such duty to decide whether sufficient inquiries have already been made, subject only to a *Wednesbury* unreasonableness challenge, bearing in mind the TPB's consultative role and statutory scheme of the TPO in assessing that question: *Hysan Development Co Ltd v Town Planning Board* (CACV 242 & 233/2012, 13 November 2014, Lam VP, Chu JA and Au J) at [94]; *Flintshire County Council v R (on the application of Anthony Jayes)* [2018] EWCA Civ 1089 at [14] *per* Hickbinbottom LJ.

100. The meaning and scope of the *Tameside* duty was recently clarified in *Ho Loy v Director of Environmental Protection* (HCAL 21 & 22/2015, unreported, 22 December 2016) at [46] - [54]. Chow J emphasised the following points:

- (1) [51] - [52]: It is important to appreciate that *Tameside* did not establish any general common law duty to consult before a public officer or body could exercise a statutory power which might affect the public generally. *Hysan*, *Capital Rich* and

Smart Gain also did not establish any general common law duty to consult or inquire.

(2) [51]: The true basis of the decision in *Tameside* is grounded on traditional administrative law principles, namely, that a decision maker exercising a statutory power must ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly.

(3) [53]: It is generally for the decision maker to decide what steps to take to collect relevant information for the purpose of answering the right question, absent any specific statutory requirement, subject to the court's supervisory jurisdiction exercised by way of judicial review.

(4) [53]: The manner and intensity of the inquiry to be undertaken into any relevant factor accepted or demonstrated as such is a matter for the decision-maker, not the courts.

101. Under this ground, the applicant's complaint is that the TPB failed to discharge its *Tameside* duty to make proper inquiry of the issues raised in the applicant's representations. In particular, the applicant says in its Form 86 that the TPB should have made inquiries into the following specific areas³⁸:

(1) Whether 25,000 was an absolute control figure such as to affect the TPB's consideration, by reference to the development concept of Discovery Bay, and whether the Application, with the attendant increase in total population by 1,190, was consistent with such development concept.

³⁸ In its Form 86, paragraph 73.

- A
- B (2) Whether the approval of the Application would have
- C jeopardized the 25,000 figure, bearing in mind the Unused
- D GFA had not yet been utilised and the total population of
- E Discovery Bay had yet to reach 25,000.
- F (3) Whether the prevailing circumstances were such as to warrant
- G lifting or relaxing the 25,000 figure.

H 102. In its skeleton at paragraph 56, the applicant has also said the

I TPB should have made inquiries as to (a) whether the "about 25,000"

J figure has been exceeded; and (b) if so to what extent it has been exceeded.

K 103. Mr Litton submits that, at the heart of the applicant's above

L complaints is that the TPB regarded the planned total population figure of

M about 25,000 as a "cap" or "absolute control figure" when it referred to the

N "original development concept of Discovery Bay" in the second reason for

O the Decision. This, Mr Litton says, is incorrect.

P 104. Mr Litton has made comprehensive submissions³⁹ to

Q demonstrate that it was clear from the reading of the Minutes and the

R Affirmation of Lung that the TPB, in assessing the Application, did not

S regard the 25,000 figure as a cap and was fully aware of the planning

T intention set out at paragraph 7 of the Explanatory Statement and that it did

U

V

³⁹ See paragraphs 46 and 48 of the Affirmation of Lung.

permit further increase in the population⁴⁰, which was guided by the factors set out at paragraph 7.2 of the Explanatory Statement⁴¹.

105. In such circumstances, it is obvious that the TPB must have asked itself those questions. However, the extent of the inquiry is a matter for the TPB, and it is open to the TPB, as a matter of planning judgment, to take the view that for planning purposes it would be more appropriate to assess the proposed development with other developments in Discovery Bay as whole, rather than on a piecemeal basis⁴².

106. Thus, in the context in which the TPB was being asked to make a decision, it was fully acquainted with the issue raised by the applicant. There was no controversy between the applicant and the PlanD that the DB OZP figure of 25,000 could be increased. The TPB accepted this position and reached its Decision *on other planning considerations*. It was therefore unnecessary for the Board to inquire into any of the specific matters raised by the applicant in Form 86 or its skeleton.

107. I would have agreed with Mr Litton's above submissions if the applicant's case under this ground is premised only on questions relating to treating 25,000 figure as effectively a cap.

⁴⁰ As pointed out by Mr Litton, extensive representations had been made by the applicant's representatives before the TPB to the effect that (a) the Explanatory Statement made clear the total planned population was about 25,000 and that it was possible to increase that further; and (b) materials placed before the TPB by the applicant showed that the 25,000 figure was adopted a long time ago based on different circumstances and considerations. See: Minutes, paragraphs 7(j) & (n); Slides 10 & 16 of the applicant's Power Point Presentation for the Meeting [2B/9/108, 114].

⁴¹ See paragraphs 32, 36 - 38 of the TPB's skeleton.

⁴² See paragraph 39.

108. However, in his reply at the hearing, Mr Yu has further submitted that the TPB in looking at the Application was charged with the function to determine whether the proposed rezoning of Area 6f was a proper land use for it under the DB OZP. For that, the TPB was guided by the planning intention and the criteria set out in the Explanatory Statement⁴³. Hence, in proper discharge of its *Tameside* duty, the TPB should have asked these right questions namely, whether the rezoning was consistent with the planning intention, and whether it met the feasibility study of infrastructure and environmental capacities.

109. In relation to these questions, for the reasons I have explained under Grounds 1 and 2 above, I agree with Mr Yu that the TPB had failed to ask the proper questions as to whether the Application was consistent with the planning intention⁴⁴. Mr Litton's contentions that the TPB was entitled to make the Decision based on *other planning considerations* (on the basis that the proposed rezoning should be considered and assessed comprehensively together with the other developments in Discovery Bay) cannot assist him, as I have already concluded above that those considerations are not proper planning considerations.

110. I would therefore also allow Ground 3 on the basis that the TPB failed to discharge its *Tameside* duty in asking the right question and

⁴³ As mentioned, Mr Litton also agrees that any increase in population for planning purposes is to be guided by the factors set out at paragraph 7.2 the Explanatory Statement, as is the same position adopted by the PlanD in the 2nd RNTPC Paper. See paragraph 37 of Mr Litton's skeleton.

⁴⁴ Given that the PlanD had in effect been satisfied that the Application raised on issues on infrastructure and environmental capacities issues as mentioned at [70] above, it appears the only principal outstanding question that was left for the TPB to consider in relation to the criteria set out in the Explanatory Statement was whether the Application was consistent with the planning intention.

making proper inquiry as to whether the Application was consistent with the planning intention of the DB OZP.

C3. *Ground 5*

111. Under this ground, the applicant complains that:

(1) The Decision is a word-for-word copying of the reasons set out by the PlanD in the 2nd RNTPC Paper at paragraph 12.1.

(2) Even in the subsequently filed affirmation by the TPB⁴⁵ in support of the Decision, the TPB is still unable to articulate any proper and logical basis in support of the reasons.

112. In this respect, Mr Yu has emphasized that the court has repeatedly deprecated the practice by the TPB to copy the reasons from the PlanD papers. The vice of so doing is that such copying raises the real issue as to (a) whether a material issue was or was not taken into account; and (b) whether the TPB had in fact exercised independent decision-making as it should: *Hysan, supra*, at [199] - [200].

113. In these circumstances, Mr Yu submits that the TPB did not apply an independent judgment in coming to the Decision, and abdicated its function and deferred to the PlanD instead.

114. With respect, I am unable to agree.

115. As it has also been repeatedly said, although the practice of copying reasons should be strongly discouraged, the mere fact that the TPB

⁴⁵ See the Affirmation of Lung.

had adopted the PlanD's reasons is not by itself objectionable as long as it can be shown that it had independently considered the application before it. See: *Smart Gain*, at [12]; *Jonnex*, at [83].

116. In the present case, I accept Mr Litton's submissions that, looking at the Minutes as whole (in particular paragraphs 23 - 28 concerning the deliberation) and considered it in context, the TPB had independently considered and assessed the Application:

- (1) The TPB did independently deliberate on the points raised for consideration including (a) the unique background of the comprehensive development concept in Discovery Bay; (b) the scope of further residential development under the current OZP and; (c) the cumulative impact of approving similar rezoning proposals once a precedent was established: paragraph 25.
- (2) Some members raised the opposing view that the proposed development could facilitate the supply of housing units and the major technical issues had been resolved by the applicant: paragraph 26.
- (3) The Vice-Chairman responded to the opposing view, pointing out that (a) the Site was not small; (b) the applicant had indicated an intention for further residential developments; and (c) it would be more appropriate to assess the application with other developments in Discovery Bay comprehensively: paragraph 27.
- (4) The Chairman then concluded that the majority members did not support the Application: paragraph 28.

117. Although I have concluded in the above that the TPB in arriving at the Decision had relied on reasons which are erroneous, this does not mean that the TPB had not considered the Application independently in the exercise of its own judgment.

118. In the premises, the applicant fails on this ground.

D. CONCLUSION

119. For the above reasons, I will allow this judicial review on Grounds 1 to 4. I will quash the Decision and remit the same to the TPB for reconsideration in light of the court's reasons set out in this judgment.

120. I further make an order *nisi* that costs of this application be to the applicant, to be taxed if not agreed, with certificate for two counsel.

121. It remains for me to thank counsel for their assistance in this matter.

(Thomas Au)
Justice of Appeal
sitting as an additional judge of
the Court of First Instance

Mr Benjamin Yu SC and Ms Eva Sit, instructed by Mayer Brown, for the applicant

Mr John Litton and Ms Catrina Lam, instructed by Department of Justice, for the respondent

tpbpd@pland.gov.hk

寄件者: Vincent.Lau [REDACTED]
寄件日期: 2021年02月11日星期四 15:58
收件者: tpbpd@pland.gov.hk
副本: Cindy.Tsang [REDACTED] Keren.Seddon [REDACTED] Kelvin.Chui [REDACTED]
主旨: FURTHER REPRESENTATION IN RESPECT OF THE DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3
附件: 02auth.pdf; S6D_form_20210211.pdf

Dear Town Planning Board,

Please find uploaded to the following link a letter regarding the captioned for your information. The Form and Authorisation letter is attached. A hardcopy has been delivered to the TPB Secretariat this afternoon.

Link: <https://drive.google.com/drive/folders/1RNurQVdq3F3uBXKTqdr2HpZ4-Z8ZA6t5?usp=sharing>

Kind Regards,

Vincent Lau
Senior Town Planner

TOWNLAND CONSULTANTS LIMITED
1801, 18/F, 101 King's Road,
North Point, Hong Kong
Telephone: (852) 2521 2911
Direct: (852) 3557 3809
Email: vincent.lau@townland.com

This e-mail and any attachments to it are intended only for the party to whom they are addressed. They may contain privileged and/or confidential information. If you have received this transmission in error please notify the sender immediately and delete any digital copies and destroy any paper copies. Thank-you.

Townland accepts no contractual liabilities or commitments arising from this e-mail unless subsequently confirmed by fax or letter or as an e-mail attachment giving company name, address, registration number and authorised signatory.

Web site: <http://www.townland.com>

○

MASTER MIND DEVELOPMENT LIMITED
智生發展有限公司

8 February 2021

Townland Consultants Limited
18/F, 101 King's Road,
North Point,
Hong Kong

Attn.: K. R. Seddon, Chief Executive Officer

Dear Madam,

SECTION 6D(1) REPRESENTATION
TOWN PLANNING ORDINANCE (CHAPTER 131)

FURTHER REPRESENTATION IN RESPECT OF THE
DRAFT PAK LAP OUTLINE ZONING PLAN NO. S/SK-PL/3

We are pleased to appoint Townland Consultants Limited (TOWNLAND) as the Planning Consultant to prepare and submit the Captioned Further Representation on our behalf. TOWNLAND is hereby authorised to liaise, correspond and attend meetings with all relevant Government Departments and other bodies in respect to the Representation.

Should you have any queries, please feel free to contact us at 2750 3199.

Yours faithfully,
For and on behalf of
Master Mind Development Limited

For and on behalf of
MASTER MIND DEVELOPMENT LIMITED
智生發展有限公司


.....
Authorized Signature(s)

Wong Sung King Dorothy
Managing Director

For Official Use Only 請勿填寫此欄	Reference No. 檔案編號	
	Date Received 收到日期	

- The further representation should be made to the Town Planning Board (the Board) before the expiry of the specified plan exhibition period. The completed form and supporting documents (if any) should be sent to the Secretary, Town Planning Board, 15/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong.
進一步申述必須於指定的圖則展示期限屆滿前向城市規劃委員會（下稱「委員會」）提出，填妥的表格及支持有關進一步申述的文件（倘有），必須送交香港北角渣華道 333 號北角政府合署 15 樓城市規劃委員會秘書收。
- Please read the "Town Planning Board Guidelines on Submission and Publication of Representations, Comments on Representations and Further Representations" before you fill in this form. The Guidelines can be obtained from the Secretariat of the Board (15/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong - Tel.: 2231 4810 or 2231 4835) and the Planning Enquiry Counters of the Planning Department (Hotline: 2231 5000) (17/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong and 14/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories), or downloaded from the Board's website at <http://www.info.gov.hk/tpb/>.
填寫此表格之前，請先細閱有關「根據城市規劃條例提交及公佈申述、對申述的意見及進一步申述」的城市規劃委員會規劃指引。這份指引可向委員會秘書處（香港北角渣華道 333 號北角政府合署 15 樓 - 電話：2231 4810 或 2231 4835 及規劃署的規劃資料查詢處（熱線：2231 5000）（香港北角渣華道 333 號北角政府合署 17 樓及新界沙田上禾輦路 1 號沙田政府合署 14 樓）索取，亦可從委員會的網頁下載（網址：<http://www.info.gov.hk/tpb/>）。
- This form can be downloaded from the Board's website, and obtained from the Secretariat of the Board and the Planning Enquiry Counters of the Planning Department. The form should be typed or completed in block letters, preferably in both English and Chinese. The further representation may be treated as not having been made if the required information is not provided.
此表格可從委員會的網頁下載，亦可向委員會秘書處及規劃署的規劃資料查詢處索取。提出進一步申述的人士須以打印方式或以正楷填寫表格，填寫的資料宜中英文兼備。倘若未能提供所需資料，則委員會可把有關進一步申述視為不曾提出論。

1. Person Making this Further Representation (known as "Further Representer" hereafter) 提出此宗進一步申述的人士（下稱「進一步申述人」）
Full Name 姓名 / 名稱 (Mr./Ms./Company/Organisation* 先生/女士/公司/機構*) Master Mind Development Limited (Note: for submission by person, full name shown on Hong Kong Identity Card/Passport must be provided) (注意：若個人提交，須填上與香港身份證／護照所載的全名)

2. Authorised Agent (if applicable) 獲授權代理人(如適用)
Full Name 姓名 / 名稱 (Mr./Ms./Company/Organisation* 先生/女士/公司/機構*) Townland Consultants Limited (Note: for submission by person, full name shown on Hong Kong Identity Card/Passport must be provided) (注意：若個人提交，須填上與香港身份證／護照所載的全名)

3. Details of the Further Representation 進一步申述詳情	
Draft plan to which the further representation relates (please specify the name and number of the draft plan to which the proposed amendments is made) 與進一步申述相關的草圖（請註明建議修訂的草圖名稱及編號）	Draft Pak Lap OZP No. S/SK-PL/3

* Delete as appropriate 請刪去不適用者

Please fill in "NA" for not applicable item 請在不適用的項目填寫「不適用」

3. Details of the Further Representation (Continued)(use separate sheet if necessary) [#] 進一步申述詳情(續)(如有需要,請另頁說明) [#]		
Nature of and reasons for the further representation 進一步申述的性質及理由		
Subject matters 有關事項 [@]	Are you supporting or opposing the subject matter? 你支持還是反對有關事項?	Reason 理由
Amendment Item A to the Draft Pak Lap OZP No. S/SK-PL/3 as shown on Amendment Plan No. R/S/SK-PL/3-A1	<input type="checkbox"/> support 支持 <input checked="" type="checkbox"/> oppose 反對	Please refer to Further Representation Letter
Proposed Amendments to the Explanatory Statement of the Draft Pak Lap OZP No. S/SK-PL/3 in relation to Amendment Plan No. R/S/SK-PL/3-A1	<input type="checkbox"/> support 支持 <input checked="" type="checkbox"/> oppose 反對	Please refer to Further Representation Letter
	<input type="checkbox"/> support 支持 <input type="checkbox"/> oppose 反對	
	<input type="checkbox"/> support 支持 <input type="checkbox"/> oppose 反對	

[#] If supporting documents (e.g. colour and/or large size plans, planning studies and technical assessments) is included in the further representation, 90 copies (or 40 hard copies and 50 soft copies) of such information shall be provided.

若進一步申述附有支持其論點的補充資料(例如彩色及/或大尺寸的圖則、規劃研究及技術評估),則須提供 90 份複本(或 40 份印文本和 50 份電子複本)。

[@] Please specify the amendment item number provided in the Schedule of Amendments.

請註明在修訂項目附表內的修訂項目編號。

Please fill "NA" for not applicable item 請在不適用的項目填寫「不適用」

tpbpd@pland.gov.hk

TPB/R/S/SK-PL/3-
F81

寄件者: Ng Hei Man
寄件日期: 2021年02月16日星期二 12:27
收件者: tpbpd@pland.gov.hk
主旨: Further Representations on Pak Lap Outline Zoning Plan (No. S/SK-PL/3)
附件: TPB20210216(PL).pdf

Dear Sir/Madam,

Please refer to the attachment for the captioned.

Full Name: Ng Hei Man

HKID first four alphanumeric number: [REDACTED]

Yours faithfully,
Ng Hei Man

16th February 2021

Town Planning Board
15/F North Point Government Offices
333 Java Road
North Point
Hong Kong

By e-mail: tpbpd@pland.gov.hk

Dear Sir/Madam,

RE: Further Representations on Pak Lap Outline Zoning Plan (No. S/SK-PL/3)

I am writing to submit further representations on the captioned.

The size of V zone in the west of Pak Lap is now reduced and confined to existing village cluster. Such arrangement is appropriate and in line with the general planning intention of Pak Lap. However, it is still disappointing that the land at the east of the village cluster is now rezoned from V zone to AGR zone.

From the very beginning, the designation of a large AGR zone in Pak Lap is a wrong decision, as it fails in promoting any genuine agricultural activities and offers no protection for the environment. In the past few years, no genuine agricultural activities have been taken place in the area. What we can witness was land excavation, with turf paved on the remaining "regenerated grassland".

AGR zone would still allow small house application. A study revealed that the approval rate of small house applications in AGR remains high at over 60%¹. In this way, it remains doubtful if the proposed AGR zone can ensure proper protection of the environment.

If Planning Department is now taking the opportunity to review the OZP taking into account of the latest circumstances, no more land, including the proposed land, should be zoned as AGR zone. It was suggested that the proposed AGR zone should be zoned as conservation zonings such as GB(1) zone. The planning intention of GB(1) zone is

¹ Please refer to The Hong Kong Headline Indicators for Biodiversity and Conservation 2015-2017 https://cms.hkbws.org.hk/cms/attachments/article/403/Indicator%20Report%202015-2017%20final_eng_web.pdf

"to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl. There is a general presumption against development within this zone". Moreover, small house development is further restricted in this zone so that the ecological and landscape resource in the area can be protected.

In this case, I OBJECT to the proposed amendment by Planning Department.

Yours faithfully,
Ng Hei Man

tpbpd@pland.gov.hk

寄件者: Tony Nip [REDACTED]
寄件日期: 2021年02月14日星期日 17:47
收件者: tpbpd@pland.gov.hk
主旨: Proposed Amendment to the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/3

Dear Sir/ Madam,

I would like make further representation in respect of the captioned.

I recommend the area to the east of the village cluster at Pak Lap should be rezoned from "Village Type Development" to conservation zonings such as "Conservation Area" or "Green Belt(1)", instead of "Agriculture".

Thank You and Best Regards,

Nip Hin Ming

HKID: [REDACTED]

寄件者: WOO, Ming Chuan [REDACTED]
寄件日期: 2021年02月16日星期二 16:58
收件者: Town Planning Board
主旨: Further Representation on the Draft Pak Lap Outline Zoning Plan No. S/NE-PL/3
附件: 20200216_Further Rep on Draft Pak Lap OZP_WMC.pdf

Dear Sir/Madam,

My submission regarding the captioned is attached. Thank you.

Best Regards,
Woo Ming Chuan
(First four alphanumeric characters of HKID: [REDACTED])

Secretary, Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point, Hong Kong
(E-mail: tpbpd@pland.gov.hk)

By email only

16 February 2021

Dear Sir/Madam,

Further Representation on the Draft Pak Lap Outline Zoning Plan No. S/NE-PL/3

I am writing to make further representation on the latest Pak Lap Outline Zoning Plan (OZP).

1 High conservation importance of Pak Lap

1.1 Pak Lap is of high ecological importance and is surrounded by the Sai Kung East Country Park. The woodland in Pak Lap supports a diverse population of different fauna groups and is ecologically linked to the surrounding Sai Kung East Country Park. Pak Lap supports not only woodland and generalist bird species, but also protected species of ardeids, waterbirds and raptors. High diversity of butterflies (37 species) and birds (55 species) have been recorded at Pak Lap¹. This includes two uncommon butterfly species, Bush Hopper *Ampittia dioscorides etura* and Silver Streak Blue *Iraota timoleon timoleon*, and eleven bird species of conservation interest. Besides, Water Fern *Ceratopteris thalictroides* (水蕨) was found in the wet abandoned fields in Pak Lap. This species is considered to be a "rare and precious plant" due to its special habitat requirement, its area of distribution and population size are decreasing².

1.2 The general planning intention of the Pak Lap OZP is "to protect its high natural landscape value, to protect its natural and rural character which complements the overall naturalness and the landscape beauty of the surrounding Sai Kung East Country Park". I consider that such conservation-oriented approach should be adopted in the designation of various zones in Pak Lap.

¹ Ecological data quoted from HKBWS submission dated 27 November 2013 to the Town Planning Board on the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/C

² Hu, Q.M., Wu, T.L., Xia, N.H., Xing F.W., Patrick C.C.L., Yip, K.W. (2003). Rare and Precious Plants of Hong Kong. Agriculture, Fisheries and Conservation Department, Government of HKSAR.

2 Further reduction of the "Village Type Development" (V) zone is appropriate

2.1 According to the TPB Paper No. 10624, no Small House application was submitted to Lands Department (LandsD) since 2010, only two Small House applications processed by LandsD over the past 10 years (i.e. one approved and one rejected), four outstanding Small House applications under processing, and the 10-year forecast for Pak Lap is unknown.

2.2 The current amendment is to rezone 0.45 hectare of land to the east of the village cluster at Pak Lap from V zone to AGR zone, and the remaining V zone can provide land to meet the four outstanding Small House applications. I consider that such incremental approach is in line with the planning intention of the Pak Lap OZP and the further reduction of V zone is appropriate.

3 "Agriculture" (AGR) zone is insufficient to protect the natural environment

3.1 I agree that the rezoning would provide *"greater buffer distance between the section of stream running in north-south direction across the Pak Lap area to Pak Lap Wan and the existing village cluster and the V zone"*³. However, the Town Planning Board (TPB) should also pay attention to the inadequacies and potential threats of AGR zone.

3.2 According to the Hong Kong Headline Indicators for Biodiversity and Conservation 2015-2017⁴, a lack of a stricter AGR zoning is identified as a problem in the existing zoning mechanism. It stated *'the current broad definition of "agriculture uses" is, as a result, leading to the destruction of cultivable agricultural lands.'* It is also worrying that the approval rate of small house applications in AGR zone under Town Planning Ordinance remains high at over 60%. The land uses in AGR zone which were often approved by TPB, such as filling of land for permitted agriculture purpose, small house development, hobby farms and animal boarding establishments, would cause undesirable environmental and sewerage problems in Pak Lap and the surrounding natural habitats connected to the country park. Therefore, a stricter zoning (such as "Green Belt (1)" (GB(1)) zone) should be adopted to better protect the sensitive ecological features in Pak Lap and truly provide the functions of a buffer to the nearby stream.

³ Section 3.4 of the TPB Paper No. 10705

⁴ The Hong Kong Headline Indicators for Biodiversity and Conservation 2015-2017. Available at: http://cms.hkbws.org.hk/cms/attachments/article/403/Indicator%20Report%202015-2017%20final_eng_web.pdf

4 My comments and recommendations

- 4.1 I support the reduction of the V zone to safeguard the ecologically sensitive environment in Pak Lap including the stream near the V zone.
- 4.2 For the current proposed amendment, I urge the TPB to rezone the V zone to GB (1) zone, which is intended *"to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl. There is a general presumption against development within this zone"* and with controls on development such 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."* This can avoid house development or incompatible developments that would destroy the natural features in Pak Lap, protect the stream from adverse sewage impacts, and provide stringent development control.
- 4.3 I also urge the TPB to acknowledge the ecological value of the bird community recorded in Pak Lap, take into consideration protecting these associated habitats from any undesirable development and human disturbances, and deter any "destroy first, build later" activities in Pak Lap.

Thank you for your kind attention and I hope that the TPB would take my comments into consideration.

Yours faithfully,
Woo Ming Chuan

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt ☐ Mark Subject Restricted ☐ Expand personal&public groups



Further Representation on the Draft Pak Lap Outline Zoning Plan No. S/NE-PL/3
16/02/2021 22:54

From: "WONG, Suet Mei" [REDACTED]
To: tpbpd <tpbpd@pland.gov.hk>
Cc: Chuan Woo [REDACTED]
FileRef:

Dear Sir/Madam,

My Further Representation on the Draft Pak Lap Outline Zoning Plan No. S/NE-PL/3 is attached. Thank you. My ID: [REDACTED]

Best Regards,



Wong Suet Mei PakLap_Comment.pdf

16 February 2021

Dear Sir/Madam,

Comments on Draft Pak Lap Outline Zoning Plan No. S/NE-PL/3

Pak Lap, where is encircled by Sai Kung East Country Park on three sides, is of ecological importance. The woodland in Pak Lap supports a diverse population of different fauna groups and is ecologically linked to the surrounding Sai Kung East Country Park. Pak Lap not only supports woodland and generalist birds species, it also supports protected species of ardeids, waterbirds and raptors. High diversity of butterflies (37 species) and birds (55 species) have been recorded at Pak Lap¹. This includes two uncommon butterfly species, Bush Hopper *Ampittia dioscorides etura* and Silver Streak Blue *Iraota timoleon timoleon*, and eleven bird species of conservation interest. It is also stated in the explanatory statement of the approved Pak Lap OZP that *Ceratopteris thalictroides* (水蕨) "was recorded in the wet abandoned fields and its occasional occurrence is subject to site conditions." This is considered to be a "rare and precious plant" due to its special habitat requirement, its area of distribution and population size are decreasing². Individuals of this water fern were found in the marsh of the current V zone and AGR zone in 2014 (Figure 1).

1 AGR zoning is not an adequate zoning to protect the natural environment

- 1.1 Water Fern *Ceratopteris thalictroides*, which is of conservation significance and is under Class-II national protection, was once recorded in the current AGR zone but "destroy first, build later" activities also occurred at the site. A stringent zoning should be applied to deter undesirable developments and to allow rehabilitation of the ecosystem.
- 1.2 However, the AGR zone would not provide sufficient protection because land uses including Government Use (Police Reporting Centre only), On-Farm Domestic Structure, Public Convenience, Religious Institution (Ancestral Hall only) and Rural Committee/Village Office are always permitted within AGR zone. Meanwhile, New Territories Exempted House, Animal Boarding Establishment and Hobby Farm may also be permitted on application to the Town Planning Board. It is stated in the main paper that "if land within the "V" zone is not sufficient to meet the need for Small House

¹ The survey data was obtained from the results of the ecological surveys at Pak Lap by Eco-education and Resource Centre plus recorded species during a site visit by HKBWS and KFBG

² Hu, Q.M, Wu, T.L., Xia, N.H., Xing F.W., Patrick C.C.L., Yip, K.W. (2003). Rare and Precious Plants of Hong Kong. Agriculture, Fisheries and Conservation Department, Government of HKSAR.

development in future, there is flexibility to allow the Small House development through planning permission"³. The land uses permitted under both Column 1 and Column 2 of AGR zoning, which include small house development through planning permission, would pose undesirable environmental problems to Pak Lap and the natural habitats connecting with the country park.

- 1.3 According to the Hong Kong Headline Indicators for Biodiversity and Conservation 2015-2017⁴, a lack of a stricter AGR zoning is identified as a problem of the existing zoning mechanism. It stated 'the current broad definition of "agriculture uses" is, as a result, leading to the destruction of cultivable agricultural lands.' It is also worrying that the approval rate of small house applications in AGR zone under TPO remains high at over 60%.
- 1.4 I support the intention to provide "greater buffer distance between the section of stream running in north-south direction across the Pak Lap area to Pak Lap Wan and the existing village cluster and the "V" zone"⁵. However, I also urge the TPB to pay attention to the potential threats of AGR zoning on the surrounding environment and also the potential sewage impacts brought by the small house development that allowed through planning permission under the proposed AGR zoning. Therefore, I consider a stricter zoning should be adopted to truly perform the function of buffering.

2 "Destroy First, Build Later" should not be encouraged

- 2.1 I would like to remind the TPB that the "cleared" farmland in Pak Lap was previously wet agricultural land distributed with Water Fern *Ceratopteris thalictroides* which is of conservation significance and is under Class II national protection. However, unauthorized land excavation/filling activities and drainage works occurred and turned the seasonally wet grassland into dry land. Unfortunately, this destroyed land was rezoned to the AGR zone where houses and recreational developments were allowed under Column 1 and 2.
- 2.2 As TPB has suggested that "the Town Planning Board will not tolerate any deliberate action to destroy the rural and natural environment in the hope that the Board would give sympathetic consideration to subsequent development on the site concerned."⁶ To avoid the promotion of "destroy

³ TPB Paper No. 10705

⁴ The Hong Kong Headline Indicators for Biodiversity and Conservation 2015-2017. Available at: http://cms.hkbws.org.hk/cms/attachments/article/403/Indicator%20Report%202015-2017%20final_eng_web.pdf

⁵ TPB Paper No. 10705

⁶ TPB Press Release. Available at:

first, develop later" attitudes among landowners in the locality, I urge the TPB to revise the current OZP and rezone areas where "destroy first, build later" had taken place to a stringent zoning.

3 Our comments and recommendations

- 3.1 I support the reduction of the V zone to safeguard the ecologically sensitive environment in Pak Lap and the intention to buffer the river from adverse sewage impacts. I also recommend to:
- 3.2 Rezone the AGR zone to GB(1)/AGR(2) zone, where *"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."* These zonings are also to avoid houses development or incompatible developments including existing recreational intensive hobby farm practices that would destroy the natural features, and to protect the stream from adverse sewage impacts and provide stringent development control.
- 3.3 Acknowledge the ecological value of the bird community, to take into consideration protecting these associated habitats from any development and human disturbances and to deter "destroy first, build later".
- 3.4 Reiterate that the introduction of planning control alone could not fully protect the sites from activities such as unauthorized tree felling and vegetation removal. In order to fully protect the ecological and landscape values of the site, as well as the overall value of the surrounding Sai Kung East Country Park, the Authority should consider including Pak Lap into the Sai Kung East Country Park following detailed assessments and public consultation. I consider that Pak Lap and surrounding areas are qualified for such purpose given its value in terms of ecology, landscape and built heritage.

Thank you for your kind attention and I hope that the TPB would take the above comments into consideration.

Best regards,
Wong Suet Mei

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt ☐ Mark Subject Restricted ☐ Expand personal&public groups



Further representation on Draft Pak Lap Outline Zoning Plan (Plan No. S/SK-PL/3)
16/02/2021 19:45

From: Samuel Wong [REDACTED]
To: "tpbpd@pland.gov.hk" <tpbpd@pland.gov.hk>
FileRef:

16 February 2021, Hong Kong

Chairman and Members
Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point
Hong Kong
Email: tpbpd@pland.gov.hk

Further representation on Draft Pak Lap Outline Zoning Plan (Plan No. S/SK-PL/3)

Dear Chairman and Members,

I am writing to support amendment Item A in the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/3.

However, please note my further comments:

- The general planning intention for the Area is to protect its high natural landscape value and rural character. Therefore, I welcome the decision to shrink the area reserved for "Village Type Development" and to only cover existing settlements.
- While understanding that the current site condition may not be suitable for zoning the area now "Agriculture" as "Green Belt" or "Conservation Area", I'm deeply concerned about the effectiveness of reserving an area for "Agriculture" when the intention is to protect the rural environment and natural beauty of Pak Lap.
- According to the *Draft Pak Lap Outline Zoning Plan No. S/SK- PL/3* 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 are NOT appropriate given the lack of access and proximity to watercourses.
- There is a stream running through the east of the site and south to the Sai Kung East Country Park and Pak Lap Wan. Enhanced control over development is needed to reduce potential pollution source which may impact the stream.
- Furthermore, unauthorised developments and paving of land areas were observed. An enforcement notice (Case No. E/SK-PL/007) was issued on 4 January 2021 because of unauthorised toilets, changing, bathing and storage facilities.

- Sai Kung East Country Park is an important natural asset to our city. Pak Lap as an enclave surrounded by the country park, it has an inseparable relationship in term of environment and ecology with the nearby country park. There is a need and public expectation to protect these areas and prevent any further destruction to the natural and rural environment.
- I urge the Board to review and limit the items permitted under columns 1 and 2 to ensure the planning intention and protection for Pak Lap is realised and sustained.

Here I submit my comment for your consideration.

WONG Wan Kei Samuel

HKID: [REDACTED]

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt ☐ Mark Subject Restricted ☐ Expand personal&public groups



Further Representations on Pak Lap OZP
16/02/2021 19:28

From: Paul Zimmerman [REDACTED]
To: "tpbpd@pland.gov.hk" <tpbpd@pland.gov.hk>
FileRef:

16 February 2021, Hong Kong

Chairman and Members
Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point
Hong Kong
Email: tpbpd@pland.gov.hk

Further representation on Draft Pak Lap Outline Zoning Plan (Plan No. S/SK-PL/3)

Dear Chairman and Members,

I am writing to support amendment Item A in the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/3.

However, please note my further comments:

- The general planning intention for the Area is to protect its high natural landscape value and rural character. Therefore, I welcome the decision to shrink the area reserved for "Village Type Development" and to only cover existing settlements.
- While understanding that the current site condition may not be suitable for zoning the area now "Agriculture" as "Green Belt" or "Conservation Area", I'm deeply concerned about the effectiveness of reserving an area for "Agriculture" when the intention is to protect the rural environment and natural beauty of Pak Lap.
- According to the *Draft Pak Lap Outline Zoning Plan No. S/SK- PL/3* 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 are NOT appropriate given the lack of access and proximity to water courses.
- There is a stream running through the east of the site and south to the Sai Kung East Country Park and Pak Lap Wan. Enhanced control over development is needed to reduce potential pollution source which may impact the stream.
- Furthermore, unauthorised developments and paving of land areas was

observed. An enforcement notice (Case No. E/SK-PL/007) was issued on 4 January 2021 because of unauthorised toilets, changing, bathing and storage facilities.

- I urge the Board to review and limit the items permitted under columns 1 and 2 in order to ensure the planning intention and protection for Pak Lap is realised and sustained.

Here I submit my comment to your consideration.

Paul Zimmerman



☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt ☐ Mark Subject Restricted ☐ Expand personal&public groups



RE: Further Representations on Pak Lap OZP
16/02/2021 20:01

From: Paul Zimmerman [REDACTED]
To: "tpbpd@pland.gov.hk" <tpbpd@pland.gov.hk>
FileRef:

Resent

My ID Card is [REDACTED]

Paul Zimmerman 司馬文

[REDACTED]
www.designinghongkong.com

From: Paul Zimmerman
Sent: 16 February 2021 19:28
To: tpbpd@pland.gov.hk
Subject: Further Representations on Pak Lap OZP

16 February 2021, Hong Kong

Chairman and Members
Town Planning Board
15/F, North Point Government Offices
333 Java Road, North Point
Hong Kong
Email: tpbpd@pland.gov.hk

Further representation on Draft Pak Lap Outline Zoning Plan (Plan No. S/SK-PL/3)

Dear Chairman and Members,

I am writing to support amendment Item A in the Draft Pak Lap Outline Zoning Plan No. S/SK-PL/3.

However, please note my further comments:

- The general planning intention for the Area is to protect its high natural landscape value and rural character. Therefore, I welcome the decision to shrink the area reserved for "Village Type Development" and to only cover existing settlements.
- While understanding that the current site condition may not be suitable for zoning the area now "Agriculture" as "Green Belt" or "Conservation Area", I'm deeply concerned about the effectiveness of reserving an area for "Agriculture" when the intention is to protect the rural environment and natural beauty of Pak Lap.

- According to the *Draft Pak Lap Outline Zoning Plan No. S/SK- PL/3* 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 are NOT appropriate given the lack of access and proximity to water courses.
- There is a stream running through the east of the site and south to the Sai Kung East Country Park and Pak Lap Wan. Enhanced control over development is needed to reduce potential pollution source which may impact the stream.
- Furthermore, unauthorised developments and paving of land areas was observed. An enforcement notice (Case No. E/SK-PL/007) was issued on 4 January 2021 because of unauthorised toilets, changing, bathing and storage facilities.
- I urge the Board to review and limit the items permitted under columns 1 and 2 in order to ensure the planning intention and protection for Pak Lap is realised and sustained.

Here I submit my comment to your consideration.

Paul Zimmerman



**Summary of Further Representations (FRs) made on the Proposed Amendment to
the Draft Pak Lap Outline Zoning Plan (OZP) No. S/SK-PL/3**

**Annex V of
TPB Paper No. 10726**

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
F1	Master Mind Development Limited	<p>(a) Oppose Amendment Item A and the proposed amendments to the Explanatory Statement of the OZP.</p> <p><u>Grounds of FR</u></p> <p><i>Genuine Need for Small House Development</i></p> <p>(b) The Board has acted unreasonably and arbitrarily in adopting the Proposed Amendment when it has not sufficiently discharged its <i>Tameside</i> duty and there remain substantial doubt as to the basis of the Proposed Amendment. 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 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>(c) 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 window. 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>(d) 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 Lands</p>	Not to adopt the Proposed Amendment as part of the draft OZP and the FR Site should remain to be zoned as "V".

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>Department (LandsD) by the Indigenous Inhabitant Representative (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.</p> <p>(e) Contrary to the Board's view that there is no practical means available to determine the genuine need for Small House development at the planning stage, there are in fact options available to overcome or assist to overcome the information gap. 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>(f) In response to R4, R5 & R6 that land in the "V" zone has been sold and that the "V" zone may facilitate the abuse of the Small House Policy, the Planning Department (PlanD) has noted that land ownership should not be a material planning consideration. The current landholding does not preclude villagers from developing Small Houses in the future, nor undermine the real demand for village expansion.</p> <p><i>Rezoning of the FR Site from "V" to "AGR"</i></p> <p>(g) An incremental approach has already been adopted when designating the "V" zone with an aim to confining Small House development to the</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>existing village cluster and the adjoining suitable land and to minimise adverse impact on the natural environment. Recognising that demand for Small House development in the existing 'village environs' of Pak Lap can be anticipated, land already intended for village expansion should be preserved. It is inappropriate for PlanD to reduce the "V" zone while acknowledging potential demand for "V" in the future. This uncertainty demonstrates that the Proposed Amendment is not based on a sound planning approach.</p> <p>(h) 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 Country Park Enclaves.</p> <p>(i) The rezoning to "AGR" in effect will alter the planning intention of the FR Site and will frustrate future Small House development which is contrary to the said planning intention.</p> <p>(j) The "AGR" zone creates greater administrative and financial burdens and uncertainty for indigenous villagers hoping to implement their Small House rights with the requirement for a s.16 planning approval in addition to application to the LandsD.</p> <p>(k) The Further Representer is a "concerned friend of the village" who seeks holistic preservation of Pak Lap through environmental and cultural stewardship. The Further Representer recognises the importance of</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>village enhancement and ecological conservation, and has a mission of supporting the repair and restoration works in Pak Lap. The “AGR” zone will seriously curtail the Further Representer’s efforts in supporting village growth and achieving comprehensive ecological enhancement.</p> <p>(l) The Proposed Amendment neglects the 300-year history of Pak Lap Village. By restricting the area designated for existing recognised villages and areas of land considered suitable for village expansion, it would significantly and adversely affect Pak Lap Village by curtailing consolidated development, village renewal and villager’s ability to improve living standards. Indigenous villagers are in effect being discouraged from returning to their roots and home.</p> <p>(m) 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.</p> <p><i>Provision of Buffer to the Existing Stream</i></p> <p>(n) 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</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>environmental or ecological impacts as a result of village development as compared with “AGR” use.</p> <p><i>Planning Procedure</i></p> <p>(o) 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>(p) 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</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		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.	
F2 to F16	For the names of further representers, please see Annex II .	<p>(a) Oppose Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) 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.</p> <p>(c) Visitors to Pak Lap, where there are no hotels nor restaurants, are mainly local citizens, and hence there is not much spending. The rezoning from “V” to “AGR” would further reduce land reserved for villagers to develop Small House, depriving the development rights of villagers.</p> <p>(d) The older generation of villagers who make a living outside the village are reaching retirement age and they have decided to return to live in the village. The cancellation of the “V” zone would extinguish all hope for the elderly to build a residence in the village. PlanD’s practice is unfair</p>	Nil.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>to the villagers.</p> <p>(e) The Board must not only take into account the views of green groups and deprive the rights of others. The Board ought to respect the lawful traditional rights of the indigenous inhabitants of the New Territories.</p> <p>(f) Preservation of the “V” zone would not induce adverse ecological impacts.</p>	
F17 to F36	For the names of further representers, please see Annex II .	<p>(a) Oppose Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) Among the land use zonings in Pak Lap, “AGR” accounted for 2.39 ha, “CA” for 3.43 ha, but there was only 0.95 ha of land zoned “V”.</p> <p>(c) 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.</p> <p>(d) The further reduction of “V” to 0.45 ha neglects the genuine need of the villagers for the “V” zone and is detrimental to village development. The preservation of 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</p>	Nil.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		development of land.	
F37 to F80	For the names of further representers, please see Annex II .	<p>(a) Oppose Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) In the case where a landowner intended 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 proposed 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.</p> <p>(c) 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.</p>	Nil.
F81	Ng Hei Man	<p>(a) Oppose Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) While the reduction in the size of “V” is appropriate and in line with the general planning intention, it remains disappointing to zone the FR Site as “AGR”. It is a wrong decision from the beginning to designate a large</p>	Rezone the FR Site from “AGR” to “GB(1)”.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>“AGR” zone as it fails to promote any genuine agricultural activities and offers no protection for the environment. There was land excavation, with turf paved on the remaining “regenerated grassland”.</p> <p>(c) Application for Small House is allowed within the “AGR” zone. A study reveals that the approval rate of Small House applications in “AGR” zone remains high at over 60%. It remains doubtful if the proposed “AGR” zone can ensure proper protection of the environment.</p> <p>(d) No more land in the OZP, including the FR Site, should be zoned as “AGR”. It was suggested that the “AGR” zone should be zoned as conservation zonings such as “Green Belt (1)” (“GB(1)”) zone, planning intention whereby is “to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl. There is a general presumption against development within this zone”. Moreover, Small House development is further restricted in this zone so that the ecological and landscape resource in the area can be protected.</p>	
F82	Nip Hin Ming	(a) Conservation zonings such as “Conservation Area” (“CA”) and “GB(1)” should be designated for the FR Site.	Rezoning the FR Site as “CA” or “GB(1)” zones.
F83	Woo Ming Chuan	(a) Pak Lap which is encircled by Sai Kung East Country Park (SKECP) supports diverse population of different fauna groups and is ecologically	Rezoning the FR Site as “GB(1)” zone.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>linked to the SKECP. It also supports protected species of ardeids, waterbirds and raptors. High diversity of butterflies (37 species) and birds (55 species) have been recorded in Pak Lap, including two uncommon butterfly species, Bush Hopper <i>Ampittia dioscorides etura</i> (黃斑弄蝶) and Silver Streak Blue <i>Iraota timoleon timoleon</i> (鐵木萊異灰蝶) and 11 bird species of conservation interest.</p> <p>(b) A water fern <i>Ceratopteris thalictroides</i> (水蕨), which is considered to be a “rare and precious plant” due to its special habitat requirement, was found in the wet abandoned fields in Pak Lap but its area of distribution and population size are decreasing.</p> <p>(c) 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.</p> <p>(d) The Board should pay attention to the inadequacies and potential threats of the “AGR” zoning. The current broad definition of “agricultural uses” is leading to the destruction of cultivable agricultural lands. The land uses permitted under “AGR” zone would pose undesirable environmental and sewerage problems in Pak Lap. It is worrying that the approval rate of Small House applications in “AGR” zone remains high at over 60%. A stricter zoning (such as “GB(1)”) should be adopted. This can avoid</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>house development or incompatible developments that would destroy the natural features in Pak Lap, protect the stream from adverse sewage impacts, and provide stringent development control.</p> <p>(e) The Board is urged to acknowledge the ecological value of the bird community recorded in Pak Lap, take into consideration of the protection of these associated habitats from any undesirable development and human disturbances, and deter any “destroy first, build later” activities.</p>	
F84	Wong Suet Mei	<p>(a) Pak Lap which is encircled by SKECP supports diverse population of different fauna groups and is ecologically linked to the SKECP. It also supports protected species of ardeids, waterbirds and raptors. High diversity of butterflies (37 species) and birds (55 species) have been recorded in Pak Lap, including two uncommon butterfly species, Bush Hopper <i>Ampittia dioscorides etura</i> (黃斑弄蝶) and Silver Streak Blue <i>Iraota timoleon timoleon</i> (鐵木菜異灰蝶) and 11 bird species of conservation interest.</p> <p>(b) A water fern <i>Ceratopteris thalictroides</i> (水蕨), which is considered to be a “rare and precious plant” due to its special habitat requirement, was found in the wet abandoned fields in Pak Lap but its area of distribution and population size are decreasing. Individuals of this water fern were found in the marsh of the FR Site and the “AGR” zone in 2014, but</p>	Rezone “AGR” zone as “GB(1)” or “AGR(2)” zones.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>“destroy first, build later” activities also occurred there.</p> <p>(c) 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.</p> <p>(d) The “AGR” zone would not provide sufficient protection because land uses permitted under Columns 1 and 2, which include Small House development through planning permission, would pose undesirable environmental problems (including potential sewage impacts) to Pak Lap and the natural habitat connecting with the country park. It is worrying that the approval rate of Small House applications in “AGR” zone remains high at over 60%. The current broad definition of “agricultural uses” is leading to the destruction of cultivable agricultural lands. A stringent zoning should be applied to deter undesirable developments, to allow rehabilitation of the ecosystem, and to truly perform the function of buffering.</p> <p>(e) The cleared farmland in Pak Lap was previously wet agricultural land distributed with the aforesaid water fern. Unauthorised land excavation/filling activities and drainage works occurred and turned the seasonally wet grassland into dry land. It is unfortunate that this destroyed land was rezoned to “AGR” where houses and recreational developments were allowed under Columns 1 and 2. To avoid the promotion of the “destroy first, develop later” attitudes among landowners in the locality, the Board is urged to revised the current OZP and rezone</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>areas where “destroy first, develop later” had taken place to a stringent zoning.</p> <p>(f) The Board should acknowledge the ecological value of the bird community, to take into consideration in the protection these associated habitats from any development and human disturbances and to deter “destroy first, build later”.</p> <p>(g) The Board is recommended to rezone the “AGR” zone to “GB(1)”/“AGR(2)” zones, where “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”. These zonings are also 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.</p> <p>(h) 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. In order to fully protect the ecological and landscape values, as well as the overall value of the surrounding SKECP, the authority should consider including Pak Lap into the SKECP following detailed assessments and public consultation. It is considered that Pak Lap and surrounding areas are qualified for such purpose given its value in</p>	

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		terms of ecology, landscape and build heritage.	
F85	Wong Wan Kei Samuel	<p>(a) Support Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) Welcome the decision to shrink the area reserved for “V” to only cover the existing settlements.</p> <p>(c) While understand that the current condition of the FR Site may not be suitable for zonings such as “GB” or “CA”, there is concern about the effectiveness of reserving the area for “AGR” when the intention is to protect the rural environment and natural beauty of Pak Lap.</p> <p>(d) 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 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 SKECP and Pak Lap Wan.</p> <p>(e) It is observed that there are unauthorised developments and paving of land. An enforcement notice was issued on 4.1.2021 because of unauthorised toilets, changing, bathing and storage facilities.</p>	To review and limit the uses permitted under Columns 1 & 2.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>(f) Pak Lap is surrounded by the SKECP and has an inseparable relationship in terms of environment and ecology with the country park. There is a need and public expectation to protect these areas and prevent any further destruction to the natural and rural environment.</p> <p>(g) To ensure the planning intention and protection of Pak Lap is realised and sustained, the Board should review and limit the uses permitted under Columns 1 and 2.</p>	
F86	Paul Zimmerman	<p>(a) Support Amendment Item A.</p> <p><u>Grounds of FR</u></p> <p>(b) Welcome the decision to shrink the area reserved for “V” to only cover the existing settlements.</p> <p>(c) While understand that the current condition of the FR Site may not be suitable for zonings such as “GB” or “CA”, there is concern about the effectiveness of reserving the area for “AGR” when the intention is to protect the rural environment and natural beauty of Pak Lap.</p> <p>(d) 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 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</p>	To review and limit the uses permitted under Columns 1 & 2.

FR No. (TPB/R/S/SK-PL/3-)	Further Representer	Subject of FR	Further Representer's Proposal
		<p>impact the stream running through the east of the FR Site to the south of SKECP and Pak Lap Wan.</p> <p>(e) It is observed that there are unauthorised developments and paving of land. An enforcement notice was issued on 4.1.2021 because of unauthorised toilets, changing, bathing and storage facilities.</p> <p>(f) To ensure the planning intention and protection of Pak Lap is realised and sustained, the Board should review and limit the uses permitted under Columns 1 and 2.</p>	