

**Proposed Amendments to Draft Pak Lap Outline Zoning Plan No. S/SK-PL/1,  
Incorporating Amendments Shown on Plan No. R/S/SK-PL/1-A2**

**1. Introduction**

This paper is to brief Members on the review of the issues related to the draft Pak Lap Outline Zoning Plan (OZP) No. S/SK-PL/1 arising from the Court of First Instance (CFI)'s judgment on the judicial review (JR) lodged by Chan Ka Lam (the Applicant) in respect of the Pak Lap OZP and two others<sup>1</sup>, and to seek Members' agreement that:

- (a) the proposed amendments to the draft Pak Lap OZP as shown on the draft Pak Lap OZP No. S/SK-PL/2A at **Annex B1** (to be renumbered as S/SK-PL/3 upon exhibition) and its Notes at **Annex B2** are suitable for exhibition under section 7 of the Town Planning Ordinance (the Ordinance); and
- (b) the revised Explanatory Statement (ES) of the OZP at **Annex B3** is an expression of the planning intentions and objectives of the Town Planning Board (the Board) for the various land use zonings of the draft Pak Lap OZP No. S/SK-PL/2A (to be renumbered as S/SK-PL/3 upon exhibition) and is suitable for exhibition together with the draft OZP.

**2. The Preparation of OZP**

2.1 Pak Lap is one of the country park enclaves (CPEs) for which statutory plans were prepared under the Ordinance. The draft development permission area plan (DPA Plan) covering Pak Lap was published on 30.9.2010, which was interim in nature and subsequently replaced by OZP.

2.2 On 27.9.2013, the draft Pak Lap OZP No. S/SK-PL/1 (**Annex A1**) was exhibited for public inspection under section 5 of the Ordinance. During the statutory exhibition periods, a total of 10,665 valid representations and 3,665 valid comments, of which all were related to the designation of "Village Type Development" ("V") zone, including the comment submitted by the Applicant (C3652), were received. After giving consideration to the representations and comments from April to June 2014, the Board, on 4.6.2014, decided to partially uphold 9,962 representations by rezoning a section of the existing stream in Pak Lap and the area to its east from "V" to "Agriculture" ("AGR") (**Annex A2**). On 25.7.2014, the proposed amendment to the draft OZP was published under section 6C(2) of the Ordinance. Upon expiry of the three-week exhibition period, a total of 11 valid further representations were received.

2.3 After giving consideration to the further representations and the related

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<sup>1</sup> The other two OZPs are those for So Lo Pun and Hoi Ha, which will be covered in separate papers and considered by Members at the same meeting.

representations and comments under section 6F(1) of the Ordinance on 21.11.2014, the Board decided not to uphold the further representations, and to amend the draft Pak Lap OZP No. S/SK-PL/1 by the proposed amendment (**Annex A2**).

- 2.4 On 19.12.2014, the Board agreed to submit, under section 8 of the Ordinance, the draft Pak Lap OZP, together with the draft OZPs for Hoi Ha and So Lo Pun, to the Chief Executive in Council (CE in C) for approval. On 3.2.2015, the CE in C, under section 9(1)(a) of the Ordinance approved all three OZPs. On 13.2.2015, the approved OZPs were exhibited for public inspection under section 9(5) of the Ordinance.

### **3. The JR Application**

- 3.1 On 18.2.2015, a JR application was lodged by the Applicant against (i) the decision of the CE in C made on 3.2.2015 to approve the three draft OZPs for Pak Lap, Hoi Ha and So Lo Pun; and (ii) the decision of the Board made on 19.12.2014 to submit the three draft OZPs to the CE in C for approval. The CFI allowed the JR on 24.11.2017 quashing the said decisions of the CE in C and the Board with a direction that all three OZPs be remitted to the Board for reconsideration.
- 3.2 According to the CFI's judgment, the JR was allowed on the grounds that the Board failed to carry out its duty to inquire, specifically on two issues, namely, the genuine need for Small House development (the genuine need issue) (for all three OZPs) and the accuracy of the base map (the maps issue) (for Hoi Ha OZP only), and such failure had tainted the CE in C's decision. On both issues, the Court holds the view that the deliberation and reasons given by the Board did not demonstrate it had properly inquired into the representations in respect of the three OZPs and made its decisions on the representations. For the genuine need issue in particular, the Board had not explained on what basis it had treated the forecast figures of the Small House demand to provide support for showing the needs of "V" zoning, whether and why it had accepted or rejected the validity of those extensive representations made under the question on the genuine need issue, and how the representations had affected its view on planning the size of the "V" zones.

### **4. Review on the Genuine Need Issue**

- 4.1 To comply with the CFI's judgment, a review has been undertaken on the issue on the genuine need for Small House development in Pak Lap, taking into account the following aspects relating to the designation of "V" zone:
- (a) the principles for designating the "V" zone; and
  - (b) information for assessing the Small House need of indigenous villagers.
- 4.2 Additional/updated information, where necessary, on the above aspects is obtained/collated to facilitate Members' deliberation on the issue and making further inquiries as necessary.

### Principles for Designating the “V” Zone

- 4.3 Pak Lap is one of the CPEs protected by statutory planning, for which sites of high conservation value are suitably protected. The plan-making process was an iterative process with proposals carefully drawn up to strike a balance between conservation and development. In drawing up the land use proposals, a conservation-oriented approach was adopted as a starting point. All the important habitats, with information obtained from Agriculture, Fisheries and Conservation Department (AFCD), were protected by conservation zoning, e.g. “Conservation Area” (“CA”) as a start. Since CPEs mostly cover existing indigenous villages, consideration would also be given to designating “V” zone on the OZP to reflect the existing village clusters and identify suitable land for village expansion if necessary. In this regard, the areas within and outside the village ‘environs’ were carefully analysed in terms of suitability for Small House development taking account of a host of planning factors including but not limited to the local topography, the existing settlement pattern, approved applications for Small House development, outstanding Small House applications, Small House demand forecast, availability of road access and infrastructure, areas of ecological and landscape importance as well as site specific characteristics.
- 4.4 When planning for “V” zone, the demand for Small House developments would only be one of the various factors to be considered. There was no obligation to cater for the full Small House demand at the outset. In order to minimise the adverse impacts on the natural environment, an incremental approach should be adopted by first confining the “V” zone to the existing village settlements and the adjoining suitable land and then expanding outwards upon due consideration of all relevant planning considerations.

### Information for Assessing the Small House Need of Indigenous Villagers

- 4.5 During the hearings of the representations/comments/further representations, the following information had been presented to the Board as reference on the estimated Small House demand:
- (a) there were 7 outstanding Small House applications being processed by Lands Department (LandsD) at the time of the hearing of representations/comments in April – June 2014, which remained the same when the further representations were heard in November 2014; and
  - (b) the figure of 10-year forecast of Small House demand provided by the Indigenous Inhabitant Representatives (IIRs) was 72 houses when the draft Pak Lap OZP was gazetted in September 2013. This figure was presented to the Board at the hearing of representations/comments in April – June 2014, which was updated to 70 at the hearing of the further representations in November 2014.

### Additional/Updated Information

- 4.6 For this review, additional/updated information has been obtained for assessing the Small House demand of villagers, including (i) the actual number of Small House applications received/approved/rejected by LandsD since 2010, and the latest number of outstanding Small House applications being considered by

LandsD and (ii) the 10-year Small House demand forecasts starting from 2010 provided by the IIRs, and breakdown of 10-year Small House demand forecast provided by IIRs. Consideration has also been given to other relevant factors such as the latest population and other local circumstances.

- 4.7 The actual number of Small House applications received/approved/rejected by the LandsD since 2010 are summarized as follows:

<b>Year</b>	<b>The number of Small House application received</b>	<b>The number of approved Small House application</b>	<b>The number of rejected Small House application</b>
<b>2010</b>	0	0	1
<b>2011</b>	0	0	0
<b>2012</b>	0	0	0
<b>2013</b>	0	0	0
<b>2014</b>	0	1	0
<b>2015</b>	0	0	0
<b>2016</b>	0	0	0
<b>2017</b>	0	0	0
<b>2018</b>	0	0	0
<b>2019</b>	0	0	0

- 4.8 The figures of 10-year Small House demand forecasts provided by the IIRs of Pak Lap (based on the replies from the IIRs on a standard proforma issued by LandsD on a yearly-basis (**Annex C<sup>2</sup>**)) are summarised in the following table:

<b>Year*</b>	<b>Figure of “10-year forecast” demand</b>
<b>2010</b>	Not submitted <sup>@</sup>
<b>2011</b>	Not submitted <sup>@</sup>
<b>2012</b>	Not submitted <sup>@</sup>
<b>2013</b>	72 <sup>#</sup>
<b>2014</b>	70 <sup>^</sup>
<b>2015</b>	Unknown <sup>△</sup>
<b>2016</b>	Unknown <sup>△</sup>
<b>2017</b>	Not submitted <sup>@</sup>
<b>2018</b>	Not submitted <sup>@</sup>
<b>2019</b>	Unknown <sup>△</sup>
<b>2020</b>	Unknown <sup>△</sup>

\* *The starting year of the 10-year period covered by the forecast demand*

@ *No proforma was submitted by the IIRs for that period*

# *At the time of gazettal of the draft OZP, and presented to the Board at the hearing of the representations/comments*

^ *Presented to the Board at the hearing of the further representations*

△ *The figure marked as “unknown” as the IIR did not indicate the specific figure in the submitted proforma, or the figure was marked as unknown in the proforma*

<sup>2</sup> According to District Lands Officer/Sai Kung (DLO/SK), LandsD, the format of the proforma and the breakdown of forecast being sought have changed over the years. The current standard proforma has been used since 2015.

4.9 The major observations/findings on the above figures and other relevant information are as follows:

4.9.1 Actual number of Small House applications

- (a) since 2010, there has been no Small House application submitted to LandsD;
- (b) there have been 2 Small House applications processed by LandsD over the past 10 years (i.e 1 approved Small House application and 1 rejected Small House application); and
- (c) as advised by DLO/SK, LandsD, there are also 4 outstanding Small House applications under processing, which all of them fall within Government land (**Plan 1**).

4.9.2 The 10-year Small House demand forecast

- (a) the 10-year Small House demand forecast is subject to changes over time. As shown in the above table, the Small House demand slightly dropped from 72 in 2013 to 70 in 2014 respectively;
- (b) as shown in the IIR's reply on the standard proforma in January 2020 (**Annex C**), 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 coming 10 years (2 residing in Hong Kong and 2 overseas). The IIR has not provided information on how many of these male indigenous villagers will apply for Small House grants, and the forecast demand is unknown;
- (c) DLO/SK, LandsD advises that the forecast was provided solely by the IIRs and could not be easily verified based on the information currently available. DLO/SK, LandsD would verify the status of an applicant for Small House development at the stage of Small House grant application; and
- (d) based on the above, while the 10-year Small House demand forecasts provided by the IIRs in the past 10 years as set out in paragraph 4.8 above provide a useful reference for considering the reasonableness of the Small House demand forecast figures, there is no practical means available for determining the genuine need for Small House development at the planning stage.

4.9.3 Land available for Small House development

According to the PlanD's latest estimation, about 0.4 ha of land (16 Small Houses) within the current "V" zone is available for Small House development, which could fully meet the outstanding Small House applications. Yet, the IIR of Pak Lap has not provided the 10-year Small House demand for 2020 (**Annex C**). A summary table of Small House demand and land available for Small House development for Pak Lap

Village is as follows:

Latest Small House Demand Figure (as at January 2020) (A)+(B) = 4		“V” zone Area	Available land to meet Small House demand	Land required to meet the outstanding applications (A) (ha)	Land required to meet Small House demand (A)+(B) (ha)	% of the outstanding applications (A) met by available land	% of the Small House Demand (A) + (B) met by available land
Outstanding Small House Applications (A)	10-Year Small House Demand Forecast (B)						
4	Unknown	0.98 ha	0.4 ha (16 houses)	0.1 ha	--	400%	--

#### 4.9.4 Other relevant information (Plan 2)

- (a) according to By-census 2016 and estimation by PlanD, the population of Pak Lap is about 50. The existing village houses at the main village cluster are two to three storeys in height, with some of them undergoing renovation/reconstruction. There are Small Houses under construction at the western part of the “V” zone (**Photo 5 on Plan 2**). The vacant land within “V” zones has been cleared and ready for development. Site clearance for approved Small Houses at the northern “V” zone has also been carried out. A 2-storey village office has been built in the south of the main village cluster;
- (b) the area to the east of the existing stream zoned “AGR” is fenced off and grassed (**Photo 2 on Plan 2**); and
- (c) Pak Lap is only accessible via footpath leading to Sai Kung Man Yee Road. There is no vehicular or marine access to the Area. There is no strong infrastructural basis to support significant development in the Area.

## 5. Recommendations

5.1 Based on the additional/updated information on the actual number of Small House applications received/approved/rejected by LandsD since 2010, it is indicated that there is certain demand for Small House development in the area. While the land available within “V” zone can fully meet the outstanding Small House applications, it is considered that the “V” zone on the draft Pak Lap OZP is not excessive in terms of the number of Small Houses (i.e. 16 houses) that could be provided. The vacant land within “V” zone has been cleared and is considered suitable for Small House developments in accordance with the provision of the “V” zone on the current OZP. Based on the conservation-oriented approach on CPEs and the general approach adopted by the Board in delineating “V” zone, a balance between enhancing nature conservation of the Area and meeting the needs of villagers for Small House development has been struck in drawing up the “V” zone in the area. Relevant bureau and departments have no comment on the review and no objection to the “V” zone.

- 5.2 Apart from the review on genuine need for Small House development issue mentioned above, 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 one 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 “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 (**Plans 2 to 6**). 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 (**Annex B1 and Plan 3**).
- 5.3 DLO/SK, LandsD advises that the proposed rezoning of the land to the south of the village cluster from “V” to “G/IC(1)” would involves government land on which two outstanding Small House applications by way of Private Treaty Grant have been received. The processing of the Private Treaty Grant is suspended at the time being in relation to the judgment on JR of Small House Policy.
- 5.4 In relation to the proposed public convenience, Director of Food and Environmental Hygiene advises that the new public convenience will adopt a bio-treatment system which is a close system and does not have a soak-away function. Since there is no existing or committed/planned public sewer in the area, Director of Environmental Protection (DEP) reminds that any discharge of treated wastewater is subject to the control under the licensing requirements of Water Pollution Control Ordinance. Both departments have no objection to/comment on the rezoning proposals.
- 5.5 While the proposed amendments will lead to a reduction in “V” zone area of 0.03 ha, the land available for Small House development within “V” zone would be about 0.4 ha (16 Small Houses).
- 5.6 A table comparing the concerned zones between the current Pak Lap OZP and the proposed amendments is shown below (**Plan 3**):

<b>Zoning</b>	<b>Current (Draft OZP No. S/SK-PL/1 incorporating amendments shown on Plan No. R/S/SK-PL/1-A2 (ha)</b>	<b>Proposed (Draft OZP No. S/SK-PL/2A) (ha)</b>	<b>Changes (ha)</b>
“V”	0.98	0.95	- 0.03
“G/IC” & “G/IC(1)”	0.02	0.03	+ 0.01
“CA”	3.41	3.43	+ 0.02

## 6. Proposed Amendments to Draft Pak Lap OZP

### 6.1 *Amendments to Matters Shown on the Plan*

#### Amendment Item A (about 0.03 ha) (Plan 3)

Rezoning an area to the south of the village cluster at Pak Lap from “V” to “G/IC(1)” with maximum building height of 2 storeys, or the height of the existing building, whichever is the greater; and

#### Amendment Item B (about 0.02 ha)

Rezoning an area to the further south of the village cluster at Pak Lap from “G/IC” to “CA”.

### 6.2 *Amendments to the Notes of the OZP*

The proposed amendments to the Notes of the OZP to incorporate development restriction of the “G/IC(1)” sub-zone in the Remarks (with additions in ***bold and italics*** and deletions in ‘cross-out’) are at **Annex B2** for Members’ consideration.

## 7. Revisions to the Explanatory Statement of the OZP

The ES of the OZP is proposed to be revised to take into account the proposed amendments as mentioned in the above paragraphs. Opportunity has been taken to update the general information for various land use zones to reflect the latest status and planning circumstances. The proposed amendments to the ES of the OZP (with additions in ***bold and italic*** and deletions in ‘cross-out’) are at **Annex B3** for Members’ consideration.

## 8. Plan Number

Upon exhibition for public inspection, the Plan will be renumbered as S/SK-PL/3.

## 9. Consultation

### Departmental Consultation

9.1 The findings of the review and the proposed amendments to the draft Pak Lap OZP have been circulated to relevant government bureau and departments, and their comments have been incorporated in the review above.

9.2 All government bureau/departments consulted have no objection/comment:

- (a) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau;
- (b) Chief Town Planner/Urban Design and Landscape, Planning Department;
- (c) Chief Building Surveyor/ New Territories East 2 & Rail, Buildings Department;



- (d) Chief Highway Engineer/New Territories East, Highways Department
- (e) Chief Engineer/Mainland South, Drainage Services Department;
- (f) Chief Engineer/Construction, Water Supplies Department;
- (g) Chief Engineer (Works), Home Affairs Department;
- (h) Commissioner for Transport;
- (i) Director of Agriculture, Fisheries & Conservation;
- (j) Director of Electrical and Mechanical Services;
- (k) Director of Environmental Protection;
- (l) Director of Food and Environmental Hygiene
- (m) Director of Fire Services;
- (n) Director of Leisure and Cultural Services;
- (o) Director of Marine; and
- (p) District Lands Officer/Sai Kung, Lands Department;
- (q) District Officer (Sai Kung), Home Affairs Department; and
- (r) Head of Geotechnical Engineering Office, Civil Engineering and Development Department.

Consultation with Sai Kung District Council and Sai Kung Rural Committee and Public Consultation

9.3 The proposed amendments to the OZP are mainly a review on the land use zonings on the draft Pak Lap OZP to reflect the existing conditions in the area. Subject to agreement of the proposed amendments by the Board for gazetting under section 7 of the Ordinance, the Sai Kung District Council and Sai Kung Rural Committee will be consulted during the 2-month statutory plan exhibition period. Members of the public can submit representations on the OZP to the Board during the same statutory plan exhibition period.

**10. Responses to Previous Representations, Comments and Further Representations Relating to the Genuine Need Issue**

All the previous representations, comments and further representations submitted to the Board in respect of the draft Pak Lap OZP No. S/SK-PL/1 raised views and queries related to the designation of “V” zone. Should the Board agree to the recommendations of the review as set out in paragraph 5 above and the proposed amendments to the draft OZP as detailed in paragraph 6 above, all the representers, commenters and further representers will be informed accordingly. They may submit representations on the amendments to the OZP or comments on the representations for the Board’s consideration under sections 6 and 6A of the Ordinance respectively.

**11. Decision Sought**

Members are invited to:

- (a) consider the findings and recommendations of the review as detailed in paragraphs 4 and 5 above;
- (b) agree to the proposed amendments to the draft Pak Lap OZP as detailed in paragraph 6 above and that the draft Pak Lap OZP No. S/ SK-PL/2A at **Annex**

**B1** (to be renumbered as S/SK-PL/3 upon exhibition) and its Notes at **Annex B2** are suitable for exhibition under section 7 of the Ordinance;

- (c) adopt the revised ES at **Annex B3** for the draft Pak Lap OZP No. S/ SK-PL/2A as an expression of the planning intentions and objectives of the Board for the various land use zonings of the OZP and agree that the revised ES should be published together with the draft OZP; and
- (d) agree to inform all the representers, commenters and further representers in respect of the draft Pak Lap OZP No. S/SK-PL/1 on the amendments to the draft OZP, and that they may submit representations on the amendments to the OZP or comments on the representations for the Board's consideration under sections 6 and 6A of the Ordinance respectively.

## 12. Attachments

<b>Annex A1</b>	Draft Pak Lap OZP No. S/SK-PL/1 (reduced to A3 size)
<b>Annex A2</b>	Amendment Plan No. R/S/SK-PL/1-A2
<b>Annex B1</b>	Proposed amendments to the draft Pak Lap OZP as shown on the draft Pak Lap OZP No. S/SK-PL/2A
<b>Annex B2</b>	Revised Notes for the draft Pak Lap OZP No. S/SK-PL/2A
<b>Annex B3</b>	Revised ES for the draft Pak Lap OZP No. S/SK-PL/2A
<b>Annex C</b>	The proforma of 10-year Small House demand forecast for Pak Lap submitted by the IIRs
<b>Plan 1</b>	Small House Applications in Pak Lap
<b>Plan 2</b>	“Village Type Development” (“V”) Zone of Pak Lap
<b>Plan 3</b>	Comparison of Existing and Proposed Zonings on the OZP
<b>Plan 4</b>	Rezoning Proposals
<b>Plan 5</b>	Site Photos
<b>Plan 6</b>	Aerial Photo

**PLANNING DEPARTMENT**  
**MARCH 2020**