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The Conservancy Association

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3rd June 2020

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: Comments on the draft Pak Lap Outline Zoning Plan (No. S/SK-PL/3)

Since the preparation of Development Permission Area Plan (DPA Plan), then replaced by Outline Zoning Plan (OZP) after 3 years, for country park enclaves (CPEs), The Conservancy Association (CA) always emphasizes that the ultimate goal should be to protect natural and rural character of both CPEs and the surrounding Country Parks. Although the proposed amendments under the draft Pak Lap OZP attempt in reaching such goal, they are still far from satisfactory.

1. Genuine need for Small House development is still not properly treated

The proposed amendments on the draft Hoi Ha OZP, So Lo Pun OZP and Pak Lap OZP were to respond to the Judicial Review (JR) judgment dated 24 November 2017 that Town Planning Board (TPB) failed to carry out its duty to inquire:

- i. the genuine need for Small House development
- ii. the accuracy of the base map for Hoi Ha OZP

From the TPB Paper No. 10624 prepared for the draft Pak Lap OZP in March 2020, we noted that a review was undertaken with reference to the 2 aspects:

- i. the principles for designating the “V” zone
- ii. information for assessing the Small House need of indigenous villagers

For the principles for designating V zone, the TPB Paper No. 10624 made the same explanation as below:



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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 zonings... Since CPEs mostly cover existing indigenous villages, consideration would also be given to designation 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 analyzed in terms of suitability for Small House development taking account of a host of planning factors including but not limited to local topography, settlement pattern, 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. (Section 4.3)

In order to minimize 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 adjoining suitable land and then expanding outwards upon due consideration of all relevant planning considerations. (Section 4.4)

However, what we can observe now is that some areas of conservation need are not zoned as conservation zonings in the draft Pak Lap OZP. Some V zone land, even located near the existing village settlement, are not considered as “suitable” when we refer to some other planning factors, particularly outstanding Small House applications, Small House demand forecast and areas of ecological importance.

Meanwhile, when we refer to the information for assessing the Small House need of indigenous villagers stated in the TPB papers, it is important to note the JR judgment¹ which confirmed that TPB failed to make proper inquiry on the genuine need issue:

In the present context, the core question raised by the representors’ extensive representations as summarised above is whether, by way of the forecast figures,

¹ See HCAL 28/2015

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=112400&QS=%2B&TP=JU



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there were proven genuine needs of the indigenous villagers to build Small Houses within the existing villages in these enclaves. (Section 72)

In the premises, in proper discharge of the duty of inquiry, the TPB should ask itself the above question and properly answer it. However, as seen from the reasons above, the TPB had not explained even in a broad brush manner on what basis it had treated the forecast demand figures to provide support for showing the needs to support the V zoning. The TPB had not in any way explained whether and why it had accepted or rejected the validity of those (or any of those) extensive representations made under this question and how they had affected its view on planning the size of the V zones. In light of the lack of any explanations, the court cannot be satisfied that the TPB had asked itself the right question in relation to the relevant contentions raised in the representations, and answered it properly. (Section 75)

However, we are disappointed with such responses stated in the TPB Paper No. 10624:

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. (Section 4.9.2(c))

there is no practical means available for determining the genuine need for Small House development at the planning stage. (Section 4.9.2(d))

The responses in the TPB papers continued to accept that the Small House forecast is unverifiable in nature in the planning stage. Since the genuine need for Small House development was still not proved when designating the size of V zone, we opine that TPB still did not make proper inquiry into the genuine need issue.

2. Zonings on specific areas are still not appropriate to protect the environment

Apart from reviewing the genuine need issue, we note that Planning Department has also reviewed the land use zonings on the draft OZP taking into account of the latest circumstances. Despite reviews based on the above 2 aspects, the proposed amendments cannot reflect the intention to protect some of the areas in Pak Lap.



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Item A – Rezoning of an area to the south of the village cluster at Pak Lap from V to Government, Institution or Community (1) (G/IC(1))

Item B – Rezoning of an area to the further south of the village cluster at Pak Lap from G/IC to Conservation Area

We have to reiterate that if we refer to the background of the OZP review this time, there are mainly 2 aspects² of review:

- i. Review on genuine need for Small House development
- ii. Review the land use zonings on the draft OZP taking into account of the latest circumstances

We are very disappointed that the proposed 2 amendments are minor and not in line with such background.

No genuine need based on the additional information for assessing Small House demand

From the TPB Paper No. 10624, the additional information provided for assessing Small House demand of village further proved that there are no genuine needs for Small House development. Over the past 10 years, only 1 Small House application was approved in 2014, and NO Small House applications have been received by Lands Department (Figure 1). While 4 outstanding Small House applications were recorded, indeed only 0.1 hectares of land is needed to meet all outstanding application, but the current V zone is 0.4 hectares for 16 houses, 400% of the outstanding applications met by available land. We cannot see why under limited/no need for Small House, the V zone is still considered as “not excessive³”. We have to state that keeping a large V zone in Pak Lap is completely violating an incremental approach in confining V zone in CPEs.

We also cannot see the justification to zone the vacant land at the southeast of the village settlement as V zone. According to our land search on the owners of all 21 privately owned land lots in that part of area, ALL of them have been sold by the indigenous villagers to the developer in 1993, 1994, 1996 and 2001 (Figure 2). Since all land lots were already sold by the indigenous villagers, it is highly doubtful that

² See Section 5.2 of TPB Paper No. 10624

³ See Section 5.1 of TPB Paper No. 10624



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there is genuine need to secure land for Small House development in Pak Lap.

Destroy first, build later

That part of vacant land was indeed subject to land excavation and vegetation clearance before implementing DPA Plan in Pak Lap. After implementation of DPA Plan in Pak Lap, unauthorized development was recorded in 2011 and Enforcement Notices were issued on some private land lots on that vacant land. We have long been warned that this kind of activities in rural countryside is an attempt of “destroy first, build later”. Any attempts of “destroy first, build later” should not be tolerated as it would set undesirable precedent for similar case in future. Sadly, no amendments have been made on that part of V zone.

Based on the additional information of Small House applications over 10 years, outstanding Small House application, result of land search on the vacant land in the southeast of village settlement, signs of “destroy first, build later”, we opine that the proposed amendments are not the result of a proper review on the draft Pak Lap OZP.

Improper designation of AGR zone

From the very beginning, the designation of a large AGR zone in Pak Lap is a wrong decision, as it failed in promoting any genuine agricultural activities and offers no protection for the environment.

Dating back to the 1057th TPB meeting in 2014, no locals and concerned groups expressed great interest in introducing any agricultural activities in Pak Lap, but large AGR zone was still proposed at that time. We were sad to note the conclusion of the meeting minutes as it revealed the intention of the AGR zone was to reserve land for village expansion in future⁴.

The land to the east of the stream should be rezoned to “AGR”. Should there be a genuine need to cater for the Small House demand, flexibility had been provided under the planning application system for Small House developments within the “AGR” zone or for rezoning application to expand the “V” zone (Section 64)

In the past few years, no genuine agricultural activities have been started in the area.

⁴ See Section 64 of 1057th TPB Meeting minutes



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What we can witness was land excavation, with turf paved on the remaining “regenerated grassland” (Figure 3-5).

The AGR one also turned the natural stream located at the eastern side of the proposed V zone. From our observation, suspected illegal discharge can be spotted connecting to the natural stream, while the river bank has been largely modified (Figure 6 and 7).

If Planning Department is now taking the opportunity to review the draft OZP taking into account of the latest circumstances, the AGR zone in Pak Lap has to be reviewed and largely amended to ensure proper protection of the environment.

3. Our recommendation on the amendments would ensure proper conservation and protection of Pak Lap

We have to reiterate that we DO NOT SUPPORT Item A and B amendments only, as amendments are necessary to be in line with the two review background mentioned in the TPB Paper No. 10624. If we have to take the review seriously, CA suggests that the entire review process has to be conducted again to come up with a more comprehensive plan for Pak Lap.

Particularly, the amendments should include the following items (Figure 8):

- i. V zone in the west of Pak Lap should be greatly reduced and confined to existing village settlement
- ii. AGR zone should be zoned by conservation zonings such as Green Belt (1) or “Conservation Area” zone.

We hope that Planning Department and TPB would consider our plan.

Thank you for your attention.

Yours faithfully,

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Campaign Manager

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Figure 1 Over the past 10 years, only 1 Small House application was approved in 2014 in Pak Lap, and NO Small House applications have been received by Lands Department (marked in red) (Source: Section 4.7, TPB Paper No. 10624)

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

Figure 2 According to our land search on the owners of 21 privately owned land lots in the southeast part of V zone (marked in red), ALL of them have been sold by indigenous villagers to the developer

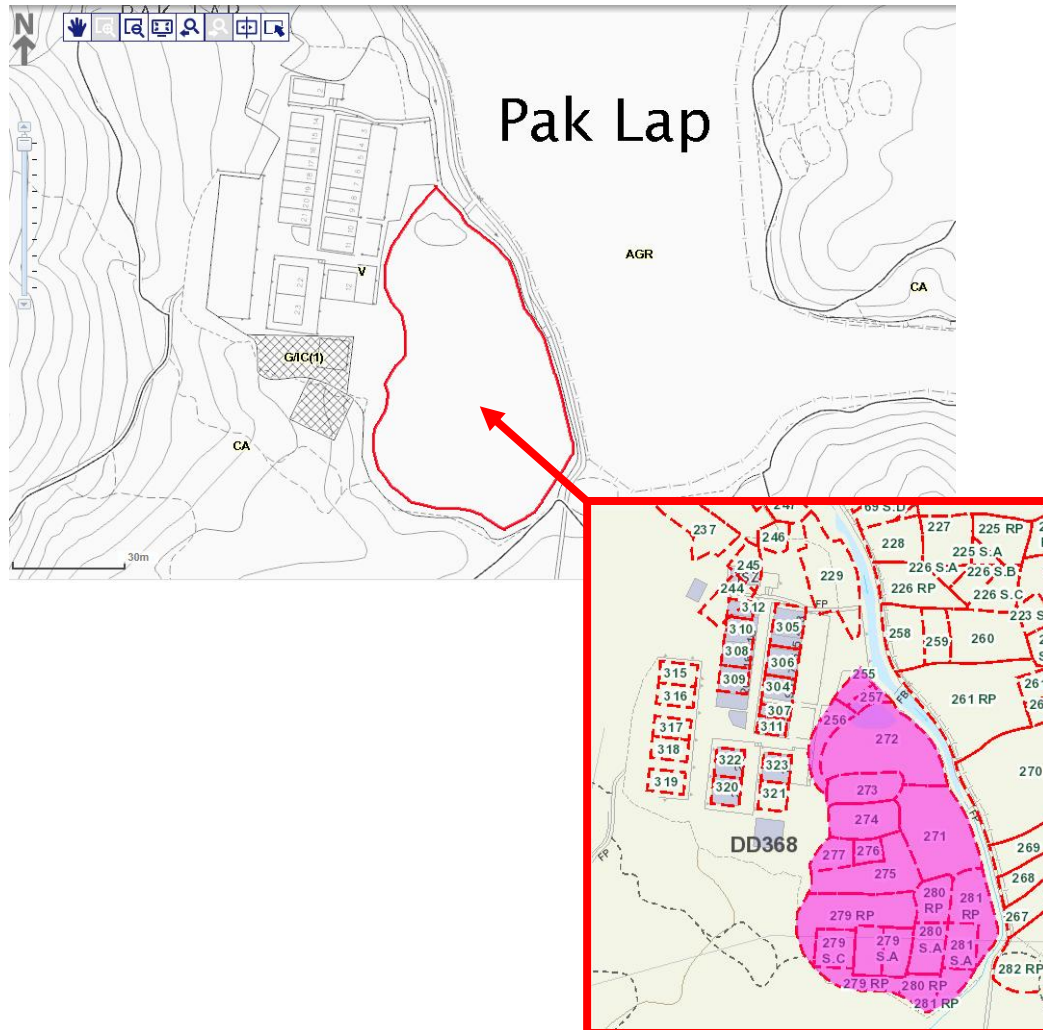


Figure 3 and 4 Condition of Pak Lap in 2017. Signs of land excavation can be spotted on the remaining “regenerated grassland”





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Figure 5 Condition of Pak Lap in March 2020. Most of the “regenerated grassland” was paved by turf



Figure 6 and 7 From our observation, suspected illegal discharge can be spotted connecting to the natural stream, while the river bank has been largely modified (circled in red)



Figure 8 Our recommendation on the amendments on the draft Pak Lap OZP (base map extracted from the TPB Paper No. 10624)

