

Objections to Proposal to convert Agricultural Land to Other Specified Uses annotated Rural Use, OU (RU) by the Planning Department under their Review of Rural Land Uses in Northern New Territories of July 2001, and Review of Master Schedule of Notes to Statutory Plans of July 2002.

And Proposals for Integrated Strategic Planning and Implementing Conservation Policy Mechanisms - Restoring the Balance in the Countryside

Fundamental Errors

1. **Without prior public consultation**, the Planning Department is proposing to recognise and legitimise the degradation of the countryside, in particular the land currently zoned as Agricultural Land and reward its owners with a re-zoning to Other Specified Uses annotated Rural Use, OU(RU) which means an ‘up-zoning’ to other (more profitable) uses than agriculture, in particular to housing development land with increased density, and Recreation Zoning. They are also proposing to facilitate conversion of Recreation Land to development of increased density low rise housing. They are proposing to do all this specifically in the Northern NT which includes some of the most unspoiled and beautiful areas in Hong Kong where many valuable scenic agricultural areas are in the foreground of and adjoin the country parks.
2. Worse still, Planning Department have already implemented this Study in the form of gazetting amendments to zoning in controversial locations at Tai Tong. This case was later said to be only “a pilot to gauge public views/reactions to the new zoning mechanism” was gazetted on 28th June 2002, but without making public the underlying Review of Rural Land Uses in Northern New Territories of July 2001 compiled a year before. Instead, what was announced at the time of the pilot case was a separate Review of Master Schedule of Notes to Statutory Plans, announced on 4th July 2002. The existence of the underlying policy Review was apparently not mentioned until Planning Department’s letter of 30th July 2002 to WWF revealed the existence of this Study. The Review has been withheld as too sensitive and not ever been provided in full, but after repeated request after a meeting to obtain information of 20th August 2002, only a Summary of Findings of the Review was specially drafted in 2002 and provided under cover of a letter to WWF dated 9th September 2002. This Summary of Findings of the Review, (hereafter referred to as the Review), which partially explains some of the thinking behind the pilot re-zoning case, was thus provided after the statutory period for objection to the pilot re-zoning had expired.
3. Following some questions from WWF in their letter of 30th September 2002, Planning Department’s reply of 11th October 2002 provides material which reveals that their original Review and position is plainly un-reasonable and that there is room for considerable improvement with future consultation and a more integrated approach to strategic planning. There has since been a useful meeting of 30th October 2002 in which some of the concerns expressed herein were advanced.
4. Improper and poor planning administration which may significantly damage the public interest, but which is for the specific benefit of land holding

interests, has taken place. Instead of the promotion of the “general welfare of the community” as required by the Town Planning Ordinance Cap. 131, Preamble and Section 3, the Planning Department has promoted the specific welfare of the landowners and developers.

5. The Review proposals are poorly thought out, simplistic, too broad, and are not tied in to mechanisms and criteria which ensure conservation of land and natural habitats instead of rewarding those who permit degradation and pollution so that the land becomes unfit for agriculture use and only fit for property development land use and hence up-zoning.
6. It is appreciated that **the Review will lead to increased land speculation hence the secrecy** surrounding the Review, the refusal to release the Full Version of the Review, and the refusal to supply information or properly consult as to the 750 hectares of Agricultural Land identified for up-zoning as seen in Planning Department’ s letter of 11th October 2002.
7. **We Submit that:-**
 - a. The Review and the town planning terminology for the new zoning is defective for many reasons and must be withdrawn pending proper consultation, proper definitions of terms, and integration with other existing principles and policies;
 - b. Strategic planning for the countryside must include conservation and the environment and consultation so as to be realistic and sustainable;
 - c. Government intervention to increase land values to promote development must be balanced by a system for intervention to protect the natural and rural landscapes, and policies and mechanisms are needed and proposed to achieve this.
8. **Unbalanced Review in favour of landowners and developers.** As a result of “tremendous development pressure”, presumably from the landowners and developers who are stated to consider the land use zonings in the statutory plans “as too restrictive and hence freezing the development potential of their land”, see Paragraph 3, the Planning Department have produced and implemented a Review which is targeted towards providing development potential to owners of Agricultural Land and hence unbalanced and containing numerous defects as a result of the lack of proper consultation and secrecy. Its effect will be to encourage applications for unco-ordinated development along roads contrary to existing planning policy which is to prevent sprawling growth of towns at the expense of the countryside.
9. This is because the Review of Rural Land Uses is in fact only a partial review, specifically aimed to provide more land for development without considering the whole picture and problems and opportunities for public benefit in an integrated way, and without considering at the strategic planning stage the cumulative impacts its recommendations will cause on the truly rural and natural elements of the Northern New Territories. The result is a temporary quick fix for the perceived demand for cheap development land without

strategic planning to conserve the natural and rural landscapes and thus preserve the true value of the land. This is contrary to one of the key factors for the strategic assessment of medium and long term housing needs as identified by the Territorial Development Strategy Review, Final Executive Report, 1998, (hereafter referred to as TDS 1998) at page 75 paragraph 17 where it was made clear that the growth potential of the broad areas including North Western and North Eastern New Territories would be studied “having regard to such key factors as environmental thresholds, conservation of ecological assets, clearance....etc”. The TDS 1998 identified as **Points of Principle** that a balanced approach was essential with “give and take” see page 69 paragraph 2, and that there was consensus “that Hong Kong needs to have a **new strategic development framework** that can provide a focus for channelling the efforts and initiatives of the community **as a whole** in a **rational and equitable** way.” see page 69 paragraph 1. We adopt these Points of Principle in making the submissions herein.

10. The Summary of Findings of the Review proposes **a drastic change in land policy which would change the rural and natural character of the land**, specifically for the Northern New Territories, resulting in a domino effect whereby fuelled by the alleged tremendous pressure, up to 1,400 hectares or 2/3 of the Agricultural Land in the Northern NT could eventually or potentially fall to increased development and increased density, see Paragraph 33, in a series of steps or planning phases as follows:-
 - a. convert Agricultural Land to OU(RU) which permits Recreational Development and Housing development, primarily to facilitate demands for low density housing at an increased density, double the density currently permitted in Residential Group D;
 - b. facilitate NTEH, such as small houses under the controversial Small House Policy, which is the chief demand with the most applications in such areas;
 - c. facilitate the conversion of Recreation zoned land which falls to be re-zoned into housing development land, again perceived to be the chief demand for such land;
 - d. convert Agricultural Land to the new designation of OU(RU) for Recreation use, apparently to compensate for the Recreation zoned land already lost and being lost to housing and industrial development, open storage etc.
 - e. And finally Recreation land in turn falls to being converted because OU(RU) land is regarded as not a binding zoning but a transition zone or planning stepping stone to even more development, ie property development. This will happen when infrastructure and circumstances change and when increased rural degradation makes it desirable to re-zone, hence the ‘domino’ effect.
11. **The enormous cumulative impact on the natural and rural nature of the New Territories is not adequately discussed.** Using the figures from within the

tables or statements in the Summary of Findings of the Review and Planning Department's letter of 11th October 2002, the following propositions emerge:-

- a. There is "still" about 2,700 hectares of land zoned as Agricultural within the Study area of the Northern New Territories;
- b. One-third is under active cultivation, the rest idle, open storage or container backup;
- c. There is 191.9 hectares of land with unauthorized industrial uses, e.g. storage, workshops and carparks, see Paragraph 27 and Table 6;
- d. 750 hectares of Agricultural Land is already identified as being 'low quality' and could be considered for re-zoning;
- e. In the last 7 years between January 1994 and June 2001, about 200 hectares of Agricultural Land has been re-zoned from Agriculture to other uses, see Table 2 and paragraph 17 (actually 198.80 hectares lost from Agricultural);
- f. Recreation zoning lost to development in the same period 216.75 hectares;
- g. Green Belt (GB) lost to mostly development and others in the 7 years, 169.73 hectares but there was an increase of GB of 288.05 hectares gained at the expense of Conservation Area (CA) which was up-zoned or lost to become Green Belt which made the previous CA land more vulnerable to development, but net 'gain' in GB hence 118.32 hectares;
- h. Conservation Area lost (to development and Green Belt zoning which is more vulnerable to development as seen above) in the same period 469.84 hectares but less 40.40 hectares of CA down-zoned or gained by Country Parks hence net loss of about 429.44 hectares of CA;
- i. Total Loss from 'up-zoning' of the Agricultural, Recreation, Conservation Zones above in 7 years = about 844.99 hectares or average loss of 120 hectares per year loss of countryside;
- j. In relation to Agricultural Land alone, the loss of 198.80 hectares of Agricultural Land over 7 years amounts to an average loss of 28.4 hectares per year,
- k. based on the number of planning Applications in Agriculture Zone, Table 3, this shows a success rate of $995 \text{ applications} \div 1344 \times 100 = 74\%$ success rate, of which the huge proportion of the successful planning applications, some 756 or 780 applications out of the total of 995 successful applications related to NTEH or the controversial Small House developments. NTEH Houses represent the great majority of the successful applications within Agricultural Land and the applicant for these would be presumably a major beneficiary of any new policy.

12. The above figures clearly show that the proposed conversion of the countryside to other uses is **not sustainable and will lead to the permanent loss of much of the rural landscape during the lifetime of the current citizens of the SAR.** If piecemeal alterations are made to the zoning system to facilitate conversions to property development without a system for mitigation and rural planning gain, the process of degradation will be even faster and more devastating and more arbitrary. However Planning Department by their letter of 11th October 2002 sees no need to evaluate strategically or at all the cumulative impacts of such loss on the countryside and will not release information for proper consultation thereon. To suggest that planning for the initial loss of about one third of the Agricultural Land is “minimal” loss of rural landscape, per Planning Department’s letter of 11th October 2002 page 4, is not reasonable. There has been a failure to adopt a sustainable approach, see TDS 1998 pages 100-101 which requires “**the widest possible public participation throughout the study process...**” One of the reasons is because TDS 1998 regarded it as **essential** that our “areas of high landscape and ecological value continue to be given the fullest possible protection.” The Broad Concept for planning sustainably is shown at Figure 29 page 113.
13. **The Study Area was wrongly selected.** It is wrong in principle to lump the North East New Territories together with the North West New Territories to form a Study area of Northern New Territories.
- a. The East is of completely different composition from the West, the East being less spoiled by degradation or land abuse, involves large areas of outstanding natural beauty which adjoin country parks, is more truly rural and intact unfragmented land, and includes large areas of the unspoiled Border or Boundary areas. According to the Territorial Development Strategy Review, 1996, by PELB, one of the Broad Development Principles at page 30 emphasized that the North East New Territories should have a primary role with “emphasis on conservation” and with provision of tourist and recreational facilities in selected locations. “The greater part of the rural NENT is one of the last areas to remain relatively unpolluted and unspoiled. From an environmental point of view the area should be excluded from any major urban growth...” see TDS Review Foundation Report, July 1993 page 65. The TDS 1998 showed the differences in Figure 4 with the East having large portions of “Unique Areas” which would be totally wrong for OU(RU) yet no distinction to expressly exclude such Unique Areas is made in the Review.
- b. Distinctly different, the West contains far more degraded rural land with problems from neglect and land abuse and contains Route 3 and West Rail as noted in paragraph 5 of the Review and TDS 1998 page 20 paragraph 24. The TDS 1996 at page 29 described a primary role for the North West as being upgrading of semi-urbanised areas and village and private residential development within the scope of existing statutory plans but protecting the Mai Po Marshes. “Future development of NWNT should be centered along the existing corridors”, see TDS Review Foundation Report 1993 page 64.

- c. Separate planning strategies are being considered for the Border or Boundary Area. See also the TDS Review Foundation Report of July 1993 by Planning Department on Rural Land Use, and Landscape and Conservation at pages 49-51 and 64.
 - d. In fact each area demands separate planning strategies for its use and conservation and this vague too broad overall policy change will simply create administrative problems and expense by raising hope values and speculative expectations especially in the Unique and Significant Areas identified in the TDS 1998. Generally “the feasibility of developing supplementary housing sites on the periphery of existing and planned urban areas should be investigated...” TDS 1998 page 96, i.e. not on Agricultural land wherever situated all over the Northern NT.
 - e. The potential coverage for OU(RU) all over the Northern NT is unnecessarily wide and will encourage numerous speculative zoning and building applications in unspoiled areas.
14. **Fundamental Errors.** In summary, the methodology and aims and terms of reference and terminology used in the Review of Rural Land Use Summary of Findings contain fundamental errors leading to a Review which is flawed in many respects. In particular:-
- a. It is wrong in law and against basic planning principles to set land policy with such important effects and which is aimed at promoting the specific welfare of the landowners and developers without properly evaluating strategically the needs and effects of the **general welfare of the community**, per Section 3 of the Town Planning Ordinance, and the cumulative impacts this new policy will cause to the community and other land uses, see Section 4 of the Ordinance.
 - b. It is wrong in principle to regard Agricultural Land as a ‘land bank’ for withdrawals for property development use, when the degradation which takes place is a consequence of improper land use or misuse from land hoarding, neglect and unauthorized uses (unauthorized industrial uses are 191.9 hectares, see Paragraph 27 and Table 6). A privileged sector of users should not gain at the expense of the community as a result of their own wrong use. Instead of planning for proper use, it encourages mis-uses and speculation.
 - c. The approach adopted in the Review is contrary to Planning Department Standards and Guidelines Chapter 10, 1992 Edition, Landscape and Conservation, in relation to Agricultural Areas, paragraph 1.22. “**Every effort should be made to conserve areas of suitable farmland outside of planned urban development areas in order to create and maintain a healthy and diversified agricultural industry....**” Agricultural Land is a community asset, part of our **cultural heritage** and a precious resource to be used as such and kept sustainably for future generations, not dissipated to present day

property developers without any adequate system for balanced compensation.

- d. The Review is contrary to the strategies and Principles established by the TDS and in particular the TDS Review Foundation Report by Planning Department of July 1993 pages 49 onwards, for example the Principle that “Good arable land and fish ponds should be retained as far as possible for intensive agricultural use to maintain the openness, scenic and overall countryside “green” character of the rural areas.”
- e. It is wrong in principle to regard Recreation Land as simply a housing or industrial development related zone, Recreation should be regarded as a use distinct from that kind of property development and not regarded as a transition zone or stepping stone to increased property development;
- f. The Scope of Study at paragraph 9 claims to be testing the strategic technical feasibility of the proposed zoning changes to recommend a broad framework of changes but is clearly deficient because the aims omit accommodating the current Conservation Policy and Strategies as described in A Green Challenge for the Community by Planning Environment and Lands Bureau, November 1993 at page 39, copy enclosed, the Conservation Policy Review now still in progress, important policy issues of Sustainable Development see TDS 1998 pages 100-101, compliance with international norms and National obligations in respect of these matters summarized in A Green Challenge at pages 103-106, and the Agricultural Policy, and the special planning for the Boundary areas as mentioned above. As noted above, the Review runs contra to many of the statements and principles set out by Planning Department in its July 1993 TDS Review Foundation Report.
- g. The Review is out of step with the recent Government statements on Sustainable Development, where it is said “...we have reviewed the proposed Planning Objectives and we accept that there is room for some improvements, particularly in conveying the message that sustainable development should be the fundamental guiding principle, as well as setting out the need for better nature conservation and heritage preservation as clearer planning objectives. In terms of how to better conserve significant natural and man-made landscapes and habitats, it is worth noting that, in parallel with this Study, the Government is also reviewing its conservation and heritage policies. The outcome of the policy reviews will be duly incorporated into the 2030 Study.” Hong Kong 2030, Planning Vision and Strategy, Stage 1 Public Consultation Report, 2001, page 11 paragraph 17.
- h. The Review omits any explicit consideration of the problems caused by the outdated NTEH and Small House Policy which has attracted criticism and controversy and been under review for years without action, see for example TDS 1998 page 20 paragraph 24 “random, low-intensity development”, SCMP 23rd April 2002 reproduced in Urban

Planning and Environmental Law Quarterly, June 2002. Instead the Review makes recommendations which could exacerbate the scale and inequality of that Policy and increase the expense and burden to the Administration and the public interest.

- i. The Review cannot truly claim to provide a broad framework for informed policy and strategic decision making when the matters considered were so limited, narrow, and incomplete and **omitted key strategies** for future land planning, use and administrative control currently being discussed. The public interest or general community welfare as a whole is the main issue here and should be reviewed as a whole. Consideration of important issues such as countryside conservation demand that "...we should take account of the principles of stewardship and of sustainable development, the adoption of a more holistic approach to the environment is desirable" see generally A Green Challenge at page 47.
- j. **The terminology used** in the Review and the OU/RU proposal is inappropriate, misleading, confusing and contradicts existing planning terminology, and will be difficult to administer.
- k. The new zoning of OU/RU will ensure that rural landscapes will degrade and change to become urban or sub-urban with increased density low rise property development to the loss of true rural character with its present mix of rural and natural landscapes, especially in the absence of any proper definition of the concepts of 'rural landscape' or 'rural area'.
- l. **There is no right to property development in Agricultural Land. It is wrong in law, contrary to planning practice, and poor administration** for the Planning Department to recognize that landowners and developers consider the zonings as too restrictive and 'hence freezing the development potential of their land' and to emphasize that Agricultural zoning is controversial, see Review Summary Paragraph 3, when in fact Agricultural Land zoned as such ought to have no property development potential. By entertaining and recognizing the alleged development potential the Planning Department has created the risk of raising a legitimate expectation out of a mere speculative hope value in the context of zoning, which may in turn drive up the cost to the public in terms of compensation and resumption claims.
- m. The Planning Department, by this proposal and contrary to good planning practice, is aggravating the problem of speculators hoarding Agricultural Land in land banks and thus degrading it and thus depriving farmers of rentable farming land and thus depriving Hong Kong citizens of fresh and healthy local produce. Planning Department's letter of 11th October 2002 recognizes that speculation will follow from this Review and hence their unsatisfactory solution is partial secrecy and no strategic planning and no early consultation thereon.

- n. **The 10 Foundation Stones or Principles for Protecting our Environment** are set out in A Green Challenge, Chapter 4. The Review fails to comply with most of these foundation stones and thus lacks a basis for responsible policy.
15. **Defective Strategic Planning of the Countryside.** It was wrong to fail to include Conservation Policy considerations into the strategic planning of the Countryside so that informed decisions could be made and planning gains identified early to make possible proper planning. To relegate environmental and conservation matters to the much later implementation stage, on a piece-meal case by case basis as the “areas of high conservation value are discovered” and at lower district level or to individual Town Planning Boards, as advocated by Planning Department letter of 11th October 2002, is simply to invite confrontation and delays and expense such as seen in the Long Valley Case and other cases. Piece meal planning is not proper planning. Strategic Planning **for the countryside** which for example only considers cumulative impacts of increased density on the drains and sewers and roads but not the cumulative impacts on **the important components or very essence of the countryside** such as agricultural land, habitats and landscapes being destroyed by the proposed sewers and developments etc, is not responsible strategic planning. Right thinking members of the public would be horrified to learn that Planning Department only strategically planned for drains and sewers and roads and building developments in the countryside but not the most distinct and important thing namely conserving the quality and balance of the countryside itself. The consequence of a mind-set fixed on providing for infrastructure for property developments is thus the failure to provide balanced proper planning as required by the Town Planning Ordinance. It is wrong to decide in advance on principle that we will gradually lose 750 hectares of Agricultural Land and not make any strategic cumulative impact assessment of this loss so that compensation for this loss can be planned sensibly and strategically at the same time.
16. Integration of Conservation and Natural Landscape protection, which is a most important factor in the countryside, into the strategic planning process is essential for sensible decision making and any Study or Review which merely puts this into the background for later remedy is unnecessarily damaging the countryside by poor planning. Relegating conservation and the landscape as being mere details to be considered later when all decisions are made ensures that Planning Department pays mere lip service to sustainable development and conservation which are then seen as an afterthought or constraints and obstacles to development instead of vital components of the rural landscape and vital components contributing to a properly planned New Territories. If truly, “There is no prejudice against conservation zonings” per Planning Department’s letter of 11th October 2002 page 3, there can be no sensible objection for actively and strategically planning for it instead of omitting it.
17. The **importance of strategic planning for conservation and landscape was emphasized by Planning Department in the TDS Review Foundation Report para 6.1 at page 35 and 6.62 page 49** where for example it is stated that land use profiles for Broad Rural Areas were intended to “provide a **framework for identifying and evaluating** areas of significant ecological and landscape

value; areas with potential for agriculture and recreational uses; and areas where future development might take place without degrading the landscape and the natural environment. They also provide a basis for formulating the proposed broad rural land use pattern (Figure 6.5).” The TDS 1998 at page 87 paragraph 47 refers to a Strategic Environmental Assessment of 1995 and paragraph 48 refers to the need to consider environmental and ecosystem protection in several ways such as:-

- a. in Integrated Planning and Development Studies, see paragraph 48(m);
- b. Developing Strategic Environmental Master Plans, see (o);
- c. better co-ordination, see (q);
- d. Investigation of Cumulative Impacts as a basis for future policy decisions, see (r);
- e. Developing “a strategic sustainability framework to provide a basis for assessing development proposals in a more balanced way”, see (s).

18. **The current situation of piece meal developments with no proper impact assessment.** Failure to implement strategic planning for conservation will mean piece meal destruction of the natural and rural landscape by piece meal developments most of which currently proceed with no EIA, no proper surveys, no consultation but instead by secrecy maintained by confidentiality between developer and government departments, no assessment of the cumulative impacts, no system for restoring balance with compensation, resulting in fragmentation of the countryside and usually loss of rural and natural areas by the general community. This will lead to more **“Uncontrolled development (which) has proliferated in some areas and this has led to extensive degradation of the rural environment.”** see A Green Challenge 5.18 page 42. **The current methods have failed for years. It is time to change.**

19. The approach adopted is contrary to the Four Principles of Conservation in land use planning set out in the Planning Departments existing Standards and Guidelines on Conservation, Chapter 10, paragraph 2:-
- i. “retain significant landscapes and ecological attributes and heritage features as conservation zones;
 - ii. restrict uses within conservation zones to those which sustain particular landscapes and ecological attributes and heritage features;
 - iii. control adjoining use to minimize adverse impacts on conservation zones and optimize their conservation value; and
 - iv. create, where possible new conservation zones in compensation for areas of conservation value which are lost to development.”

20. The General Development Concept in the New Territories as outlined in paragraphs 11-14 of the Review Summary is deficient in failing to include proposals or mechanisms to convert the countryside into zonings which promote general community welfare or benefit in ways which are more consistent with the true meaning of countryside as opposed to urban sprawl at the fringe of new towns and sprawling along new roads and infrastructure. In this context the expression in paragraph 15 of restriction to “low density rural uses compatible with the rural environment...” will be interpreted to mean legitimising suburban sprawl and facilitating its encroachment into the countryside contrary to existing Planning Department Standards and Guidelines on Conservation. The piece meal or partial approach will encourage precisely what the Review Summary claims to want to avoid per paragraphs 13-14, namely the piece meal growth of urban sprawl. It fails to reflect the principles contained in the TDS and other documents and policies. **In conclusion, strategic planning to specifically encourage sustainability and conservation has to be performed in order to carry out current Government policy** which has made sustainable development a fundamental guiding principle and made nature conservation and heritage preservation clear planning objectives, see Hong Kong 2030, Planning Vision and Strategy, Stage 1 Public Consultation Report, page 11, paragraph 17.
21. **Misleading and confusing planning terminology which will lead to urban sprawl.** A concept of “Rural Use” which is a deceptive description has been introduced. This terminology is wrong and confusing and will lead to urban sprawl for a number of reasons.
- a. The actual title of the Study, namely Review of Rural Land Uses...and the Background paragraphs suggest that ‘rural use’ and ‘rural areas’ ought to cover Agriculture, Conservation Area, SSSI, etc and presumably Country Park and Green Belt but these latter 4 zones do not feature in the Rural Use definitions.
 - b. Instead, based on the Summary of Findings of the Review, it appears that it is intended that the so called ‘Rural Use’ intended in OU(RU) is in fact limited to ‘dwindling’ Agricultural and the 3 “development related zonings” namely Residential Group D, Industrial Group D and Recreation (which as noted above is classed as development related). Describing increased density housing with Plot Ratio of 0.4 as ‘Rural Use’ is a misleading definition of a rural environment and which would not occur to any right-minded individuals in Hong Kong dealing with such ordinary words in their ordinary meaning. A more honest description of the real use intended by the so called ‘Rural Use’ would be to call it “Suburban Use” and “Urban Fringe Uses” or “Urban” depending on the amount of resulting concrete cover.
 - c. Based on the Master Schedule of Notes, OU(RU) includes developments such as flats, houses, transport terminus, institutions and shops. However the Planning Intention describes OU(RU) as being “intended primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be

allowed on application to the Town Planning Board...” The Notes indicate that the so called ‘selected range of rural uses’ is not rural but is in fact simply urban or urban fringe uses with a deceptive name.

- d. The vague phrases such as ‘rural area’, ‘rural landscape’, ‘rural characteristics’ are not defined. So what are the ‘Rural Use’ flats and houses to be regarded as ‘compatible with’? If ‘rural area’ or ‘rural landscape’ is read together with ‘Rural Use’, which is defined in the Planning Intention, these simply become similar to urban or urban fringe. Statements in the Review such as “conservation of rural landscape” thus means conservation of the flats and houses landscape permitted under OU(RU). However, if ‘rural area’ or ‘rural landscape’ is intended to mean something different from ‘Rural Use’, this clearly demonstrates that the phrase ‘Rural Use’ is misleading and bound to confuse and deceive people into thinking that a green and pleasant environment is being assured by Planning Department in OU(RU) when in reality it just means sprawling development with less building height than in town.
 - e. The Planning Department concept of Rural Use and rural landscape is thus completely different from a blend of villages surrounded by natural landscape or countryside and farmland which is what most right thinking people would expect from the normal use of the word ‘rural’ in the context of Hong Kong. It is just a cover for the not acceptable but accurate term ‘urban sprawl’ or fringe. Urban growth is not acceptable because it envisages the sprawling growth of towns to the detriment of the countryside and proper planning. But this Policy would facilitate this sprawl, hence the verbal camouflage adopted by pretending it is a ‘Rural Use.’
 - f. The introduction of the term ‘Rural Use’ into a separate zoning will create confusion with the existing definitions of Conservation Area which includes “retaining natural features and rural use.” This CA definition is using the term rural use in its normal accepted meaning. If however the Review now intends that flats and houses are to be permitted in Conservation Area land then there is no inconsistency. However it would be totally wrong to permit the development of flats and houses etc in Conservation Area, see the TDS Review Foundation Report July 1993, Landscape Strategy Components, page 51-52 which notes “No development is envisaged” in Conservation Area. The confusion and inconsistency arises from the misleading terminology adopted for the mis-named and misconceived ‘Rural Use’ zoning.
 - g. With these problems, it is clearly unwise to proceed with piecemeal rezoning in Tai Tong.
22. **There is no definition of Rural Landscape or Rural Areas.** What is the Rural Landscape or Rural Area and uses which Planning Department intends to protect? An acceptable definition is required because as currently planned it would appear that there is no material difference from Urban other than the height being lower but the sprawl being greater. An attempt to define the

Landscape Strategy Components with their landscape and development characters is contained in the Planning Department's TDS Review Foundation Report July 1993 at page 51-52. The Landscape Conservation Strategy and Broad Landscape Framework per the TDS and 5.26 and Annex C of the Green Challenge are a beginning. However, these criteria do not appear to be reflected in the current Review. A further set of criteria for definition to be discussed for insertion into an improved system could include:

- a. Distinguishing Natural Landscape from Rural Landscape, so that **Natural Landscapes** would cover for example the planning zones of Country Parks, Coastal Protection Areas, wetlands, Conservation Areas, SSSI, and Green Belt and depending on location and other criteria also some Agricultural Land;
- b. An attempt at definition of Natural Landscapes is provided in Hong Kong Planning Departments Standards and Guidelines, Chapter 10, Conservation at paragraph 3 stating "The natural landscapes of Hong Kong are diverse. They comprise extensive uplands, agricultural plains, valleys, and indented coastline and areas of wetland. There are many characteristic animal and plant communities, with over 1,800 native plant species and some 400 species of birds being recorded. At present over 40 percent of the land area of the Territory is zoned for conservation use...." This definition shows that agricultural plains and valleys, though altered by human use and habitation, are important components of Natural Landscape. It is thus essential to protect those areas by explicit zoning where they contain characteristic species communities. Many agricultural areas contain distinctive and unique communities of plants and wildlife which it is vital to conserve by carefully worded zoning so that appropriate agriculture can co-exist with the species.
- c. **Rural Landscapes** could be a blend of or ratio of 'Earth : Concrete', with 'Earth' including some Agricultural, Recreation, Open space, Fung shui woodlands, ie total uncovered 'earth' or un-built areas on one hand, vs 'Concrete' the total 'concreted' or built-over areas on the other hand, including Residential, Industrial, Village, carparks, storages of various kinds, GIC, infrastructure etc.
- d. Current zoning coverages used as the baseline;
- e. Current height restrictions, 3 storey at most but not to permit demolition of existing traditional structures until properly assessed for heritage value;
- f. Traditional village architecture, heritage features, farming and activities to be assessed and conserved;
- g. Off site compensation or transfer of development rights for retention of significant traditional structures to be considered and implemented where appropriate;

- h. Settlements and developments only permitted in clusters at defined existing areas;
 - i. All Fung shui woods and every tree therein to be protected regardless of size and trees or woods to be restored where degraded or damaged and encroached upon;
 - j. Current views and landscapes to be conserved with emphasis on maintaining a complete unspoiled vista from coast to peaks or valleys so as to ensure conservation of the remote wilderness experience provided by unspoiled landscape integrity;
 - k. No roads to be planned or widened unless ecological evaluation has been performed and to serve existing proved need, not speculative demand;
 - l. Wildlife conservation to be the main aim of all unused areas;
 - m. Organic agriculture which is appropriate to the habitats to be given encouragement and priority;
 - n. Passive recreation and amenity which is appropriate to the habitat or surrounding areas to be given priority.
23. Clear Objectives for a Rural Land Use policy, as distinct from an Urban land use policy, must be drawn up. For example, one could adapt for the New Territories, the kind of objectives used by the City of Canberra, “The Objectives of the Rural Land Use Policies are:
- a. To conserve the distinctive rural landscape setting of Canberra and maintain its ecological integrity
 - b. To conserve sufficient wildlife habitats to adequately protect native plant and animal species
 - c. To make provision for the productive and sustainable use of land for agriculture
 - d. To make provision for other uses which are compatible with the use of the land for agriculture
 - e. To ensure that land parcels are appropriate in size for their approved uses
 - f. To offer leases for time periods which reflect planning intentions for the locality
 - g. To reinforce a clear definition between urban and rural land.”
24. The Domino effect or phased degradation. Recreation degraded so Planning Department converts to OU(RU), and Agriculture degraded so convert to Recreation or OU(RU). The Review Proposal to convert

Agricultural Land to the new zoning of Other specified Use (Rural Use) OU(RU) is partly intended to convert Agricultural Land to Recreational use, see paragraph 20. This is because:-

- a. 38% of the Recreation Zones have been developed into other zoned uses or suffered adjoining and non-conforming existing use such as open storage and rural industrial uses, see Paragraphs 27- 28-29 and
 - b. because it is intended to re-zone this degraded Recreation zone area into Residential and Industrial and
 - c. because of the large number of planning applications for other uses in the Recreational zone, see paragraphs 29 and 30 and Table 7.
 - d. This is a clear example of the domino effect, the existing Recreational zoning having been degraded by non-conforming uses and juxtaposition with other incompatible land uses such as open storage and rural industries, see paragraph 27 with Table 6 and paragraph 30, it is now thought appropriate to legitimise the mess with unauthorized uses, and reward those concerned by opening up Agricultural Land for Recreational use so that the existing degraded Recreational use land can now be legitimately used for housing development and industry;
 - e. The change to Recreation Zone for some areas must be viewed with serious concern in the light of examples where golf course use or 4WD use has led to serious degradation of agricultural land with ecological value, and thus act as a useful preliminary phase before repeated further applications for conversion to housing or other development status. The number of such applications must therefore be viewed with phased degradation in mind and Planning Department must not facilitate or encourage this type of development strategy.
 - f. The Agricultural Land under paragraph 20 is also considered to be developed into a village office 'as of right'. This is unnecessary as most villages already have an office or do not need another one as of right. There is no necessity for this to be as of right, so that 'on application' and with proper justification is sufficient.
25. The new zoning OU(RU) for Agricultural Land will encourage intense pressure for permits for building development and with increased density from Plot Ratio 0.2 to 0.4 on former Agricultural Land. In essence as describe above, the so called Rural Use is to be not truly rural at all, it will be urban fringe or suburban use or urban use in the middle of Natural Landscapes whereby:
- a. Agricultural Land is converted either into Recreational development land which in turn can be converted into Building development land;
 - b. or Agricultural Land is converted into increased density low rise housing development land, primarily to cater for the NTEH or

controversial Small House demands as seen clearly in Table 3 but not reflected in the actual text of the Summary.

26. **Zoning as incentives for Developers.** The Summary of Findings of the Review at paragraphs 22-25 makes an interesting policy suggestion for Government intervention where zoning incentive is proposed whereby developers are provided with relaxed plot ratio restriction or denser development “to provide greater incentive for development, with a view to improving the development prospect on land zoned Residential (Group D)” in the vague hope that such land holders will be provided with incentive or motivation to install proper infrastructure such as sewage, drainage and road connections!
- a. Such a vague hope or expectation is unrealistic without land use restrictions capable of enforcement by District Lands Offices and Planning Department through stringent lease conditions and increased administrative staff and resources to deal with the numerous un-cooperative NTEH or Small House owners, see Review Paragraph 27 Table 6, stating 191.9 hectares of unauthorized industrial uses, so presumably many other hectares of other abuses go unchecked. This Review would encourage even more applications which will have serious resources and manpower implications if they are to be handled responsibly.
 - b. This shows that the rationale is to reward owners for improving their own property access and services, by which they will be the beneficiary through increased land value. There is no real community welfare benefit from this. It is mainly developer and landowner gain from the infrastructure to access and service his property. It is poor administration showing favouritism to developers to implement something as simplistic as this.
 - c. Nevertheless the idea of Government intervention in providing **financial incentive through zoning to improve quality of life, environment and conservation is worthy of consideration** provided true benefit for community welfare can be achieved. Just as greater incentives can be applied for development on degraded land, so it can be linked to greater incentives to be provided for conservation of valuable Agricultural Land and conservation of ecological value existing on Agricultural Land and elsewhere and protection of scenic landscapes and cultural heritage.
 - d. However such incentives must be made contractually or statutorily binding on those seeking to benefit. The conditions for such relaxation of plot ratio restriction should include measures closely tied to enhancing amenities, conservation values in the countryside either at the sites in question or ex situ by way of transfers and surrenders to truly achieve community welfare. These suggestions are restated subsequently as part of the Real Way Forward -**Restoring the Balance**, which is commended for further study and implementation by the various departments in an integrated rural land policy.

- e. However in the light of the current oversupply of residential property it is thought unnecessary to provide such incentives by increased density except in very special circumstances where there is clear public benefit hence criteria for assessing the same are set out subsequently.
 - f. In relation to Industrial Group D zone, paragraphs 26-27 and Table 5, again there is current oversupply of Industrial Premises, with much conversion from industrial to residential, see TDS 1998. What are the industrial operations which are regarded as suitable for the rural environment but which could not be housed in conventional flatted factories? The implication is that such rural industrial workshops are either so polluting or so hazardous as to be only suitable for the countryside but not the urban environment. 'Rural workshops' as current land uses represent a serious blot on the rural landscape because of the lack of enforcement and are known to be a serious cause of degradation of land and surrounding land as can be seen in the following paragraphs 28-30 whereby non conforming open storage and rural industrial uses have degraded the better quality of life in the existing Recreation Land use zoning. Stronger justification must be provided but this is lacking the current Review.
 - g. It would be objectionable and poor policy and poor administration to reward the polluters with increased land value by up-zoning without some other real and significant gain to the community. A system of up-zoning for the polluting land owner coupled with and conditional upon surrender and exchange to result in ex-situ planning gain to the public interest is suggested and will be dealt with subsequently when considering ways to Restore the Balance.
27. **The Tai Tong Test case: Planning to reward those who contribute towards degradation.** The Background to this Review or Study as described above has been notable for its secretiveness or furtiveness. Proper Public consultation was not contemplated. The true or Full version of the Review, done as long ago as July 2001, has been withheld and only the Summary of Findings of the Review has been provided recently in September 2002, at a late stage after concern was expressed, and after the time limit for Objection to Tai Tong zoning had passed. This matter was only brought to wider attention by WWF who alerted the environmental NGO's of the Tai Tong re-zoning which was later revealed to be a 'test case' for the new planning conversion idea contained in the secret Review or Study. Similarly, the proper Master Schedule of Notes Review documents were not provided until it was too late.
28. Deprived of this information, and deprived of the relevant material, the public and the environmental NGO's have been deprived of the material upon which to adequately consider and object to the Tai Tong Re-zoning case. **In the light of this substantive and procedural injustice, the case should be withdrawn.**
29. Tai Tong would set a poor precedent but is a remarkable example revealing the Planning Department intentions on how to use this new idea. Tai Tong has suffered a remarkable history of habitat degradation from a natural and rural area, some of which is close to a Country Park, to a position of such damage

occupied by numerous structures and uses of unknown legality that now Planning Department feels it can support and reward the current degraded status quo by advocating re-zoning many hectares of it to Other Uses(Rural Uses). OU(RU) with its alleged planning intention for use for recreation and small houses is already not compatible with some of the uses and degree of degradation already existing at some sites which are behind high fences with storage and workshop type uses, so the re-zoning will probably be just a first phase in the domino effect to more density and industrial use. It is thus a remarkable example of :

- a. How this Review or policy could reward the polluter or unauthorized user of land and encourage degradation of the natural environment;
 - b. and how the Planning Department intends to implement the new idea if it becomes policy;
 - c. how development of the wrong type and in the wrong place which would never normally be permitted, becomes legitimized by non-enforcement and this new zoning treatment;
 - d. how an area never planned for property development, far away from and without proper infrastructure for development, becomes the beneficiary of increased land values permitting increased population density even before the infrastructure is in place;
 - e. how this zoning method will thus perpetuate a bad situation and so that planning in the NT becomes reactive and driven by wrongdoing and expediency, instead of recognized planning principles;
 - f. how the few who own and ‘develop’ land in this way are selected to benefit without benefit to the true “general welfare of the community” as required by the Town Planning Ordinance.
30. Perhaps it is already “policy” and the policy has been changed without formal announcement, as indicated by the last Paragraph 44 of the Summary of Findings of September 2002, entitled the Way Forward which states that “Based on the study recommendations” Planning Department will review Agriculture and Recreation zones on individual statutory plans and recommend to the Board (ie Town Planning Board) the appropriate zoning amendments. Regrettably this is not the first time that important land policy in Hong Kong has been changed without formal announcement or consultation.
31. Actual implementation of the Study at a specific site was contrary to the Summary of the Review which in its Scope of Study at paragraphs 9 and 10 only intended to make broad recommendations of a strategic basis, and that “the appropriateness of a zoning for an individual site is beyond the study scope.” However the Tai Tong case shows that the Review or Study is actually being implemented via the unusual method of a test case, even before the Review has been made into a Policy and even before the Review has been made public. Planning Department emphasises the theoretical nature of the discussion yet we can see it is now being applied directly to a specific case,

without the details being properly worked out, and without any public consultation. This is extremely poor administration and extremely poor planning to just leave it to an individual Town Planning Board to work out the details of a major and very broad and far reaching policy change on a case by case and piece meal basis.

32. The solution is to withdraw this Tai Tong Re-zoning without delay so that proper consultation and integrated policy consideration can take place with the constructive observations from these submissions in mind so that proper terminology and definitions and conditions and limits to this new policy can be devised.
33. **We support WWF in its Objections and questions and constructive proposals** contained in its letters to Planning Department dated 10th July, 30th July, 27th September and 30th September 2002 and KFBG' s Objection to the Tai Tong Re-zoning of 27th August 2002 on principle and on the facts. In particular:
- a. We support the recommendations on grading Conservation Area zoning as CA1 and CA 2 which is complementary to the current system, and will provide more flexibility and choices to planners, developers and conservationists and hence fairer;
 - b. We support the insertion of the Asterisk, meaning use only if appropriate, in many more cases where there are potential conservation gains or losses, especially in relation to Government works such as roads and drainage which are known to be most damaging and the cause of most of the area lost in the rural areas;
 - c. And we would request full answers to the questions raised, in particular those contained in the letter of 30th September 2002. These answers must be provided before proper consultation can take place.
 - d. The Review of July 2001, meaning the Full Version, plus the terms of reference should be made available in full, not just the Summary of Findings of September 2002, especially if it is to be relied upon by the Planning Department and the Town Planning Boards in making decisions.
 - e. The current secretive or opaque approach is premature and misconceived and will contribute to poor Administration and injustice, as this Submission shows, and contrary to the accepted principles of fullest possible public consultation as set out in the TDS 1998 and A Green Challenge, the 10 Foundation Stones, Chapter 4.
34. **No right to development in Agricultural Land.** The statement of the assertion that Agricultural Land has development potential is an error at the heart of the Review. The Need for Review at paragraph 3 selectively mentions that landowners and developers consider the current zonings “as too restrictive and hence freezing the development potential of their land.” This is a remarkable statement when coming from Planning Department who should

know that those owning Agricultural Land have little or no right to expect development. It is only a speculative hope held by speculators who hold huge land banks, and it is unwise and regrettable that language which legitimizes expectations such as this has been used in an official document. It will serve to raise hopes for development and increased compensation arising from a zoning context to the detriment of the public interest. It is possible that Planning Department could aggravate the consequences of the recent decision of Yin Shuen Enterprises v Director of Lands (2002) 1HKC 304 and further increase speculative hope value to the public detriment by this Review. This misconception about development potential and rights is well explained by Nicholas Brooke, Creative approach key to conservation, SCMP 17th May 2000, copy enclosed. It is regrettable that Planning Department encourages it. The Department should have stated that such a right could only be obtained after the developer complies with conditions which provide true compensation to the public which would otherwise lose its countryside. This Submission will provide an example showing how one can Restore the Balance.

35. The statement at paragraph 3 of the Review Summary is also not balanced. It fails to recognize that many right thinking people and other departments concerned with conservation and the natural beauty of the land have stated that the zonings and other regulatory mechanisms have not been sufficiently restrictive or adequately enforced leading to the current mess of “uncontrolled development” whereby Agricultural Land and Recreation Land has been allowed to become degraded. This is the very problem which the Review seeks to address in a piece meal fashion by legitimizing the harm already caused. Thus, the Planning Departments’ mistake in law has contributed to the erroneous favourable concession to land owners and developers being contemplated.
36. The purported justification for the Review. The Review at Paragraph 20 seeks to justify the change by implying that conversions from Agriculture Land will only be done piece meal for ‘low density’ developments who would be granted increased plot ratio so as to reward developers in the vague hope this might eventually lead to improvements in the infrastructure such as roads, drains and sewerage. The same reasoning is applied for increases in density proposed for Residential Group D at paragraph 24 of the Review. As noted above, in Paragraph 4 and 15(a) herein, this is just a cover to justify benefiting the landowners and developers who are the only real beneficiary of land value increase from Planning Department generosity. It is wrong in principle for re-zoning to be used as a means to finance infrastructure for dubious developments of the wrong type and which are already in the wrong place through unauthorized use, or inadequate enforcement, and thus reward the speculator. No one wishes to discourage genuine environmental improvements, but they must not be done at the expense of the natural countryside or rural landscape or at the expense of the general community welfare. This Review fails to consider mechanisms to ensure the current rural balance is maintained.
37. The purported justifications for the Review thus betray the reality, which is that the Review:

- a. Will facilitate ad hoc or piece meal developments contrary to official policy and the stated intention of the Review;
 - b. Will increase the speculative or hope value of rural land, in particular Agricultural Land thus rendering changes in Conservation Policy more difficult to implement;
 - c. Will do little to improve rural environment but instead convert it so as to make it no different from urban sites, but with the added feature of urban sprawl with added car use, congestion along the new roads and other cumulative impacts and fragmentation of the countryside, and thus more damaging as a result of the piece meal approach.
38. **Degradation Led Development. Real causes and real needs and the Priorities.** In general terms the large amount of Agricultural Land which is not farmed or properly used for farming has come about as a result of inaction, neglect or non-intervention, and the failure to enforce regulations and lease conditions coupled with poor planning so that large areas of agricultural land are currently owned in land banks of developers and not used as planned. In consequence of such mis-use some of this land has been caused or permitted to be degraded to such a state as to be not fit for use for farming without significant remediation or expense. See TDS Review Foundation Report July 1993 paragraph 6.63 at page 49; and Mary Felley, A Biodiversity Conservation Policy and Legal Framework for Hong Kong, 1996, pages 32-33; and Green Challenge 5.18. It is remarkable that many farmers have been driven to farm in the Mainland as partly as a consequence of the difficulties of finding suitable land to rent in Hong Kong, see Consultancy Study on Agriculture March 1999 at page 10-11 and SCMP 1st November 1998.
39. The Need for Review states that agriculture has dwindled as a result of economic restructuring in Hong Kong, presumably meaning property speculation and property development, but this fails to note that there is now an apparent oversupply of property and that a new restructuring to improve the quality of Hong Kong life is underway. This needs new thinking to cater for New Priorities, new activities and improved lifestyle expectations, not just the old thinking to provide land for developers as in the old days. See A Green Challenge pages 19-21, and Achieving Conservation-A Positive Conservation Policy for Hong Kong, The Conservancy Association August 2000. Increasing the areas of lands zoned for conservation, green belt, open space, amenity, and country park is now a priority. Maintaining and making available for farmers the better areas for genuine agriculture is of the utmost importance. This has been explained in the submissions by Friends of the Earth and other organizations on the Agricultural Policy for Hong Kong in 1999, see below. The real value of the countryside has been ignored even though the TDS 1998 at page 121 states “promote the use of lowland rural areas not, for the time being, required for strategic development, for the production of food and a range of uses that would be compatible with a rural setting, given also the provision of adequate infrastructure”. Also see Conservation in Hong Kong, Wild but Not Free: An Economic Valuation of Benefits of Nature Conservation in Hong Kong, 2002 by Civic Exchange.

40. The failure to consider the broader implications of planning changes makes the Review flawed because its Scope of Study fails to identify or deal with these issues. It sees agriculture and ecological value as obstacles to development, instead of properly seeing that a healthy productive rural landscape with the beauty of natural surroundings actually enhance quality of life and hence enhance property values for those fortunate enough to afford areas not yet spoiled by poorly planned development. It is noteworthy that numerous advertisements in the press and on the KCR bear witness to the value developers attach to marketing a rural and scenic setting for their properties. The Government's policy is that sustainability is a fundamental guiding principle but the Review fails to take this into account.
41. The Review notes that there is a problem of piece meal development at paragraph 14, but this Review provides nothing which will reduce the fragmentation of agricultural and green areas which will be encouraged by this piece meal type of zoning change.
42. **Major Loss of Agricultural land and Conservation Land but no Compensation.** The Review Summary at paragraph 17 and Table 2 reveals that in the last 7 years already 200 hectares of Agricultural Land has been lost, but it fails to note that this is because Agricultural Land is seen as the soft option or cheapest option for resumption for infrastructure, roads, railways and other developments, and referred to in the Review as "long term solution space". There has been no adequate compensation or mitigation for this loss or for the loss of Green Belts 169 hectares and loss of much Conservation Areas to development, to more vulnerable Green Belt, and to other uses. There has been some attempt at restoring the balance for all this loss in the creation of a small country park extension possibly in compensation for other park land which was lost to infrastructure developments. The Review notes that only one third of the remaining 2,700 hectares of Agricultural Land is under active cultivation and that 750 hectares or about another one third should be re-zoned because it is of low quality. This implies that the Planning Department considers that the loss of at least one third or even two thirds of the Agricultural Land (see para.33) with no mechanism for mitigation or compensation is the final result of this Review. This is not an acceptable situation or policy and will be a serious loss to the natural environment and quality of life in the NT. What will be left of the so called rural landscape if there is no mitigation or compensation for losses of rural landscape of this magnitude? It is regrettable that in the Review no mention is made of systematically restoring the balance by zoning Agricultural land to conservation or other habitats for nature and country park extensions consistent with international norms for biodiversity and sustainable development.
43. The failure to provide for compensation for loss of countryside is contrary to the Planning Departments Standards and Guidelines on Conservation, Chapter 10, Paragraph 2 which states "Create, where possible, new conservation zones in compensation for areas of conservation value which are lost to development." There is much valuable opportunity now to enhance the value and attractiveness of the New Territories and the methods to do this should be

studied as part of a thorough strategic review before implementation of the current partial land Review so criticised herein.

44. Conflict of Interest. Some Government departments and developers are perceived to have had a common interest in not protecting or adequately conserving agricultural land for farming.
- a. Developers purchase Agricultural Land because they have a speculative interest in the hope that one day their land may be resumed for roads or housing or re-zoned for property development.
 - b. Government has a short term financial interest in agricultural land being changed to development land which may attract higher financial rewards in the short term for government by way of land premia, increased rates, increased taxes and other revenue.
 - c. This background is important. It shows that Government has a clear conflict of interest when putting forward this Review favouring development. This is partially the explanation why the failure to enforce the laws to protect the quality of Agricultural Land, as a form of Government non-intervention, has a financial advantage both to government and the developers.
45. Degradation of Agricultural Land is the cumulative result of many factors impacting on the farming environment, such as:-
- a. Refusal by owners to rent the land to farmers because it is more profitable to indulge in speculation by selling it to developers for land bank and emigration of indigenous villagers, see Consultancy Study on Arrangements for Supporting the Development of Agriculture in Hong Kong, March 1999, page 6;
 - b. Developers who purchase for the land banks with no intention to use the land for bona fide farming but instead for speculation, see SCMP 1st November 1998, and temporary purposes such as recreation/business golf driving ranges, golf courses (such as Sham Chung surrounded by Sai Kung Country Park), open storage, car yards, dumping and other unsightly degrading uses wherever roads and adequate infrastructure have been constructed to enable such dumping to take place, see TDS 1998 page 17 paragraph 8;
 - c. Government acquiescence which regards land banks as a change in function of the land, see Paragraph 19(b) of the Review Summary of Findings.
 - d. Land and water and visual and air pollution is the natural consequence of the above together with health and quality of life impacts;
 - e. The poor siting of polluting processes or emitters close to farm land as a consequence of poor planning further accelerates the process;

- f. The disruption of natural drainage caused by filling in of natural watercourses, dumping and pollutants further causes degradation and public expense, floods, and deterioration in quality of life;
 - g. Non enforcement or non-intervention by the relevant government departments whose duty it is to prevent land misuse, dumping and other unauthorised uses further leads to pollution and cumulative impacts, see Review Summary at Paragraph 27-29 and Table 6.
 - h. Under staffing and re-sourcing of such departments leads to cumulative damaging impacts upon the land which it is the government's duty to protect and prevent, see Consultancy Study on Agriculture, March 1999 at page 33 and 41;
 - i. “The result is a highly degraded and disorderly rural landscape with considerable pollution, traffic congestion, flooding and irreversible loss of agricultural land.” See TDS Review Foundation Report, July 1993 page 49.
46. In summary, the Planning Department's Review is seriously flawed and should be rejected for a number of reasons including the following:
- a. It ignores the fact that a suggestion to phase out agriculture in Hong Kong and reduce Agricultural Land to land bank status has been firmly rejected after public consultation in 1999; Government Policy continues to assert that farming remains an important economic and social activity with numerous benefits to the public interest;
 - b. It ignores or refuses to take into consideration the fact that a comprehensive Conservation Policy Review is in process and has been in discussion or progress for some years, see A Green Challenge 1993, page 47, and Hong Kong 2030 page 11;
 - c. The Review only proposes to facilitate increased development and degradation of the environment;
 - d. The Review fails to consider, at strategic planning level, the swathe of destructive cumulative impacts which will follow from the re-zoning policy contemplated;
 - e. The Review fails to provide any balancing mitigation or compensation for the loss of the identified 750 hectares or about one-third of the Agricultural Land in the area under consideration;
 - f. Fails to recognise the tremendous potential value of such Agricultural Land to the public when kept as open natural space for conservation and potential country park extension, instead only seeing the value of land in terms of development for housing and infrastructure;
 - g. In summary it Fails therefore to provide an integrated solution at an early planning or strategic level, but instead provides a poorly thought

out proposal which will pre-empt and interfere with other proposals currently under consideration.

47. In these circumstances the Review should be rejected because
- a. It is administratively unreasonable and unfair and contrary to Policy for Government to intervene to financially reward those persons who have caused or permitted their Agricultural Land to be degraded, with a re-zoning which increases the value of their land for development purposes to the community's expense;
 - b. This sort of planning is contrary to the intention of the Town Planning Ordinance;
 - c. It will encourage further 'degradation' to qualify their degraded land for re-zoning;
 - d. It is administratively wrong to implement changes of such significance when it is not coordinated and integrated into a Conservation Policy which is under formulation and consultation;
 - e. Implementing these changes without integrating re-zoning into Conservation Policy means damage to or the loss of a significant opportunity for community gain by implementation of a proper Conservation Policy;
 - f. Failure to integrate these considerations will lead to significant financial loss and the loss of opportunity to strategically plan and create a properly balanced rural environment in which nature conservation can lead to enhanced quality of life, significant financial gains and ensure compliance with international principles for the conservation of biological diversity in tandem with economic benefits;
 - g. It is contradictory to or fails to comply with numerous statements of Government policy, both general and specific, some of which are contained herein.
48. As indicated above, those who stand to gain and who have a financial interest by this ill-considered Review are as follows
- a. Development companies who have purchased millions of square feet of agricultural lands, accumulated in land banks, who have contributed to the problem of the decline of agriculture and the degradation of agricultural lands in Hong Kong, 61.7million square feet or 20% of Hong Kong's total arable land owned by 4 developers, see Sowing Seeds for a Future, SCMP 1st November 1998.
 - b. The Government, particularly the Lands Department and those concerned with generating increased revenues for government by means of increased development, increased rates and other short term financial reward;

- c. Others who benefit are those departments or persons who have caused or permitted the land to be down graded by neglect, degradation, pollution, dumping and the lack of subsequent enforcement action or intervention against all improper or unauthorised uses and abuses. By converting the land to development, the failures will be covered up in concrete.
 - d. In summary the few will gain at the expense of the public in general.
49. Those who stand to lose by the conversion of agricultural land to property development and associated uses include
- a. The farmers who already have a difficulty in renting agricultural land at reasonable prices will be further handicapped because existing land owners will be further discouraged from the traditional practice of renting for farming but be further encouraged to permit the land to lie fallow and degrade in the hope of benefiting by conversions in future, see SCMP 1st November 1998 and Consultancy Study on Agriculture March 1999;
 - b. In consequence farmer's rents will increase as the stock of agricultural land will further shrink, the budding organic farming which Government (AFCD) is encouraging, will have even more difficulty in finding land to rent; viewed in this light Planning Department's assertion in its letter of 11th October 2002, page4, that continuous loss of agricultural land is the result of "the decision to practise farming or otherwise at land owners' discretion" is misleading;
 - c. Responsible land owners and developers who do not indulge in speculative practices in the countryside but who seek to derive long term gain and security for their investment in a better regulated quality of environment are discouraged or penalized by the less scrupulous;
 - d. The public will lose valuable open space and the many benefits of agriculture and healthy, fresh and local organic produce at reasonable prices;
 - e. The tourist industry will lose attractive areas where visitors may wish to visit and photograph, these are areas of outstanding natural beauty adjacent to our country parks which are visually part of the country side experience contra to the TDS 1998;
 - f. The public will lose significant amenity values and recreation values which lie in the current upsurge in interest in organic farming;
 - g. The public will further lose by the loss of possibilities for extension to Country Parks and wildlife corridors whereby wildlife can access different Country Parks and instead vegetated areas will be further fragmented and become non-sustaining for wildlife, contra the TDS 1998;

- h. The National loss by Hong Kong not assisting in fulfilling its international responsibilities towards the protection of areas of biological diversity;
 - i. The public will further lose in that its water supplies will be further diminished by the reduction in areas for clean water collection, instead drainage will become an expensive problem leading to increased expenditure in flood prevention.
 - j. In summary those who stand to lose are the public at large and significant numbers of those who derive pleasure and profits and health from free access to and enjoyment of the countryside.
50. The proposed Review appears to be following one rejected conclusion of the Consultancy Study on Arrangements for supporting the Development of Agriculture in Hong Kong, Final Report March 1999 which had advocated a drastic change of policy whereby agriculture was phased out in Hong Kong with little regard to its true value and place in Hong Kong so that the countryside became a land bank. These arguments were set out in detail by Friends of the Earth's Comment to this document dated 17th June 1999. KFBG and HOFA and others submitted objections to the Study. Copies are attached herewith. All the comments set out in those submissions remain acutely relevant to the current poorly thought out Review.
51. As seen from the above, **the Review fails to comply with the 10 Foundation Stones or Principles for Protecting our Environment** as contained in A Green Challenge Chapter 4 and summarized under the following headings:
- a. Stewardship;
 - b. Sustainable development;
 - c. Community Responsibility;
 - d. Public Information;
 - e. Realistic Approach;
 - f. Precautionary Approach;
 - g. Regulation;
 - h. Polluter Pays Principle;
 - i. International cooperation;
 - j. Private Sector Involvement.

Proposals for Integrated Strategic Planning and Implementing Conservation Policy Mechanisms - Restoring the Balance in the Countryside

52. **Conservation Promises are more likely to be kept if Sustainable Development is actually practised with Conservation integrated into the strategic planning.** We welcome the statements now contained in Planning Department's letter of 11th October 2002 that "planning in Hong Kong aims to achieve a sustainable development which integrates all the social, economic and environmental needs in a sensible manner"; and that Planning Department recognizes the need for conservation and will not jeopardize the environment to accommodate development needs, see page 2. To do this in a sensible manner, properly and in a sincere way, strategic conservation planning is essential as stated previously.
53. We note the statements now made in the letter at page 3 that **"For clarification purpose, the Study recommends to rezone these 'non-agricultural' land to other appropriate uses, which could be conservation or development-related. There is no prejudice against conservation zonings."** The full version of the Study has not been made available but the Summary of Findings was most certainly prejudiced towards development and made no mention of any systematic policy to restore the balance by re-zoning in favour of conservation. We note Planning Department's important statement of policy that "areas that are worthy of conservation for their landscape or ecological values will not be re-zoned for development purposes. As such, the potential loss of rural landscape would be minimal." It is thus essential for such promises to be capable of actual implementation. **By strategic planning with a pro-active rezoning policy for conservation, sufficient protection can be achieved early to avoid confrontation and delays.** We note the further statement that "In case areas of high conservation value are discovered, they would be proposed for conservation purpose as appropriate." This would be more likely to be implemented if this is done in advance of development proposals rather than what is left after a development led application. It would be far better for developers and government to know in advance what areas are not capable of being 'solution space' or for speculative property investments and this can be done by re-zoning and proper enforcement. A policy needs to be composed and used, in conformity with the Planning Department's TDS Review Foundation Report of July 1993 which actually recognizes conservation as a strategic planning need so that systematically the true value of the Northern New Territories can be conserved instead of degraded piece meal as happens now.
54. **There is a need for clearly articulated incentive based mechanisms to conserve** the truly rural aspects of the countryside such as good quality agricultural land and bio-diversity habitats and provide for systematic conservation of other areas within a Conservation Policy in Hong Kong. The Planning Department is aware of the extensive consultation and debate since 1981 by the Conservancy Association who attended the Earth Summit on our behalf, and then deriving from the Earth Summit in 1992, see Friends of the Earth "A New Policy for Conservation and the Countryside in Hong Kong," April 1993, followed by Mary Felley's, A Biodiversity Conservation Policy and Legal Framework for Hong Kong, 1996, and then again revived by the Conservancy Association "Achieving Conservation -A Positive Conservation Policy for Hong Kong, August 2000, and Heading Towards Sustainability? A

report by the Centre of Urban Planning and Environmental Management 1999 which was extremely critical of planning in Hong Kong. All this culminated in the substantial publication "Conservation in Hong Kong" by Civic Exchange in July 2002 after much consultation such as the Workshop in March 2002. Much guidance has been provided by many able stakeholders but which now requires practical application by able and imaginative administrators in an inter-departmental co-ordinated way.

55. **Planning and zoning was considered as integral to a framework on which the various mechanisms for conservation could be attached.** This highlighted the different Conservation Policy Mechanisms or Conservation Tools, see Conservation in Hong Kong by Civic Exchange, page 23 onwards, such as which have been successfully used in other jurisdictions and which are being actively considered in Hong Kong see page 87-90, and summary pages 153-155. These tools included land exchange whereby a developer exchanged land with conservation potential for land for development, and mitigation banking whereby a developer was able to purchase credits which will fund acquisition of worthwhile areas, trading in development rights and mitigation charges. Each of these or a blend of them, as suggested herein, can be relevant to some developers and conservation proposals on a case by case basis. See also Nicholas Brooke, Creative approach key to conservation, SCMP, 17th May 2000 referred to above and Conservancy Association's Achieving Conservation at page 10.
56. To fail to use the opportunities available and various mechanisms such as land exchange or mitigation banking which have been under debate at this stage, so as to achieve an integrated land use policy with a planning gain in terms of conservation value land would be a major administrative failing. In these circumstances this Review must be deferred until the Conservation Policy is fully considered and revealed so that strategic planning is devised to service conservation, and not conservation being prejudiced by poor planning or as an after thought.
57. **Community Gain, not just polluter profit.** In essence, if the Planning Department is seeking to remove or alter the limited zoning protections accorded to the natural environment contained in Agricultural Land, such changes must not be piece meal and designed to benefit one sector, the land development interests only. If Government makes policy to intervene and assist the landowners of Agricultural Land by up-zoning, Government should balance such intervention to assist the general welfare of the community by ensuring a system of compensation to the public in return for such. The changes must be genuine reform with cross sectoral and general community benefit to comply with the Town Planning Ordinance. The intention is to provide financial incentives for conservation hand in hand with and systematically funded by environmentally friendly development but with little or no direct financial outlay from the Government. **The relevant principles and considerations would include:-**
- a. Setting a principle whereby the current truly Natural or Rural Landscape is conserved or enhanced as a whole so that any losses to development are mitigated or compensated on site or preferably off site

so that the community obtains overall gains at a site which is well suited for such gains in terms natural beauty, valuable ecology and amenity value, see Conservation Principles in Hong Kong Planning Department' s Standards and Guidelines;

- b. Setting a principle whereby up-zoning will not be a free windfall to the landowner developer or not just a financial short term gain to Government, but directly linked to the systematic provision of sustainable long term compensation to the public by means of the transfer or surrender of acceptable land to the public which land possesses enough of the attributes of beauty, ecology, heritage and amenity;
- c. Setting up a system which is flexible enough to promote and protect areas of conservation and agricultural value;
- d. Ensuring we do not encourage or facilitate trashing or deliberate degradation of land so as to achieve the degraded land which development requires and this Review promotes;
- e. Instead set up systems which facilitate and encourage restoration and improvement of Agricultural land so as it can be used as agricultural land or if not so used, to be used for conservation purposes, wildlife habitats, wildlife corridors, and as buffer zones to areas of conservation value;
- f. If the land is not used properly within the terms of the lease or zoning or is otherwise being neglected, degraded or abused, mechanisms should be put in place for reporting, protection, resumption or proper enforcement;
- g. Encouraging organic agriculture or similar compatible activities which will assist in the restoration and improvement of agricultural land;
- h. Allow for the fact that some trashed agriculture land, if not subject to further illegal impacts and unauthorised activities and if subject to enforcement, regulations and prevention of pollution, can be actively managed to enhance its ability to support wildlife and plant species;
- i. Allow for the fact and encourage a situation whereby abandoned agricultural land which will become or is in transition to becoming or has become a useful natural habitat or natural resource, is recognized as such and protected so as to form buffer zones, conservation areas or eventually parts of country parks;
- j. Identify inactive farmland in land banks which can be managed to improve its attraction to wildlife, and give credit to landowners or developers who surrender such land- and further credit to those who provide funding to manage the land for wildlife;

- k. Provide a fund which will enable environmental NGO's to rent Agricultural land and manage it pro-actively for appropriate wildlife or similar purposes.
58. In these circumstances, systems should be developed whereby those seeking the conversion of agricultural land into development land are **encouraged to protect and conserve their agricultural land in good condition** rather than causing or permitting it to be trashed or degraded. One must not continue to reward those who degrade and pollute. The current ethos and the policy in Government is that the polluter pays, not that the polluter gets given additional profits and privileges.
59. **Up-zoning Conversion balanced by compensation for the countryside; By a system whereby compensation to the Community is made by ex-situ transfer or surrender of acceptable land in exchange for granting development rights to land owners under appropriate criteria.** In these circumstances a system should be set up whereby those seeking conversion of Agricultural land to development land would only be permitted to do so:-
- a. upon strict criteria and conditions being fulfilled;
 - b. together with a system whereby such developers must compensate for their gain in development rights, planning density increase and economic value gained for their land they propose for development, by means of their transfer or surrender to Government (or a suitable Conservation Trust,) of appropriate areas of lands of significant undamaged agricultural or conservation value. This transferred or surrendered land can be adjacent land if appropriate or ex-situ in appropriate locations. This good land is the mitigation or compensation landbank which piece by piece becomes public owned in perpetuity.
 - c. To encourage sustainable and responsible custody of Agricultural land pending such transfer, the concept would be that the higher the agricultural or conservation or heritage value of the land being exchanged and surrendered as compensation, ie its conservation credit value, the higher the number of development credits or points achievable by the transferor for his development proposal land, see Mary Felley 1996 at page 34 and generally Conservation in Hong Kong by Civic Exchange.
 - d. The ratio of points for transfer would depend on the economic value to be gained by the land proposed to be developed, versus the ecological or scenic or natural values or conservation credits value of that being transferred or surrendered as compensation and thus gained by the public.
 - e. A technical memorandum could be drafted which experts could use to assess the credits and appropriate ratio, this could draw upon the EIA Technical Memorandum for example.

- f. In this way there would be some regular system for mitigation or compensation to the public for the continuous loss of agricultural land which is offset by the public gain and benefit in having agricultural, conservation or habitat value land.
 - g. In this way land could be made available for rent to genuine farmers, or become potential Conservation Areas or actively managed by NGO' s see TDS Review Foundation Report July 1993 page 53 or a Conservation Trust see Achieving Conservation at page 11, or if AFCD desires may become potential Country Park extension consistent with Planning Department' s Conservation Principles in Chapter 10.
 - h. Developers would gain by having a proper system for securing land which has recognizable legal title and value for development and banking purposes, not mere speculative or hope value, and the Community would gain by having their countryside conserved for posterity.
 - i. Government' s role is that of a facilitator of conservation and environment led development, with little direct financial outlay, but thereby facilitating maximum public gain and welfare through responsible control of the land.
60. Land banks for Conservation. It is well known that such land development rights transfer or exchanges are also valuable material and mechanisms for environmental off site mitigation as a result of damaging developments. Again the conservation of agricultural land would be facilitated by the establishment of such mechanisms whereby developers would purchase or facilitate the transfer of valuable unspoiled land to the public as the price for damaging impacts at the sites of their developments. This theory underpins the current practices of developers in the Deep Bay Area (for example at Nam Sang Wai/Lut Chau. It is thus extremely important to preserve what little good agricultural or habitat land there is left as the bargaining counters to make such exchanges feasible. This can be achieved by ensuring that it does have a value when left in its current status rather than only having a property value if it is deliberately abused and degraded.
61. Some of the criteria and conditions for whether Agricultural Land can be converted to Other Uses or Urban Fringe or Industrial etc would include the following:-
- a. The position and context of the land. For example conversion to development can never be permitted for Agricultural Land near existing working farm environments, streams, woodlands, wet lands, buffer areas, Green Belt, Conservation Areas, SSSI, important habitats, grasslands and areas of beauty or near Country Parks such as the excluded areas surrounded by Country Parks eg Sha Lo Tung type locations;

- b. Conversions can never be considered where there is visual impact such as near areas of beauty, along scenic routes where tourists and visitors will be likely, where views and amenities will be disrupted, near areas of recreation, walking trails and not near existing working farms;
 - c. Conversion should not be permitted where the land has been deliberately degraded or neglected, poisoned, polluted or the subject of unauthorised dumping, conveniently called “trashing” as this will simply reward those who operate to the detriment of the public interest. It is now becoming increasingly common to see trees being killed and land and watercourses being bulldozed or polluted prior to or at the same time as a development application;
 - d. Those who are in possession of degraded land should only be permitted to convert upon the provision of a suitable compensation premium calculated as indicated above by reference to a surrender of significant parcels of agricultural land in good condition or agricultural land suitable for conservation, habitat or higher purposes;
 - e. Conversions should not normally be considered in areas which are accessed by roads and infrastructure financed by the Rural Improvement Programs so as to discourage developers getting District Board’ s approvals to build roads into good areas and then trashing the land nearby in the speculative hope of achieving a conversion of degraded land to housing land.
62. In these circumstances conversion to Urban Fringe or Industrial should be strictly confined to areas where the surrounding context has been rendered so urban, so industrial, so polluted by neglect or inaction or industry that as a matter of practical necessity the only purpose the land can be actually used for is development for industrial or housing use. In these circumstances this conversion policy should only be used where developers or planners can prove that as a matter of practical necessity conversion is the only option that is realistically left open for the degraded Agricultural land. This is also because urban fringe growth or sprawling along roads is not a policy to be encouraged but only tolerated where no alternative exists. This is in conformity with TDS Review Foundation Report paragraph 6.65(e) which states “Development pressures should be channelled to Urban Transition Areas and a few selected Rural Activity/Development Areas where quasi-urban uses have proliferated (e.g. open storage, upgrading areas, warehousing, low-density housing, recreation and G/IC uses).”
63. **Incentives to encourage responsible and appropriate use.** In tandem with these proposals a policy and criteria to encourage organic farming and proper use of Agricultural Land should be implemented. This could include the following:
- a. If agricultural land is used for organic farming, resulting lower pollution burdens, cleaner streams and healthier produce, and an increase in biodiversity, a system of suitable incentives can be devised, to benefit both the farmer and the land owner;

- b. Such incentives can be the permission for such farming to be carried out closer or nearer to areas of conservation value than would otherwise be the case;
 - c. Subsidies to encourage responsible use of the land would benefit the public at large, in terms of health, amenity, tourism recreation and the spiritual values of organic farming which have been demonstrated in various symposia;
 - d. If developers lease land for genuine organic farming, then this would result in credits which could be cashed or used towards obtaining the necessary points for seeking conversion of suitable agricultural land to other uses.
64. In conclusion the Review should be rejected and be the subject of extensive consultation and integration with the Conservation Policy being formulated and the Agricultural Policy of Hong Kong. At present, this Review is poorly thought out, administratively poor practise and defective for several reasons, does not yield equitable community gain but favours a narrow sector of developers with huge land banks, is not coordinated with existing Government Policies, and is likely to cause loss to the public interest.

65. **We propose the following course of actions:**

- a. Defer or halt the implementation of the Review and withdraw the Tai Tong case;
- b. Take advantage of the opportunities presented by the current situation to Consult other Departments and NGO' s and work towards an integrated conservation policy so as to achieve the property development objectives sought by the Review with more appropriate terminology, while at the same time implementing through balanced strategic planning the objectives of nature conservation;
- c. Implement strategic planning for the countryside which specifically considers and evaluates the environment and conservation and the cumulative impacts, gains and losses, as a matter of priority so as to restore and then maintain an equitable balance which is expressly provided for in the TDS and Sustainable Development.
- d. Draft administrative arrangements between the relevant departments for the providing of zoning and development incentives to landowners in return for developers transferring to the public or Government or a Conservation Trust such other areas of acceptable Agricultural or Conservation Area or other acceptable status for the purposes of agriculture, cultural preservation or nature conservation or scenic beauty for the enjoyment and benefit of the public.
- e. The undersigned (in alphabetical order) would be happy to take part in bringing these matters forward as a matter of urgency and look forward to a constructive response.

Catholic Messengers of Green Consciousness

Conservancy Association

Friends of the Earth (Hong Kong)

Green Lantau Association

Green Power

Hong Kong Bird Watching Society

Hong Kong Organic Farming Association

Kadoorie Farm and Botanic Garden

Produce Green Foundation

Wildlife Conservation Foundation

World Wide Fund For Nature Hong Kong

14th November 2002

Enclosures