

# Public Policy Research Funding Scheme

## 公共政策研究資助計劃

Project Number :

項目編號 :

2016.A6.071.16C

Project Title :

項目名稱 :

An Empirical Study of the Town Planning Board's Planning Control Decisions on Residential Development Applicants since Hong Kong's Handover to China

香港回歸後城市規劃委員會對房屋規劃申請決定研究

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Project Duration (Month):

推行期 (月) :

15

Funding (HK\$) :

總金額 (HK\$) :

369,909.00

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**Policy Innovation and Co-ordination Office  
Public Policy Research Funding Scheme**

**Title (in English): An empirical study of the  
Town Planning Board's planning control  
decisions on residential development applicants  
since Hong Kong's handover to China**

**Title (in Chinese): 香港回歸後城市規劃委員會  
對房屋規劃申請決定研究**

**(Project Number: 2016.A6.071.16C)**

**Final Report**

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# Table of Contents

<b>Executive Summary (in English)</b> .....	1
<b>Executive Summary (in Chinese)</b> .....	9
<b>Acknowledgement</b> .....	13
<b>Research Team Members</b> .....	14
<b>Chapter 1: Introduction</b> .....	15
1.1 Background .....	17
1.1.1 <i>Hong Kong's Planning Control System</i> .....	17
1.1.2 <i>The Small House Policy</i> .....	20
1.2 Description of the Statutory Land-use Zones .....	23
1.2.1 <i>Zones in which residential use is designated as a Column 1 use</i> .....	23
1.2.2 <i>Zones in which residential use is designated as a Column 2 use</i> .....	26
<b>Chapter 2: Literature Review</b> .....	39
2.1 Government Controls in Land Development .....	39
2.2 Research Areas in Planning Control Decisions .....	40
2.3 Evolvement of Research Methods .....	41
2.4 Controversies surrounding the Small House Policy .....	44
2.4.1 <i>Inequality Against Women and Non-villagers</i> .....	44
2.4.2 <i>Land-use Implications</i> .....	45
2.4.3 <i>Property rights issues</i> .....	46
<b>Chapter 3: Research Methodology &amp; Data</b> .....	48
3.1 The Model .....	48
3.2 The Selected Variables for the Study of the Town Planning Board's Planning Control Decisions .....	49
3.2.1 <i>Development of Residential Flats and/or Ordinary Houses</i> .....	49
3.2.2 <i>Construction of Small Houses</i> .....	56
3.3 Data .....	62
<b>Chapter 4: Findings on the TPB's Planning Control decisions on Applications for Residential Development</b> .....	64
4.1 Descriptive Statistics .....	64
4.2 Probit Model Results .....	69
4.2.1 <i>Site-Specific Variables</i> .....	71
4.2.2 <i>Application-Specific Variables</i> .....	73
4.2.3 <i>Zoning-Specific Variables</i> .....	73
4.2.4 <i>Locational-Specific Variables</i> .....	74
4.2.5 <i>Exogenous Variables</i> .....	74

<b>Chapter 5: Findings on the TPB’s Planning Control Decisions on Applications for “Small House” Constructions</b> .....	76
5.1 Descriptive Statistics.....	76
5.2 Probit Model Results.....	78
5.2.1 <i>Site-Specific Variables</i> .....	78
5.2.2 <i>Location-Specific Variables</i> .....	80
5.2.3 <i>Exogenous Variables</i> .....	81
<b>Chapter 6: Policy Implications and Recommendations</b> .....	82
6.1 Regarding the Lengthy Development Process in Comprehensive Development Area (CDA) zone .....	82
6.2 Regarding the Preservation of Greenbelt Areas.....	83
6.3 Regarding the Implementation of the Small House Policy.....	84
6.4 Regarding the Rejection of Planning Applications in General .....	86
<b>Chapter 7: Public Dissemination of Research Findings</b> .....	87
<b>Chapter 8: Conclusion</b> .....	91
8.1 Applications for Residential Development .....	91
8.2 Applications for Small House Constructions.....	92
8.3 Policy Implications & Recommendations .....	92
<b>References</b> .....	95

# **Executive Summary (in English)**

## **1. Abstract**

This study analyses the planning control decisions, made by the Town Planning Board (TPB) under Section 16 of the Town Planning Ordinance, on applications for residential development, including residential flats and ordinary houses, and for small house constructions, in different statutory land use zones, between January 1990 and June 2017. In so doing, the following **research objectives** have all been fulfilled:

- 1) To examine the Town Planning Board's (TPB) planning control decisions on applications for residential development (including the development of flats and/or ordinary houses, and the construction of New Territories Exempted Houses), since Hong Kong's handover to China;
- 2) To compare the TPB's planning control decisions on residential development (and small house construction) between different land-use zones, with reference to i) the current government's objective to provide more housing units; ii) existing policies concerning the preservation of greenbelt areas and agricultural land; iii) the Small House Policy; iv) the interests of large property developers; and v) business market conditions; and
- 3) To proffer policy recommendations with respect to the current government's housing policy, existing land-use policies, and the Small House policy

Non-aggregate planning statistics, collected online from the Town Planning Board's Statutory Planning Portal, were deployed for analysis. Using discrete choice models (i.e. probit models), a total of 4,600 applications decided by the TPB were included to investigate how a variety of factors explain the probability for a planning application to be approved by the TPB. Of the 4,600 applications, 1,220 are applications for residential development in nine statutory land-use zones (including Residential [Group A], Residential [Group B], Residential [Group C], Residential [Group D], Residential [Group E], Village Type Area [V], Government, Institution and Community [GIC], Comprehensive Development Area [CDA], and Greenbelt [GB] zones) and the remaining 3,380 are applications for small house constructions in Greenbelt zone and Agriculture zone.

## **Key Findings of the Research**

Although numerous statutory land-use zones are studied in this research, the findings reported in this Executive Summary, focus on three particularly areas, namely the Town Planning

Board's planning control decisions on 1) applications for residential development in CDA zone (due to its much lengthier development process), 2) applications for residential development in GB zone (due to concerns towards the preservation of greenbelt areas), and 3) applications for small house constructions (owing to issues revolving around the implementation of the Small House Policy)<sup>1</sup>, because these areas are much more policy-related and have been receiving more attentions from the general public.

### ***The TPB's Decisions on Applications for Residential Development in CDA zone***

This study first found that, during the C.Y. Leung administration (July 1<sup>st</sup>, 2012-June 30<sup>th</sup>, 2017) after Hong Kong's handover to China, applications for residential development in CDA zone had the highest probability to be approved by the Town Planning Board. This suggests that the land-use policy towards this particular statutory land use zone had more pro-development since C.Y. Leung became Chief Executive of the Hong Kong Special Administrative Region (HKSAR). This was in line with Leung's declared intention to place the provision of housing for Hong Kong residents as a policy priority.

Then, in this zone, the TPB was more likely to approve a housing development application which proposed a higher development potential (i.e. Gross Floor Area [GFA]) than a similar application that proposed a lower GFA. This finding appears to support the notion that larger residential development projects (whether initiated by individual large developers or a joint venture of developers) had been viewed as a more preferable type of development, due to either being in a better financial position to obtain better professional consultancy services in preparation of applications or the TPB's emphasis on non-individual, non-piecemeal development projects in areas designated as CDA.

Additionally, the approval rate for proposed residential development projects on CDA sites was subject to exogenous influences as well, in that it was found to be positively correlated with Hong Kong's office vacancy rate. This finding reveals that the land-use policy regarding land within CDA zone appears to be more flexible than what the Planning Brief(s) for these sites might indicate, as market conditions relating to an alternative land-use had significant impacts on how land sites within CDA zone should be utilized from a planning perspective.

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<sup>1</sup> The findings for the other land-use zones are presented in Chapters 4 & 5 of this report.

### ***The TPB's Decisions on Applications for Residential Development in GB zone***

As for Hong Kong's greenbelt zone, the approval rate for proposed residential development projects was higher after Hong Kong's handover to China, in comparison to that prior to the handover. As there is a "general presumption against development" for GB zone, this finding indicates that Hong Kong's policy direction towards greenbelt areas had been more flexible in response to the need for housing development.

### ***The TPB's Decisions on Applications for Small House Construction***

Regarding the planning control decisions made by the TPB on small house constructions (at least partly) outside the V/VE zone, the study first found that the probability for proposed small house constructions in both GB and AGR zones to be approved when Hong Kong was still a British colony was the highest. By contrast, during the C.Y. Leung administration after the handover, applications for the construction of small houses, under Section 16 of the Town Planning Ordinance, had higher rejection rate than other administrations before and after the handover. Combined with the higher probability for proposed non-small house residential development in V zone to be rejected during the same period, the findings reveal the conscious effort by the HKSAR governments, especially the C.Y. Leung Administration, to implement the Small House Policy more stringently by confining the development of small houses within the V/VE zone, during the period in which the provision of housing to Hong Kong residents was prioritized.

Secondly, a small house application which proposed a larger site area per small house was more likely to be rejected. In other words, although many of these applications only involved private land, the TPB had very specific views towards how land outside the V/VE zone should have been utilized when it came to the construction of small house(s), in that, from a planning perspective, small house(s) were to occupy as less land space as possible.

Thirdly, a proposed large-scale small house development (i.e. 6 houses or more in an application) was more likely to be rejected than either a proposed smaller-scale small house development (i.e. 2-5 houses) or a proposed singular small house. This finding provides some empirical evidence in support of the TPB's stance against large-scale small house developments (but not necessarily smaller-scale small house developments).

Fourthly, an application which proposed small house(s) to be built entirely on government land (by landless indigenous villagers) was more likely to be rejected by the TPB than a similar application involving both private land and government land (by land-owning indigenous villagers). Even though, from a planning standpoint, the government has a higher degree of control as to how government land outside the V/VE zone should be utilized and where small houses should be constructed, given that a premium payable to the government is applicable to both cases, this finding inevitably reveals the different treatments towards different indigenous villagers within the Small House Policy.

Lastly, the likelihood for small house applications to be approved varied geographically. It was identified that the approval rate was the highest in the North district and the lowest in Yuen Long district. The higher rejection rate in Yuen Long District, as raised during the Public Policy Research Dissemination Forum by the panel of experts (see Chapter 7), was attributed to the discovery that a larger proportion of land in that district had already been utilized for open storage purposes. As a larger portion of land had already been utilized, there was a more urgent need, in comparison with other districts, to preserve the remaining greenbelt areas and/or agricultural land from further development.

## **2. Layman Summary on Policy Implication and Recommendations**

These key findings, as reported in the previous section, lead to a number of policy implications relating to 1) the lengthy development process in CDA zone; 2) the preservation of greenbelt areas; and 3) the implementation of the Small House Policy. These implications, along with their corresponding policy recommendations for the HKSAR government's consideration, are to be discussed in the following sections.

### ***Regarding the Lengthy Development Process in Comprehensive Development Area (CDA) zone***

It was found in this study that a proposed residential development either on a larger site or with a larger GFA had a higher probability to be approved by the Town Planning Board. In other words, this finding is in line with the TPB's stance towards preventing piecemeal development or redevelopment within CDA zone. This specific demand by the TPB exclusive for the development of CDA sites is attributed to the "infeasibility of individual, piecemeal development" in old urban and/or industrial areas to meet the authorities planning-related concerns. Yet, unlike development in other land-use zones, development projects in CDA zone

begin as developers acquire (and assemble) land parcels from existing landowners. As such, the TPB's insistence on large-scale, non-piecemeal development in a land-use zone known for its notoriously fragmented land ownership structure, inevitably requires developers to negotiate with a larger number of land title-holders. Not only does this result in a lengthier site assembly (hence development) process, but also in the phenomenon of developers using fresh applications as a means of keeping the permissions alive in an attempt to buy additional time for assembling land.

In view of this policy implication, the research team proposes a number of policy recommendations that follow, with the explicit aim to shorten the delays in housing development as a result of fragmented land ownership in this particular statutory land use zone. Firstly, the research team agrees with the recommendation provided by the Hong Kong Institute of Surveyors (HKIS) that, the government should sub-divide large CDA sites into smaller land lots, if feasible. If not, the government might otherwise consider designating specific land-use for specific lots within these sites. Secondly, in order to streamline the land assembly process due to developers not being able to obtain sufficient undivided shares for individual lots, the Compulsory Sale Threshold under the Land (Compulsory Sale for Redevelopment) Ordinance should be lowered from "not less than 90%" to "not less than 80%" for CDA sites in general. Additionally, the existing legislations under the Land (Compulsory Sale for Redevelopment) Ordinance should be modified to allow for the computation of one's holding of undivided shares on an aggregate-of-lot basis, rather than on a single-lot basis. Lastly, missing/untraceable owner(s) should be excluded from the computation of one's holding of undivided shares.

### ***Regarding the Preservation of Greenbelt Areas***

This study found that, since Hong Kong's handover to China, residential development applications in GB zone had a higher probability to be approved by the Town Planning Board, despite the "general presumption against development" in this particular land-use zone. This inevitably leads to a larger population (and more vehicles) in these areas. In order to cater to the needs of more residents, further development in GB zone, be it commercial, residential, or GIC-related, thus becomes necessary, which fundamentally deviates from the zone's original planning intention.

In light of this policy implication, the research team proposes some policy recommendations with the objective to uphold the original intention of the GB zone, that is, the preservation of existing natural environment and containing encroachment by urban type development as much as possible. Firstly, the government should either limit residential development of Greenbelt sites only to public housing projects or permit housing development only on sites within GB zone that have been disturbed and cannot be recovered to serve as proper greenbelts (should an Environmental Impact Assessment deem such development on these sites suitable). This, the research team believes, helps maintain the government's degree of control regarding the degree of urban encroachment in these areas and meet the housing needs of society while providing the residents with access to scenery. Further, the government should explore other sources of non-Greenbelt vacant land for housing development. For example, currently-undeveloped sites within land-use zones in which residential development is originally not permissible (for instance, brownfield sites in the New Territories) should be re-zoned to allow for residential development.

#### ***Regarding the Implementation of the Small House Policy***

It was found in this study that applications for the construction of small houses, under Section 16 of the Town Planning Ordinance, were much less likely to be approved by the TPB since Hong Kong's handover to China, particularly during the C.Y. Leung administration. This finding points to changes in the government's view, since the handover, as to how the Small House Policy should be implemented, within the context of the preservation of greenbelt areas and agricultural land. Nevertheless, despite the more stringent stance towards small house construction outside V/VE zone by the various HKSAR government, the amount of small house applications is subject not only to the number of eligible indigenous villagers under the Policy, but also to housing prices at the time. As both the number of eligible indigenous villagers and housing prices have been consistently growing in recent years, either the existing V/VE zone has to further expand or small house constructions outside the V/VE zone have to be permitted, in order to cater to the growing needs for small house constructions, without compromising the rights of indigenous villagers as protected by the Basic Law.

Also, indigenous villagers had been treated differently under the Small House Policy. This study found that the TPB was more likely to approve, from a planning perspective, an application for small house construction by indigenous villagers who owned land while encroaching on government land, than another application for small house construction entirely

on government land (in many cases as small as the minimum site area stipulated for a small house [65.03m<sup>2</sup>]) by landless indigenous villagers, even though a premium payable to the government is required in both scenarios. In other words, due to planning-related concerns towards how government land should be utilized, landless indigenous villagers are not as likely to exercise their rights under the Small House Policy.

With reference to these two policy implications, the research team proposes three recommendations to the government with the intention to contain the expansion of small house development towards areas outside V/VE zone. The government should introduce stricter conditions on the resale of small house(s), for instance:

- The existing alienation restriction period for all newly-built small houses should not be removable via the payment of premium
- Similar to the resale of flats under the Home Ownership Scheme, a full market value premium should be payable to the government for all small house transactions after the alienation restriction period expires (unless they are sold to fellow indigenous villagers)
- The “no restriction” clause for the resale of a small house granted via a Building Licence/Land Exchange, 5 years after it is built, should be removed.

Secondly, the government might also consider implementing the Small House Policy in a more stringent manner, in that the construction of small house(s) should be strictly confined within the V/VE zone. This allows for a higher degree of government control on the use of land in the surrounding areas outside the V/VE zone, without sacrificing these villagers’ rights as guaranteed by the Basic Law.

### ***Regarding the Rejection of Planning Applications***

In addition to the above policy implications (and recommendations), one critical point brought up by the panel of experts, during the Public Policy Research Dissemination Forum, is that a key reason behind the rejection of some applications by the TPB, which is not revealed through the statistical analysis of planning data, is their lack of overall quality, either due to 1) planning guidelines (particularly the requirements by different government departments) not being properly observed (or not being known) by the applicant(s) or 2) insufficient supporting documents being submitted along with the application(s). Based upon these observations, the research team, thus, recommends that applicants should observe the planning guidelines more carefully and thoroughly before submission of planning applications for the TPB’s approval.

In addition, they should acquire the services of professional consulting firms for the preparation of planning applications (and of the necessary supporting documents).

## Executive Summary (in Chinese)

### 一) 研究摘要

本研究旨在分析城市規劃委員會(城規會)由一九九零年至今，根據城市規劃條例第十六條，對在不同地帶上的房屋發展規劃申請作出的決定，並履行以下研究目的：

- 1) 調查香港在回歸後對房屋發展規劃申請作出的決定（包括樓宇單位、屋宇及新界小型屋宇[丁屋]）
- 2) 比較城規會對在不同條件下對在用途土地上的房屋發展規劃申請作出的決定（例如：政府房屋政策、現有保護綠化地帶及農地的政策、新界小型屋宇政策、發展商利益及市場狀況等）
- 3) 對有關政府房屋政策、現有土地用途政策及新界小型屋宇政策作出建議

本研究團隊利用城規會提供的規劃申請資料，對合共 4,600 宗申請（包括 1,220 宗有關樓宇單位或屋宇發展申請及 3,380 宗有關新界小型屋宇申請），以離散選擇模型進行統計分析。

### 主要研究結果

雖然此研究分析多個法定地帶，不過此部分會著眼於三個公眾較為關心的面向：一）在綜合發展區的樓宇單位或屋宇發展申請；二）在綠化地帶的樓宇單位或屋宇發展申請；及三）在綠化地帶和農業地帶的新界小型屋宇申請。

#### **城規會對於在綜合發展區的樓宇單位或屋宇發展申請作出的決定**

首先，樓宇單位或屋宇發展申請在回歸後梁振英政府時期獲批准的機率最高，反映了有關綜合發展區的土地政策，於梁振英宣布以建屋為首的政策後，較之前更支持房屋發展。然後，小型房屋發展，相對大型房屋發展，較難獲城規會批准。不論這是由於大發展商有足夠財力僱用專業人士處理有關申請，或是由於城規會不鼓勵在綜合發展區進行小型發展，此結果反映了大型房屋發展在綜合發展區有一定優勢。再者，香港私人寫字樓市場空置率與房屋發展申請獲批准的機率有正面關係。此結果顯示有關綜合發展區的土地該如何使用受其他用途的需求狀況所影響。

### **城規會對於在綠化地帶的樓宇單位或屋宇發展申請作出的決定**

房屋發展申請在香港回歸後較容易獲城規會批准。這表明香港於回歸後有關綠化地帶的政策傾向支持房屋發展的需要。

### **城規會對於在綠化地帶和農業地帶的新界小型屋宇申請作出的決定**

這研究首先發現，在綠化地帶和農業地帶，丁屋發展申請在香港回歸前較容易獲城規會批准。不過，在梁振英政府時期，丁屋發展申請獲批准的機率最低。這說明，在以建屋為首的前提下，特區政府更嚴格執行新界小型屋宇政策，丁屋發展被局限於鄉村式發展土地範圍內。第二，一個佔用較大平均土地範圍的丁屋發展申請較難獲城規會批准。換言之，雖然很多丁屋發展申請只牽涉私人土地，但是城規會對鄉村式發展範圍外的土地該如何使用有明確的見解。在規劃層面上，丁屋發展佔地越少越好。第三，一個大型丁屋發展申請（六間丁屋或以上），相對小型丁屋發展申請，較難獲批准。此說明城規會通常反對大型丁屋發展，但不一定反對較小型的丁屋發展。第四，一個完全在政府土地上建築丁屋的申請，相對一個在政府及私人土地上建築丁屋的申請，較難獲城規會批准。雖然政府對如何使用政府土地及丁屋發展的地點有較大控制權，這研究結果反映了不同原居民在新界小型屋宇政策下的不同待遇。最後，丁屋發展申請於不同地區獲批准的機率有差異。北區獲批准的機率最高，而元朗區獲批准的機率最低。元朗區較低的批准機率是由於當地有大範圍的土地已用作露天貯物場的用途，因此有較急切的需要保護當地餘下的綠化地帶及農地。

## **二) 政策影響概述及相關政策建議**

上述研究結果對現行政策有所影響。研究團隊於這部分闡述這些政策影響，並提出一些政策建議供特區政府參考。

### **有關綜合發展區內冗長的房屋發展程序**

這研究發現大型房屋發展較易獲城規會批准。換言之，這與城規會不鼓勵在此區內作小型房屋發展的取態一致。城規會有此取態是由於在綜合發展區，小型房屋發展，由於未能符合不同規劃要求，有時候並不可行。不過，有別於其地法定用途土地，發展商首先需要向其他土地業權人購買業權，以作匯集土地之用。在這前提下，城規會堅

持大型發展的取態，難免令發展商需要更長時間與大量土地業權人商討業權轉讓事宜。這亦形成發展商提交新發展申請以換取更多時間與土地業權人商討的現象。

根據上述政策影響，研究團隊現向政府提出以下政策建議，以縮短因商討業權轉讓而造成的延誤。第一，我們贊同香港測量師學會的建議，政府應分割綜合發展區內土地。如此舉不可行，政府可考慮為綜合發展區內不同土地訂立特定土地用途。第二，現有《土地（為重新發展而強制售賣）條例》中有關不少於百分之九十的不分割份數的規定應降低至不少於百分之八十，以加快匯集土地所需的時間。第三，政府應容許業權份數的計算以整個綜合發展計劃所佔土地為基準。第四，在計算業權份數時，行蹤不明的土地業權人應被排除。

### ***有關保護綠化地帶土地***

這研究發現，回歸後在綠化地帶土地上的房屋發展申請較容易獲城規會批准。這引致該地帶人口及車輛更密集。無可避免，該地帶需要繼續發展，以滿足居民所需。這與綠化地帶本身的規劃目的背道而弛。

根據上述政策影響，研究團隊現向政府提出以下政策建議，以維護綠化地帶原來的規劃目的。第一，政府應限制綠化地帶土地只用作公營房屋發展或只容許在已被使用及不能被回復為綠化地帶的土地上作房屋發展（如果相關環境影響評估確認該地點適宜房屋發展）。此舉不但令政府對綠化地帶土地的使用有更大控制權並滿足市民住屋需要，而且能令市民享有接近大自然的機會。另外，政府應改變其他非綠化地帶土地（例如棕地）的用途，以允許房屋發展。

### ***有關新界小型屋宇政策的執行及其他土地用途***

這研究發現，雖然很多丁屋發展申請只牽涉私人土地及新界原居民權益受《基本法》所保障，但是丁屋發展申請獲批准的概率在回歸後梁振英政府時期是最低。這結果反映特區政府對新界小型屋宇政策在保護綠化地帶及農地的前提下該如何執行有轉變。然而，儘管特區政府對鄉村式發展土地範圍外興建的丁屋有更嚴格的規定，丁屋申請數量取決於合資格原居民數目及當時樓價。無可避免，現有鄉村式發展土地範圍需要擴張或城規會需批准丁屋在鄉村式發展區範圍外興建，以滿足丁屋發展的需要而不犧

牲原居民受基本法保障的權益。此外，原居民在新界小型屋宇政策下的待遇不同。不過，儘管一宗包含私人及政府土地的丁屋申請及一宗只包含政府土地的丁屋申請同時需要向政府補地價，前者較容易獲城規會批准。換言之，沒有私人土地的原居民，因為政府土地的規劃需要，很多時未能行使他們在新界小型屋宇政策下的權利。

基於這些政策影響，研究團隊現向政府提出以下政策建議，以限制丁屋在鄉村式發展土地範圍外的發展。第一，政府應引進更嚴格的出售丁屋條件，例如：

- 對所有新建成的丁屋實施一個不能以補地價形式解除的轉讓限制；
- 向所有於轉讓限制期過後的丁屋買賣徵收市值地價（買家為原居民除外）
- 取消以建屋牌照方式興建的丁屋可於五年後自由轉讓的規定

此外，政府應更嚴格執行新界小型屋宇政策。例如，丁屋發展應嚴格局限於鄉村式發展區範圍內。此舉容許政府對鄉村式發展區範圍外的土地使用有更大控制權，而不需要犧牲原居民在《基本法》保障下得到的權利。

### ***有關房屋發展申請不獲批准的原因***

除以上的政策影響及建議，一個在該研究團隊舉辦的公共政策研究論壇上所提出的重點是，規劃申請質素參差往往是一個非常重要而被忽略的原因。這是基於申請人未有清楚了解規劃準則或未有足夠提交所需文件。由此，研究團隊建議，申請人需更清楚及全面地了解規劃準則。另外申請人應僱用專業人士處理規劃申請。

## **Acknowledgement**

This research project (Project Number: 2016.A6.071.16C) is funded by the Public Policy Research Funding Scheme from the Policy Innovation and Co-ordination Office (PICO) of the Hong Kong Special Administrative Region (HKSAR) Government.

We, first, would like to thank Dr. Ling-hin LI (The University of Hong Kong), Prof. Kar-kan LING (Former Director of Planning of the HKSAR Government), and Dr. Lawrence POON (Current Non-Official Member of the Town Planning Board) for serving as panel members in the Public Policy Research Dissemination Forum on January 8<sup>th</sup>, 2018, organized specifically for this project, and for their valuable and insightful opinions. In addition, we would also like to extend its gratitude to the attendees of both the research seminar held in March 2017 and the aforementioned Public Policy Research Dissemination Forum for their active participations.

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## Chapter 1: Introduction

Hong Kong's planning control system, despite being one of the crucial elements in the land (and housing) development process that determines the timing of development (and thus when and how many new housing units are to be available to the market in a given period of time), has usually been overlooked in public discussions with respect to housing policies in Hong Kong. This is attributed to a lack of understanding towards the planning control process itself, in addition to the legal technicalities of the regulations involved. In addition, as each development application is examined "via its own merit" by the Town Planning Board (TPB), the planning regulations, serving as guidelines, can be highly interpretative. As a result, the planning control process is regarded by some as a black-box process (Tang et al., 2000; Tang and Choy, 2000), in that how these decisions are made is largely unknown and uncertain despite TPB meetings have been open to the public since 2005<sup>2</sup>, hence resulting in verdicts that may not be agreeable to some. The increasing number of judicial review cases filed against the TPB by individuals and property developers alike in recent years, on issues ranging from the rezoning of greenbelt sites to development restrictions, if anything, reflect their perceptions towards the system.

Given Hong Kong's very limited land resources, in order to address the housing needs of Hong Kong residents, land sites in other non-residential land-use zones would inevitably be utilized for housing development, which require the Town Planning Board's permissions. Even though members of the TPB are appointed by the government, the latter of which also acts as the sole owner of all land in Hong Kong, the uncertainties of the planning control system, inevitably, raise some questions with regard to the TPB's planning control decisions, especially:

- Are the Town Planning Board's planning control decisions on proposed residential development consistent with the government's stated housing policy objectives to provide additional land for residential development through re-zoning previously non-residential land?;
- Are existing land-use policies with regard to the preservation of greenbelts (to conserve the natural environment and contain urban sprawl) and agricultural land (to promote

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<sup>2</sup> However, members of the public are only allowed to attend the open sessions of TPB meetings. The deliberation session(s) are conducted behind closed doors, and minutes of the sessions are available online after the meetings.

agricultural activities) being compromised as a result of the government's housing supply priority?

- What are the implications of the government's priority to provide more housing units on the Small House Policy?
- Are the TPB's planning control decisions skewed towards the interests of large property developers?
- Do the TPB's planning control decisions take Hong Kong's business conditions into account?

Considering Hong Kong's lack of developable land resources, how the town planning authorities decide what (and what not) to be developed, residentially, in midst of government's policy priority to supply more housing units and the other important but conflicting policy interests, thus, becomes a timelier and increasingly important policy topic.

In view of these questions and enquiries, the **research objectives** of this study are as follows:

- 1) To examine Hong Kong's planning control decisions on applications for residential development (including the development of flats and/or ordinary houses, and the construction of New Territories Exempted Houses), since Hong Kong's handover to China;
- 2) To compare these planning control decisions on residential development (and small house construction) between different land-use zones, with reference to i) the government's objective to provide more housing units; ii) existing policies concerning the preservation of greenbelt areas and agricultural land; iii) the Small House Policy; iv) the interests of large property developers; and v) business conditions; and
- 3) To proffer policy recommendations with respect to the current government's housing policy, existing land-use policies, and the Small House policy

To fulfill the above three objectives, this study analyzes the planning control decisions made by the TPB from January 1<sup>st</sup>, 1990 to June 30<sup>th</sup>, 2017, under Section 16 of the Town Planning Ordinance, in two different aspects. The first aspect concerns applications for residential development (i.e. the construction of housing flats and/or ordinary houses), in nine different statutory land-use zones, namely:

- Residential (Group A) zone [R(A)];
- Residential (Group B) zone [R(B)];

- Residential (Group C) zone [R(C)];
- Residential (Group D) zone [R(D)];
- Residential (Group E) zone [R(E)];
- Government, Institution and Community (GIC) zone;
- Comprehensive Development Area (CDA) zone;
- Greenbelt (GB) zone; and
- Village Development Area (V) zone

whereas the second aspect is related to applications for small house construction in:

- Greenbelt zone (GB); and
- Agriculture zone (AGR).

By revealing the statistical patterns of these planning control decisions, **Objective 1** is thus met. This provides the basis for the evaluation of the TPB's decisions, with reference to the government's priority to increase housing supply and the various intertwined yet conflicting (policy) interests. Hence, **Objective 2** is fulfilled. In meeting these two objectives, a clearer picture of the TPB's decision-making regarding land-use will be revealed, allowing for the 1) discussion of implications towards the government's housing policy, existing land-use policies (in particular those concerning greenbelt land and farmland), and the Small House policy and 2) formulation of policy recommendations in these areas. This, thus, meets **Objective 3**.

Prior to the review of literature, the discussion of methodology and data, and the presentation of empirical findings, all of which will be reported in latter chapters of this report, some important background information is to be provided with regard to Hong Kong's planning control system, the statutory land-use zones to be studied, as well as the Small House Policy itself.

## **1.1 Background**

### ***1.1.1 Hong Kong's Planning Control System***

Hong Kong's planning control system is a hybrid which incorporates elements of a regulatory system and a discretionary planning control system (Booth, 1996).

On the one hand, there are three types of regulatory control in Hong Kong's land development. First, Hong Kong, unlike many other countries, is under a leasehold system, meaning that the government is the sole owner of all land in Hong Kong; and what property developers are able

to obtain via public auction or tender in a land sale exercise is only the leasehold rights of land sites, which are decided by the government. Besides, property developers (or landowners) are required to abide by regulations as set out in the *Hong Kong Planning Standards and Guidelines* with reference to a development's densities (including plot ratio, site coverage, and building height; see Tables 1.1-1.4). Further, under the Town Planning Ordinance, statutory outline zoning plans (OZP) for different districts across Hong Kong, which dictate how land sites should be used.

Density Zone	Type of Area	Location	Maximum Plot Ratio
R1	Existing Development Area	Hong Kong Island	8/9/10
		Kowloon & New Kowloon	7.5
		Tsuen Wan, Kwai Chung & Tsing Yi	8
	New Development Area and Comprehensive Development Area	6.5	
R2			5
R3			3

Table 1.1: Maximum Domestic Plot Ratios - Metroplan Area  
Source: Planning Department

Residential density zone	Maximum domestic plot ratio
R1	8.0
R2	5.0
R3	3.0
R4	0.4

Table 1.2: Maximum Domestic Plot Ratios - New Towns (excluding Tsuen Wan)  
Source: Planning Department

Density zone	Maximum domestic plot ratio	Maximum development site ratio	Typical total number of storeys	Locational criteria
RR1	3.6	-	12	Commercial centres of Rural Townships
RR2	2.1	-	6	Areas within Rural Townships lying outside the commercial centre, and in other significant rural development areas served by medium capacity public transport, such as light rail systems.
RR3	-	0.75	3 over car port	Peripheral parts of Rural Townships or other rural development areas, or in locations away from existing settlements but with adequate infrastructure and no major landscape or environmental constraints.
RR4	-	0.4	3 including car port	Similar locations to RR3 but where development intensity is restricted by infrastructure or landscape constraints.
RR5	-	0.2	2 over car port	Replacements for temporary structures in areas requiring upgrading.
Village	3.0	-	3	Within the defined envelope of recognized traditional villages.

Table 2.3: Maximum Domestic Plot Ratios - Rural Areas

Source: Planning Department

Height of building (in metres)	Maximum site coverage (%)			Maximum plot ratio		
	Class A Site	Class B Site	Class C Site	Class A Site	Class B Site	Class C Site
up to 15	66.6	75	80	3.3	3.75	4.0
up to 18	60	67	72	3.6	4.0	4.3
up to 21	56	62	67	3.9	4.3	4.7
up to 24	52	58	63	4.2	4.6	5.0
up to 27	49	55	59	4.4	4.9	5.3
up to 30	46	52	55	4.6	5.2	5.5
up to 36	42	47.5	50	5.0	5.7	6.0
up to 43	39	44	47	5.4	6.1	6.5
up to 49	37	41	44	5.9	6.5	7.0
up to 55	35	39	42	6.3	7.0	7.5
up to 61	34	38	41	6.8	7.6	8.0
over 61	33.33	37.5	40	8.0	9.0	10.0

Table 2.4: Maximum Permitted Site Coverage and Plot Ratio in Relation to Building Height for Residential Buildings under First Schedule of B(P)R

Source: Planning Department

On the other hand, one critical element in Hong Kong's planning control system resembles a discretionary planning control system. With the expressed intention to accomplish a balance between certainty and flexibility, two columns of land uses are available for each statutory land-use zone in each OZP. Column 1 consists of uses that are always permitted whereas Column 2 includes uses permissible upon planning applications under Section 16 of the Town Planning Ordinance by property developers/landowners.

Though allowing for a higher degree of flexibility than regulatory-only systems, this "hybrid" development control system unavoidably results in subjective interpretations of planning regulations by the TPB, hence uncertain planning control decisions (see Mayo and Sheppard, 2001). This, in turn, has implications to property developers' development strategies and, thus, to the eventual amount housing supply.

### ***1.1.2 The Small House Policy***

Before the Second Opium War, the area referred to as the New Territories after 1898 was under the governance of Chinese customary law which was part of the Imperial Chinese Law (Hayes, 1988). Back then, in order to encourage human settlement, as long as a person, who acquired land that was not under the ownership of either the government or the Imperial Court, paid taxes on what was produced by the land, he was permitted to develop that land freely.

However, after Imperial China lost the Second Opium War to Great Britain, the Convention Between Great Britain and China Respecting an Extension of Hong Kong Territory (better known as the Convention of Peking) was signed on June 9, 1898, according to which the British leased the New Territories for 99 years starting July 1, 1898. Under British occupation, the old customary law was replaced by British common law. All land, including that privatized (via occupation) by villagers prior to the signing of the Convention of Peking, was taken away from them, only to be regranted to them as leasehold interests for 75 years<sup>3</sup> under the Block Crown Lease established in 1905. Under this arrangement, the land-holding villagers were stripped of some of their customary rights as all new development of their land required permission from the Colonial government (see Lai and Lorne, 2013).

Later, in the 1970s, in response to the rapid growth in Hong Kong's population, the Colonial government commenced the development of new towns in the New Territories. This inevitably compromised the interests of the indigenous villagers even further. According to Lai (2000), in order to appease them, some of their customary rights, with regard to the use of their land currently under the leasehold system, were returned to them, through the introduction of the New Territories Small House Policy in December 1972<sup>4</sup>.

Under this policy, male indigenous villagers over the age of 18, who are descended through the male line from a resident in 1898 of a recognized village within one of the nine districts of the New Territories (i.e. Islands, North, Sai Kung, Shatin, Tuen Mun, Tai Po, Tsuen Wan, Kwai Tsing, and Yuen Long)<sup>5</sup>, are eligible for the application for a grant to build a small house, at their own expenses, on rural land within the Village Type Development Area (V) zone and the environs or the village extension area (VE), up to 300 feet of a recognized village (Lands Department, 2014).

For those who own land within these areas, they can apply for either 1) a building licence at zero premium or 2) a land exchange for a land site owned by the government should the private land in question not be suitable for house construction. By contrast, for those who do not own land in these areas, they can apply for a government land site at a concessionary premium of

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<sup>3</sup> This is renewable for another 24 years minus three days at a reassessed Crown Rent, making the expiry date June 28, 1997 (i.e. 3 days before Hong Kong's handover to China).

<sup>4</sup> Another possible reason for the establishment of the Small House Policy, in accordance with Nissim (1998), is to compensate the villagers for keeping the peace during the 1967 riot.

<sup>5</sup> Currently, 642 villages are recognized under the New Territories Small House Policy.

two-thirds of the full market value. This is known as a private treaty grant (PTG). Regardless of the ownership status of land sites on which small houses are proposed to be built, however, all small house grants are subject to varying degrees of alienation restriction (Table 1), with the expressed purpose of preventing indigenous villagers from “cashing in on their eligibility for the small house grants” (Audit Commission, 2002).

Type of small house grant	Operative period of restriction	Removal of restriction		
		Within Years 1-3	Within Years 4 & 5	After 5 Years
Building Licence	5 Years	Permitted upon the payment of full market value premium (Note)		No restriction
Land Exchange	5 Years			
Private Treaty Grant (PTG) (VEA Scheme)	Perpetual	Not permitted	Permitted upon the payment of full market value premium (Note)	
Other PTGs	Perpetual	Permitted upon the payment of full market value premium (Note)		

Table 1: Restriction on alienation for small house grants by type

(Source: Audit Commission, 2002)

Note: A discounting factor is applied by the Lands Department in the calculation of the premium.

Officially, a small house is known as the New Territories Exempted House (NTEH]. The reason a small house is “exempted” is because, unlike other types of residential development (i.e. flats and ordinary houses), the construction of small houses is not subject to the regular Buildings Ordinance (and the Building (Planning) Regulations). Instead, the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) provides the blueprint as to how small houses should look like. Under this Ordinance, a small house shall 1) have three storeys or less; 2) not be higher than 27 feet (or 8.23 metres); and 3) not have a roofed-over area of more than 700 sq. ft. (or 65.03m<sup>2</sup>) (Lands Department, 2014). In other words, under the Small House Policy, an indigenous villager is entitled to the right to build a house with a maximum allowable GFA of 2,100 sq. ft. (195.09m<sup>2</sup>)<sup>6</sup>, which is by no means “small” (Lai, 2000).

Despite its “exempt” status, the construction of small house, like other types of development, is subject to the Town Planning Ordinance. While the development of small houses completely inside the V zone is always permitted (as a Column 1 use), planning permissions are necessary

<sup>6</sup> According to the definition used by the Rating and Valuation Department, a small house should belong to Group E, which consists of the largest residential properties in Hong Kong.

when 1) more than 50% of the proposed small house's footprint falls outside the V/VE zone or 2) the land site in question encroaches on conservation-related zones, greenbelt zone, open space zone, water-gathering grounds, and areas shown as "road" (Town Planning Board, 2007).

While a male indigenous villager, under the New Territories Small House Policy, is entitled to one small house grant in his lifetime, the property rights to which he is entitled over his small house had been rather ambiguous since the introduction of the policy. It was until the 1990s that this was legally clarified. In a Court of Appeal verdict made for the case *Sung Wai Kiu and Li Pui Wan vs. Wong Mei Yin* (H.C. No. A 3979/94) on January 17, 1997, it reads "Despite the fact that sale and purchase of small house is in breach of conditions of grant, the government has never taken any positive action against such activities. From the angle of public interest and public policy, it is not really necessary to deem it illegal." If anything, this court decision constitutes an institutional change, in that it legalizes the resale of small houses (to non-indigenous villagers) and proffers a clearer delineation of indigenous villagers' property rights.

## **1.2 Description of the Statutory Land-use Zones**

### ***1.2.1 Zones in which residential use is designated as a Column 1 use***

There are three statutory zones in Hong Kong, in which housing development is always allowed: Residential (Group A) [R(A)], Residential (Group B) [R(B)], and Residential (Group C) [R(C)] zones.

The R(A) zone is designated for high-density residential developments. Commercial uses, should they be on the lowest three floors of a building or within the non-residential section of an existing building, are always permitted. Otherwise, the owner of the land site in question is required to submit a planning application, under Section 16 of the Town Planning Ordinance, for the approval of the TPB.

Meanwhile, the R(B) zone is designated generally for medium-density housing developments. Unlike the high-density R(A) zone, approval by the TPB is necessary for any proposed commercial uses in this statutory land-use zone.

Lastly, the R(C) zone is designated for housing development which is both low-rise and low-density. Similar to the R(B) zone, any proposed commercial uses also require the submission

of a planning application for the permission of the TPB. The respective Column 1 uses and Column 2 uses of these three residential land-use zones are listed in Tables 2.5 & 2.6 below.

<b>Residential (Group A)</b>	<b>Residential (Group B)</b>	<b>Residential (Group C)</b>
Ambulance Depot	Flat	Flat
Flat	Government Use (Police Reporting Centre, Post Office only)	Government Use (Police Reporting Centre, Post Office only)
Government Use (not elsewhere specified)	House	House
House	Library	
Library	Residential Institution	
Market	School (in free-standing purpose-designed building only)	
Place of Recreation, Sports or Culture	Utility Installation for Private Project	
Public Clinic		
Public Transport Terminus or Station (excluding open- air terminus or station)		
Religious Institution		
Residential Institution (Ancestral Hall only)		
Rural Committee/Village Office		
School (in free-standing purpose-designed building only)		
Social Welfare Facility		
Utility Installation for Private Project		
<b>Total Number of Land Uses within Column 1</b>		
<b>15</b>	<b>7</b>	<b>3</b>

Table 2.5: Column 1 Uses for R(A), R(B), and R(C) zones

Source: Town Planning Board

<b>Residential (Group A)</b>	<b>Residential (Group B)</b>	<b>Residential (Group C)</b>
Commercial Bathhouse/Massage Establishment	Ambulance Depot	Ambulance Depot
Eating Place	Eating Place	Eating Place
Educational Institution	Educational Institution	Educational Institution
Government Refuse Collection	Government Refuse Collection	Government Refuse Collection
Exhibition or Convention Hall	Government Use (not elsewhere specified)	Government Use (not elsewhere specified)
Hospital	Hospital	Hospital
Hotel	Hotel	Hotel
Institutional Use	Institutional Use	Institutional Use
Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances	Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances	Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances
Office	Office	Library
Petrol Filling Station	Market	Petrol Filling Station
Place of Entertainment	Off-course Betting Centre	Place of Recreation, Sports or Culture
Private Club	Petrol Filling Station	Private Club
Public Convenience	Place of Entertainment	Public Convenience
Public Transport Terminus or Station (not elsewhere specified)	Place of Recreation, Sports or Culture	Public Clinic
Public Utility Installation	Private Club	Public Transport Terminus or Station
Public Vehicle Park	Public Convenience	Public Utility Installation
Religious Institution (not elsewhere specified)	Public Clinic	Public Vehicle Park
School (not elsewhere specified)	Public Transport Terminus or Station	Recyclable Collection Centre
Shop and Services	Public Utility Installation	Religious Institution
Training Centre	Public Vehicle Park	Residential Institution
	Recyclable Collection Centre	Rural Committee/Village Office
	Religious Institution	School (not elsewhere specified)
	Rural Committee/Village Office	Shop and Services
	School (not elsewhere specified)	Social Welfare Facility

	Shop and Services	Training Centre
	Social Welfare Facility	
	Training Centre	
<b>Total Number of Land Uses within Column 2</b>		
<b>21</b>	<b>28</b>	<b>26</b>

Table 2.6: Column 2 Uses for R(A), R(B), and R(C) zones

Source: Town Planning Board

### ***1.2.2 Zones in which residential use is designated as a Column 2 use***

#### *Residential (Group D) zone*

The R(D) zone is designated to improve and upgrade existing temporary structures within the rural areas by means of redeveloping existing temporary structures into permanent buildings. Low-rise, low-density residential developments are also permissible upon the Town Planning Board's planning permission.

#### *Residential (Group E) zone*

The planning intention of the R(E) zone, in accordance with the Town Planning Board, is to replace the existing industrial uses with residential uses through either redevelopment or conversion. Aiming to prevent the concentration of the industrial/residential (I/R) interface problem, new industrial developments are not allowed in these areas, although existing industrial uses are deemed tolerable.

#### *Village Type Development (V) zone*

The V zone is primarily designated to proffer land surrounding recognized villages which is deemed suitable for village expansion and/or reprovisioning of village houses affected by Government projects. The original intention of land within the V zone is for small house development. In addition, this statutory zone is delineated with the expressed aim to concentrate village type development for a more orderly development pattern, efficient use of land, and provision of infrastructures and services. While selected commercial and community uses that serve the villagers' needs of the villagers and support village development are always permitted on the ground floor of a New Territories Exempted House, the Town Planning Board's approval is required for other commercial, community and recreational uses.

A list of Column 1 (Column 2) uses for the above three statutory zones is provided in Tables 2.7 (2.8).

<b>Residential (Group D)</b>	<b>Residential (Group E)</b>	<b>Village Development Area (V)</b>
Agricultural Use	Ambulance Depot	Agricultural Use
Government Use (Police Reporting Centre, Post Office only)	Government Use (not elsewhere specified)	Government Use (Police Reporting Centre, Post Office only)
House (Redevelopment; Addition, Alteration and/or Modification to existing house only)	Public Transport Terminus or Station (excluding open-air terminus or station)	House (New Territories Exempted House only)
On-Farm Domestic Structure	Utility Installation for Private Project	On-Farm Domestic Structure
Rural Committee/Village Office		Religious Institution (Ancestral Hall only)
		Rural Committee/Village Office
<b>Total Number of Land Uses within Column 1</b>		
<b>5</b>	<b>4</b>	<b>6</b>

Table 2.7: Column 1 uses for R(D), R(E), and V zones

Source: Town Planning Board

<b>Residential (Group D)</b>	<b>Residential (Group E)</b>	<b>Village Type Development (V)</b>
Eating Place	Commercial Bathhouse/Massage Establishment	Burial Ground
Flat	Eating Place	Eating Place
Government Refuse Collection Point	Education or Conventional Hall	Flat
Government Use (not elsewhere specified)	Flat	Government Refuse Collection Point
Hotel (Holiday House only)	Government Refuse Collection Point	Government Use (not elsewhere specified)
House (not elsewhere specified)	Hospital	Hotel (Holiday House only)
Institutional Use (not elsewhere specified)	Hotel	House (not elsewhere specified)
Library	House	Institutional Use (not elsewhere specified)
Market	Institutional Use (not elsewhere specified)	Market
Petrol Filling Station	Library	Petrol Filling Station
Place of Recreation, Sports or Culture	Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances	Place of Recreation, Sports or Culture
Public Clinic	Market	Private Club
Public Convenience	Office	Public Clinic
Public Transport Terminus or Station	Petrol Filling Station	Public Convenience
Public Utility Installation	Place of Entertainment	Public Transport Terminus or Station
Public Vehicle Park (excluding container vehicle)	Place of Recreation, Sports or Culture	Public Utility Installation
Recyclable Collection Centre	Private Club	Public Vehicle Park (excluding container vehicle)
Religious Institution	Public Clinic	Religious Institution
Residential Institution	Public Convenience	Residential Institution
School	Public Transport Terminus or Station (not elsewhere specified)	School
Shop and Services	Public Utility Installation	Shop and Services
Social Welfare Facility	Public Vehicle Park (excluding container vehicle)	Social Welfare Facility
Utility Installation for Private Project	Religious Institution	Utility Installation for Private Project

	Residential Institution	
	School	
	Shop and Services	
	Social Welfare Facility	
	Training Centre	
<b>Total Number of Land Uses within Column 2</b>		
<b>23</b>	<b>28</b>	<b>23</b>

Table 2.8: Column 2 uses for R(D), R(E), and V zones

Source: Town Planning Board

*Government, Institution or Community (GIC) zone*

According to the Town Planning Board (2016a), land sites are designated as GIC sites either to reflect GIC uses that are already in place or to reserve them for the provision of GIC facilities to meet the community needs in the future. Sometimes, land sites are also zoned as GIC for the provision of “breathing space” in a high-rise, high-density environment.

Even though the provision of GIC facilities and/or public open spaces, as a major component of a proposed development, is prioritized by the TPB, it does not mean that GIC sites cannot be developed for primarily non-GIC uses. Rather, unless the proposed development compromises the operation of GIC facilities in the area or postpones the implementation of planned GIC facilities, non-GIC development, for instance residential development, on GIC sites is permissible upon application under Section 16 of the Town Planning Ordinance, given that 1) the site in question is not required for provision of GIC facilities; 2) the provision of GIC facilities in the area is deemed sufficient; and 3) the proposed development does not adversely affect an area’s townscape. In fact, in addition to the 30 Column 1 uses (Table 2.9), there are 29 non-GIC land uses that are permissible in GIC zone upon the TPB’s approval (Table 2.10).

*Comprehensive Development Area (CDA) zone*

Introduced into the OZPs in 1976, the primary objectives for CDA zone are to:

- Facilitate the renewal of older urban areas;
- Restructure old industrial areas;
- Eliminate non-conforming land uses (for instance, open storage use in rural areas); optimize the development potential through the integration of sites (under different uses and with different road patterns);

- Accomplish coordinated development in areas i) restrained in traffic, environmental, and infrastructure capacity and ii) having incompatible land-use issues;
- Provide sufficient GIC facilities, public transportation facilities, parking facilities, and open space; and
- Control the overall scale and design of development in areas with high landscape/amenity values and in historically significant locations (Town Planning Board, 2016b).

In addition to these objectives, CDA use is also designated for sites intended for development under the Urban Renewal Authority Development Scheme or Hong Kong Housing Society's (HKHS) urban improvement Scheme, with the aim to ensure optimum comprehensive redevelopment and urban restructuring through the prevention of piecemeal development or redevelopment.

Three elements distinguish CDA sites from GIC/GB sites. The first element is the compulsory submission of a Master Layout Plan (MLP), based upon the broad planning parameters and development requirements set out in the Planning Brief for individual sites designated as "CDA", in a development application, as decreed in section 4A(2) of the Town Planning Ordinance. Even though excessive details are not encouraged by the TPB due to lack of flexibility for subsequent minor changes, a MLP (Town Planning Board, 2003) should include information in two major categories, such as:

- The location of the site in question and the development's general layout (in aspects such as number of building blocks, building heights/number of storeys, locations of i) proposed main land-uses, ii) parking facilities, iii) loading/unloading facilities, iv) GIC, recreational, public transport facilities, v) ancillary major utility installations, and vi) open space and pedestrian circulation facilities, layout of internal roads including emergency vehicular access (EVA), allocation of non-building areas, the phasing of development, and a master landscape plan; and
- A development schedule detailing the site area, gross floor area (GFA), residential accommodation (if any), commercial accommodation (if any), provision of GIC, recreation and open space facilities, provision of parking and loading/unloading facilities, provision of public transportation facilities, a development programme with the proposed phasing of the development (and their respective timing), design population and schedule of population intake.

According to the two reviews conducted on CDA sites by the Town Planning Board (2015a; 2015b), by the end of March 2015, there were a total of 132 CDA sites in Hong Kong, including 64 in the Metro Area (i.e. Hong Kong Island and Kowloon Peninsula) and 68 in the New Territories. 50 (or 37.9%) of these sites, however, remained undeveloped as they did not have an approved MLP.

The second element is that, unlike any other statutory land-use zones in Hong Kong, there are no Column 1 uses for CDA zone (see Table 2.9). Instead, a total of 36 land uses are listed as Column 2 uses for CDA zone, 7 more than the amount of permissible land uses for GIC zone (Table 2.10). It should be noted, however, that these Column 2 uses can be added or deleted in accordance with *an individual site's planning intention* determined by the TPB.

Lastly, the third element that separates CDA zone from GIC/GB zones concerns the way in which land sites are obtained. According to Lai et al. (2016), a development project in non-CDA zones normally commences as developers purchase land sites from the government (with pre-determined lease conditions) through public auction or tender. By contrast, a development project in CDA zone begins as developers acquire (and assemble) land parcels from other private landowners. In case the proposed use (in this case, residential) is not permissible under the original government lease(s) of these land parcels, developers are required to apply for lease modification (and pay a premium accordingly).

<b>GIC</b>	<b>CDA</b>
Ambulance Depot	
Animal Quarantine Centre (in Government building only)	
Broadcasting, Television and/or Film Studio	
Cable Car Route and Terminal Building	
Eating Place (Canteen, Cooked Food Centre only)	
Educational Institution	
Exhibition or Convention Hall	
Field Study/Education/Visitor Centre	
Government Refuse Collection Point	
Government Use (not elsewhere specified)	
Hospital	
Institutional Use	
Library	
Market	
Pier	
Place of Recreation, Sports or Culture	
Public Clinic	
Public Convenience	
Public Transport Terminus or Station	
Public Utility Installation	
Public Vehicle Park	
Recyclable Collection Centre	
Religious Institution	
Research, Design and Development Centre	
Rural Committee/Village Office	
School	
Service Reservoir	
Social Welfare Facility	
Training Centre	
Wholesale Trade	
<b>Total Number of Land Uses Within Column 1</b>	
<b>30</b>	<b>0</b>

Table 2.9: Column 1 Uses for GIC and CDA zones

Source: Town Planning Board

<b>GIC</b>	<b>CDA</b>
Animal Boarding Establishment	Ambulance Depot
Animal Quarantine Centre (not elsewhere specified)	Commercial Bathhouse/Massage Establishment
Columbarium	Eating Place
Correctional Institution	Educational Institution
Crematorium	Exhibition of Conventional Hall
Driving School	Flat
Eating Place	Government Refuse Collection Point
Firing Range	Government Use (not elsewhere specified)
Flat	Hospital
Funeral Facility	Hotel
Helicopter Landing Pad	House
Helicopter Fueling Station	Information Technology and Telecommunications Industries
Holiday Camp	Institutional Use (not elsewhere specified)
Hotel	Library
House	Market
Marine Fueling Station	Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances
Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances	Off-course Betting Centre
Off-course Betting Centre	Office
Office	Petrol Filling Station
Petrol Filling Station	Pier
Place of Entertainment	Place of Entertainment
Private Club	Place of Recreation, Sports or Culture
Rader, Telecommunications Electronic Microwave Repeater, Television and/or Radio Transmitter Installation	Private Club
Refuse Disposal Installation (Refuse Transfer Station only)	Public Clinic
Residential Institution	Public Convenience
Sewage Treatment/Screening Plant	Public Transport Terminus or Station
Shop and Services	Public Utility Installation
Utility Installation for Private Project	Public Vehicle Park
Zoo	Recyclable Collection Centre
	Religious Institution
	Research, Design and Development Centre
	Residential Institution
	Shop and Services
	Social Welfare Facility
	Training Centre
	Utility Installation for Private Project
<b>Total Number of Land Uses within Column 2</b>	
<b>29</b>	<b>36</b>

Table 2.10: Column 2 Uses for GIC and CDA zones

Note: \* within a Religious Institution or extension of existing Columbarium only

Source: Town Planning Board

### *Greenbelt (GB) zone and Agriculture (AGR) zone*

For land sites designated as either GB or AGR zone, especially those located in the New Territories, some historical contexts should be proffered.

The Colonial government, upon “leasing” the New Territories from Imperial China in 1898, introduced the Block Crown Lease under which previously occupied (i.e. privatized) agricultural/village house land was turned into leasehold interests, thereby restraining the landowners’ rights to develop. Rural land in the New Territories was divided into different Demarcation District (DD) plans which are in effect to this day. Under the Block Crown Lease, development of land sites within these DD plans required permission by the Colonial government.

Nevertheless, on paper, the Block Crown Lease appears to have controlled “development” of rural land under its jurisdiction, but not necessarily other types of land-use without the erection of building structures. This issue was highlighted in the Court of Appeal decision, made in March 1983, for *Attorney General vs. Melhado Investment Ltd.* (CACV79/1982). Better known to the public as the Melhado case, it involves the conversion of agricultural land, under the jurisdiction of the Block Crown Lease, for open storage use. The Court ruled that lessees of agricultural land had the rights to use it for open storage purpose, as long as no building works, subject to the jurisdiction of the Buildings Ordinance, were conducted. In accordance with Lai and Ho (2002), this verdict proffers a legal interpretation as to the property rights possessed by leasehold owners of the New Territories’ agricultural land. Though the Court decision for the Melhado case, from an economics standpoint, improved efficiency in land-use, it had given rise to the proliferation of open-storages in previously-abandoned agricultural land in the New Territories, in turn leading to issues such as traffic congestions, land degradations, aesthetic concerns, as well as environmental issues.

Aiming to address this particular legal loophole, the Town Planning Ordinance (Cap. 131) was passed in 1991. Under this Ordinance, the rights previously granted to leasehold owners of agricultural land were once again taken away from them without compensations (Fischel, 1995), as the government, with the expressed goal to contain “unauthorized development”, first

gathered these rural land sites together and placed them into the newly-created Interim Development Permission Area (IDPA) Plan. Any kind of development inside the IDPAs, other than existing uses, requires the TPB's permission. The IDPA plans become the Development Permission Area (DPA) plans after 12 months, and then are incorporated into the rural Outline Zoning Plan (OZP) in approximately 3 years (Lai and Ho, 2002). Rural land within either the IDPA plan or the DPA plan, be it cultivated or abandoned, is categorized as "unspecified" (UNSP) use (Chau and Lai, 2004). It is only after the IDPA/DPA plans are incorporated into the rural OZPs that a more specific land-use is assigned to these land, mostly either "Agriculture" (AGR) or "Greenbelt" (GB) (Lai and Ho, 2002).

Despite the numerous land-uses under Column 1 and Column 2 (Tables 2.11-2.12), both AGR and GB zones are designated to have a general presumption against development. While the intention of establishing the Agriculture zone is to conserve farmland, despite the very minor role primary industries have played in Hong Kong's economy in the previous decades, the official aim of the Greenbelt zones is "primarily to promote the conservation of the natural environment and to safeguard it from encroachment by urban-type developments" (Town Planning Board, 1991).

While the Agriculture zone appears self-explanatory, the Greenbelt zone, especially the Hong Kong version of it, is far from self-explanatory, based upon the conclusions reached in numerous previous investigations (see for instance, Lai and Ho, 2001a; 2001b; Tang et al., 2005; Tang et al., 2007). The notion of greenbelts as buffers for urban concentrations, in accordance with Home (1997), is largely derived from Colonel William Light's plan for Adelaide, which was then evolved into Ebenezer Howard's concept of garden city (Hall, 1996).

It is believed by several researchers (see Lai, 1999; Tang et al., 2005; Tang, et al., 2007) that the idea of greenbelts was introduced to Hong Kong in response to the 1948 *Abercrombie Report*, in which it is recommended that the Colonial government devise relevant policies to conserve the countryside. This was subsequently substantiated with the release of the *Talbot Report* (Talbot and Talbot, 1965), which suggests that the classification and conversation of the countryside can be accomplished by means of zoning. However, in view of Hong Kong's very limited (developable) land resources, two questions inevitably arise: What are the actual purpose(s) of Hong Kong's GB zones? And are Hong Kong's greenbelt policies as stringently applied as they are in other nations, such as Great Britain? A pair of in-depth studies on Hong

Kong's greenbelt policy conducted by Tang et al. (2005) and by Tang et al. (2007) reveal that GB zones were actually incorporated in some of the earliest statutory land-use plans back in the 1960s, and that the use of greenbelts as passive recreation outlets have always been stated as one of the intentions for this zone in the statutory plans. The notion of creating greenbelt zones for conservation purpose did not come about until the 1990s, as it was explicitly stated in the 1991 Town Planning Ordinance. Unlike the practices in other nations such as South Korea (Gibson, 1999), however, greenbelt zones in Hong Kong are far from development-free (Home, 1997), as a variety of land-uses are either always permitted (as Column 1 use) or permissible upon the Town Planning Board's approval<sup>7</sup>. This is particular the case when development pressures call for conversions, rather than conversions, of greenbelt sites. Besides, rather than being universally applied, Hong Kong's greenbelt policy is found to vary geographically. An investigation by Tang et al. (2007) reports that the objective to contain urban sprawl in GB zones in Hong Kong has been much loosely applied to regions such as the Metropolitan Area and South West New Territories, but not the rest of the New Territories. These previous findings, if anything, indicate that greenbelt policies in Hong Kong are noticeably more flexible and ambiguous; and that GB zones in Hong Kong, rather used for definite conservation of the countryside, are transitory in nature, in that the development in which is subject to other policy needs.

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<sup>7</sup> Also, unlike Great Britain and South Korea, Hong Kong's GB zones are too unevenly and sporadically distributed geographically to serve as an actual spatial "buffer" to curb urban encroachment/sprawl (Tang et al., 2005).

<b>GB</b>	<b>AGR</b>
Agricultural Use	Agricultural Use
Barbecue Spot	Government Use (Police Reporting Centre only)
Country Park	On-Farm Domestic Structure
Government Use (Police Reporting Centre only)	Public Convenience
Nature Reserve	Religious Institution (Ancestral Hall only)
Nature Trail	Rural Committee/Village Office
On-Farm Domestic Structure	
Picnic Area	
Public Convenience	
Tent Camping Ground	
Wild Animals Protection Area	
<b>Total Number of Land Uses Within Column 1</b>	
11	6

Table 2.11: Column 1 uses for GB zone and AGR zone

Source: Town Planning Board

<b>GB</b>	<b>AGR</b>
Animal Boarding Establishment	Animal Boarding Establishment
Broadcasting, Television and/or Film Studio	Barbecue Spot
Burial Ground	Burial Ground*
Cable Car Route and Terminal Building	Field Study/Education/Visitor Centre
Columbarium*	Government Refuse Collection Point
Crematorium*	Government Use (not elsewhere specified)
Field Study/Education/Visitor Centre	House (New Territories Exempted House only, other than rebuilding of New Territories Exempted House or replacement of existing domestic building by New Territories Exempted House permitted under the covering Notes)
Firing Range	Picnic Area
Flat	Place of Recreation, Sports or Culture (Horse Riding School, Hobby Farm, Fishing Ground only)
Golf Course	Public Utility Institution
Government Refuse Collection Point	Religious Institution (not elsewhere specified)
Government Use (not elsewhere specified)	School
Helicopter Landing Pad	Utility Installation for Private Project
Holiday Camp	
House	
Marina	
Mass Transit Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances	
Marine Fueling Station	
Petrol Filling Station	
Pier	
Place of Recreation, Sports or Culture	
Public Transport Terminus or Station	
Public Utility Installation	
Public Vehicle Park	
Rader, Telecommunications Electronic Microwave Repeater, Television and/or Radio Transmitter Installation	
Religious Institution	
Residential Institution	
Rural Committee/Village Office	
School	
<b>Total Number of Land Uses within Column 2</b>	
29	13

Table 2.12: Column 2 uses for GB zone and AGR zone

Source: Town Planning Board

## Chapter 2: Literature Review

### 2.1 Government Controls in Land Development

Owing to (adverse) externalities<sup>8</sup> incurred in the land development process, many governments deploy development controls with the aim to preserve the natural environment and to prevent uncontrolled development, such as urban sprawl (White and Allmendinger, 2003). Planning authorities allocate the rights of development/redevelopment via non-price means (see Fischel, 1985; Lai, 1997; Tang and Tang, 1999), for the promotion of public interests, the redistribution of public costs and benefits, the elimination of negative externalities, and the improvement of the information base for decision making (Klosterman, 1996). Two distinctively different types of planning control systems are usually utilized: 1) A regulatory system and 2) A discretionary system.

The former, by separating incompatible land uses, supposedly minimizes the effect of latent adverse externalities incurred (Pogodzinski and Sass, 1991). Under this system, the approval or rejection of applications for land development is based upon a set of legally-binding land-use zoning regulations. Owing to such stringent attachment to these regulations, development control decisions are therefore perceived as both certain and predictable. However, according to Gielen and Tasan-kok (2010), these decisions do not make room for negotiations with regard to other arrangements involved in proposed developments between planning authorities and developers/landowners.

By contrast, the latter is a “strategic-level structure plan within which are a number of local/unitary development plans which translate and interpret strategic policy into site-specific allocations for land” (Adams and Watkins, 2002, p. 97). Unlike the regulatory system, these development plans, usually implemented on a national level (Cullingworth, 1997), are merely referred to as references and/or guidelines. In other words, the planning permission process is more discretionary and flexible, which makes negotiations between planning authorities and developers/landowners possible. Such flexibility, however, comes at a cost, as subjective interpretations of the guidelines articulated in the development plans result in less certain and less predictable outcomes. This, in turn, leads to higher development cost and higher

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<sup>8</sup> Five types of social costs which, in accordance with Malpezzi (1996), that make it necessary for governments to intervene in order to correct the externalities caused are 1) Congestion, 2) Environmental costs, 3) Infrastructure costs, 4) Fiscal effects, and 5) Neighbourhood composition costs.

transaction cost in the development process (Staley, 1994; Chen et al., 1996; Lai and Ho, 2002; Wong et al., 2011), which has implications to the amount of investment in land development (Cunningham, 2006; 2007; Holland et al., 2000; Quigg, 1993; Bulan et al., 2009). Besides, the planning approval process can also be susceptible to political concerns (Gielen and Tasan-Kok, 2010).

Previous researches have studied planning control decisions from a number of perspectives, such as:

- Assessing how effectiveness development control is on at least minimizing negative externalities (Lai, 1994);
- Evaluating the behaviour(s) of those involved in the land market (otherwise known as “development pressures” studies, see Blacksell and Gilg, 1977; Anderson, 1981; Underwood, 1981; and Brotherton, 1982);
- The relationship between land-use planning restrictions and transaction costs (Staley, 1994; 2000);
- The relationship between land-use zoning restrictions and property prices (Hui, 2001; 2002; 2003; 2004; Hui and Ho, 2003); and
- Examining these decisions with reference to the consistency in the planning authorities’ decision-making and to rent-seeking behaviours by special interest groups (Benson, 1984; Gifford, 1987; Mills, 1989; Tullock, 1993; 1994).

For builders and developers alike, how these planning control decisions are made naturally become the question to ask. In response, many researchers in the Land Economics and Urban Planning disciplines have studied this matter in a variety of perspectives, proffering valuable knowledge in the process.

## **2.2 Research Areas in Planning Control Decisions**

The first two primary research areas with respect of planning control are related to the assessment of the effectiveness of planning control on at least reducing negative externalities, if not removing them altogether (Lai, 1994), and the so-called “development pressures” studies in which the behaviour(s) of parties involved in the land market are evaluated (Blacksell and Gilg, 1977; Anderson, 1981; Underwood, 1981; and Brotherton, 1982). The third study area concerns either transaction costs (Staley, 1994; 2000) or property prices (Hui, 2001; 2002;

2003; 2004; Hui and Ho, 2003) are affected as a result of land-use planning restrictions. The fourth and last research area focuses on the planning authorities' behaviours in terms of the consistency in their decision making and rent-seeking behaviours (Benson, 1984; Gifford, 1987; Mills, 1989; Tullock, 1993; 1994). For the latter, the political economy theory of development control in Gilg and Kelly (1996) and Kelly and Gilg (2000), points out that societies are developed and structured in a way that only a tiny number of groups, for instance those with more financial resources, have easier access to power than others (Rydin, 1985; 1988; Pacione, 1990; 1991; Short et al., 1986). Such access gives rise to rent-seeking behaviours, due to preferential treatments on the part of the planning authorities. To put it differently, development control decisions, as a result of lobbying efforts by some entities (for instance, by rural land-owners in Gilg and Kelly [1996; 1997]), are found to be inconsistent as they appear to lean towards the interests of these entities. Such inconsistencies, thus, further result in higher uncertainties in the land development process.

### **2.3 Evolvement of Research Methods**

In the early days of the research of planning control decision making, qualitative analysis or case studies had usually been depended on (for a more detailed discussion, see Lai and Ho, 2001). Afterwards, the use of aggregate data (i.e. planning statistics) had become commonplace. Nevertheless, some researchers have raised concerns about the limitations of aggregate planning statistics in studying development control decisions. Two particular issues stand out: 1) the research methodology is aggregated in nature and 2) it is difficult to provide interpretations for findings, based upon individual cases (with their own unique elements), that can be generalized enough to be applicable to a wider context (Brotherton, 1984; 1992a; 1992b; Buller and Hoggart, 1985; Larkham, 1986; 1988; 1990, McNamara and Healey, 1984; Sellgren, 1990; Preece, 1990; Kelly & Gilg, 2000). Besides, aggregate planning data does not provide sufficient information to understand the complex decision-making processes and the unique circumstances in these applications (Murray, 1987).

With the development of advanced econometric methods in the 1980s and 1990s, the study of planning control decisions has turned to another direction. Rather than using aggregate planning data, non-aggregate planning data has been used instead with the assistance of statistical analyses (see McNamara and Healey, 1984; Buller and Hoggart, 1985; Larkham, 1986, 1988; Sellgren, 1990; and Brotherton, 1982, 1992a, 1992b). The further development of

these econometric methods, by the mid-1990s, allows for statistical investigations of development control decisions with discrete choice models (Willis, 1995; Bramley et al., 1995). These two studies, hence, provide the methodological foundations for numerous studies on the Town Planning Board's planning control decisions on various land-uses in different statutory zones.

Of these studies, some do report that political concerns are taken into consideration in the TPB's planning control decisions. Lai and Ho (2001a) study the TPB's decisions for planning applications in three residential zones [R(A), R(B), and R(C)], and find that these decisions (for R(B) and R(C) zones) are sensitive to exogenous government policies that aim to increase housing supply (also see Tang et al., 2005). On the other hand, the planning authorities tend to discriminate against large-scale developments in both R(A) zone and Greenbelt zone, which suggests that lobbying by prominent property developers does not appear to play a role in influencing the eventual decisions for these zones by the Town Planning Board.

In some other studies, however, it is market conditions, rather than political concerns, which affect the TPB's planning control decisions. Tang and Choy (2000) and Tang et al. (2000) assess applications for commercial-office development on Hong Kong Island and in Kowloon, and find that the TPB also takes market conditions of the office sector (i.e. supply of office space) at the time into account in their planning control decisions, perceived by the authors to regulate the commercial office market. In addition, the rise and fall of the manufacturing sector (in terms of labour share) is also considered by the TPB to evaluate applications for industrial-office use or office-only use in industrial zones (Lai and Ho, 2002a).

However, it is not always the case that political considerations and/or market conditions are being accounted for in the TPB's planning control decisions. In a study of applications for open container storages in Open Storage (OS) zones, Lai and Ho (2002b) report that the Town Planning Board's decisions are subject to the conditions in the container industry. The authors attribute this finding to the lack of a powerful lobby representing the interest of the container industry.

As for the quantitative studies regarding planning control decisions on the applications for small house construction, two of the earlier investigations in this regard are conducted by Lai and Ho (2001b; 2001c). The first study (Lai and Ho, 2001b) concerns the TPB's planning

control decisions on proposed small house constructions in GB zone and in UNSP zone. The authors reveal that the TPB has a tendency to approve applications with a lower Gross Floor Area (GFA) in both statutory zones; and that applications for small house construction on land sites included in a DPA plan are more likely to be rejected. On the other hand, the authors' second study (Lai and Ho, 2001c) compares the TPB's decisions on applications for small house construction with those for ordinary houses in GB zone. Unlike their first study, a proposed development's GFA is not a significant factor in explaining the TPB's decisions. Nonetheless, the TPB appears to find small house constructions in GB zone more preferable than ordinary house constructions. This finding reflects the planning authorities' tendency to protect the rights of indigenous villagers by catering to their interests.

Another study carried out by Chau and Lai (2004), rather than GB zone and UNSP zone, investigates the TPB's planning control decisions on applications for 1) small house construction and 2) open storage use (for containers) in AGR zone instead. The authors first find that the construction of small houses in this statutory zone is preferred by the TPB over open storage use. Then, similar to Lai and Ho (2001a), proposed developments 1) with a lower GFA and 2) in Sheung Shui, Fanling, Tai Po, and Yuen Long have a higher likelihood of being approved. And lastly, the TPB is found to go against the exogenous government housing-related policies when deciding applications for either small house construction or open storage use.

Another group of researchers (Tang et al., 2005; 2007) have also studied the Small House Policy in GB zone. Their first study, on the development of both low-rise housing and small houses, reports that large-scale development of small houses are much more likely to be rejected by the TPB, which concurs with the finding of Lai and Ho (2001a). Also, the authors find that TPB's planning decisions are subject to housing market conditions, in that applications are more likely to be approved when housing supply is high. Similar to Lai and Ho (2001b), there are significant differences in terms of the approval rates for applications for housing development between districts. Specifically, the approval rates for housing development applications in Sheung Shui and Tai Po are higher than others. Their second investigation, also about GB zone, focuses on four types of proposed land-use, namely small house, ordinary house, residential (i.e. flats), and open storage. Concurring with Lai and Ho (2001b), applications for the construction of small houses (or ordinary houses) have noticeably higher approval rates than those for residential development and for open storage use. The

authors also find that small house applications are more likely to be approved if they are proposed to be built on land sites involving GB zone and other development-oriented land-use zonings. By contrast, the size of the land site is not found to be a significant factor in explaining the TPB's decisions.

Besides the aforementioned quantitative studies, there have been numerous investigations which focus on the controversies surrounding the Small House Policy in a variety of aspects. The following section proffers a review of these studies separately.

## **2.4 Controversies surrounding the Small House Policy**

### ***2.4.1 Inequality Against Women and Non-villagers***

As stated in the section that details the Small House Policy, it is exclusive to male indigenous villagers over the age of 18, who are descended through the male line from a resident in 1898 of a recognized village. To put it differently, through this policy, the interests of male indigenous villagers from the 642 recognized villages are prioritized over those of two specific groups of people: 1) non-indigenous villagers and 2) female indigenous villagers. It is pointed out by Lai (2000) that the Small House Policy, from which only a fraction of Hong Kong's population benefits by virtue of their gender and birth, is fundamentally at odds with the Hong Kong Bill of Rights Ordinance (Cap. 383), particularly Articles 1 and 22.

To non-indigenous villagers, an indigenous villager's right to build a NTEH as large as 2,100ft<sup>2</sup> is discriminatory, in the sense that the Small House Policy confers a wealth transfer, through resale, that is exclusive only to indigenous villagers (Nissim, 1998; Lai, 2000). Nevertheless, it is argued that, despite being granted the exclusive right to build a small house, indigenous villagers are in some ways a disadvantaged population group, as the government has not provided as much subsidies to non-indigenous villagers for building small houses as to non-indigenous villagers (via the development of new towns, public housing, as well as municipal works and infrastructure) (Wong, 1998; Lai, 2000; Hopkinson and Lao, 2003). Additionally, it is also argued that, as the majority of small houses are built on private land at the indigenous villagers' own expenses, the resale of these houses is simply them exercising their property rights the same way ordinary homeowners sell their flats to others. According to Lai (2000), it is only the transaction of small houses built on government land, under one of the PTGs, that might constitute the problem of unfair wealth transfer.

To female indigenous villagers, the situation is a bit more complicated when considering other factors. On paper, the right to build a small house being exclusive to male indigenous villagers constitutes gender inequality. This issue even attracted attentions from outside Hong Kong. According to a report issued by the United Nations Economic and Social Council in December 1994, it reads “The Committee notes with concern that the Government’s proposed legislation on sex discrimination includes a number of exclusions and exemptions, in particular the so-called small-house policy, which discriminate against women.” The proposed legislation in question is Schedule 5 of the Sex Discrimination Ordinance (SDO) (Cap. 480), in which it is stated that “Any discrimination between men and women arising from that policy of the Government (a) known as the small house policy; and (b) pursuant to which benefits relating to land in the New Territories are granted to indigenous villagers who are men.” Even though the government’s decision to cater to the male indigenous villagers’ interests is undeniable, granting female indigenous villagers the same rights, for the sake of gender equality, is equally problematic as it inevitably leads to an immense increase in the number of small house applications. This in turn has very profound land-use implications, which are discussed in the following section.

#### ***2.4.2 Land-use Implications***

Another major criticism towards the Small House Policy concerns its innate unsustainability (see Lai, 1999b; 2000). As the indigenous villager population grows over time, the number of people eligible for small house grants increases. Thus, more land is required to accommodate their interests under the Small House Policy. While this does not pose an issue should these small houses be constructed on private land, this has profound implications on the use of government land in areas surrounding the recognized villages, as they can otherwise be use for the development of medium or high-rise residential buildings to meet the housing needs of Hong Kong residents (including the indigenous villagers themselves) (Nissim, 1998). This, in turn, promotes the interests of indigenous villagers at the expense of everyone else’s. Besides, as land resources within the V/VE zone become increasingly scarce due to small house development, planning problems arise as indigenous villagers request for the construction of their small houses outside the V/VE zone (especially Agriculture zone and Greenbelt zone). As there exists no systematic and comprehensive planning for the development of a particular area as a whole (and for controlling the spread of small houses), the Small House Policy gives rise to what Bristow (1984) calls “the gradual growth of incipient suburban sprawl.”

### ***2.4.3 Property rights issues***

Another issue with regard to the New Territories Small House Policy is related to the transaction of these small houses. Despite the inclusion of alienation restrictions in the transaction of small houses, a review of this policy conducted by the Audit Commission in 1987 reveals that indigenous villagers tended to sell their small houses soon after the certificates of compliances (CCs) were issued, thereby taking advantage of their (exclusive) eligibility for small house grants financially<sup>9</sup>. The Audit Commission's subsequent review of the policy in 2002 (Audit Commission, 2002) reaches similar conclusions. Yet, as mentioned earlier in this literature review section, since the majority of these small houses are built on private land at the villagers' own expenses, albeit officially as leasehold owners under the Block Government Lease (previously known as Block Crown Lease), the resale of small houses that are not built on government land is their way of exercising their property rights. And considering the fact that the government had, prior to the *Sung Wai Kiu and Li Pui Wan vs. Wong Mei Yin* case verdict, done virtually nothing to stop these activities, the resale of small houses should not be deemed illegal. Further, from an economics standpoint, transactions of small houses improve land use efficiency (Lai, 2000).

While the transaction of small houses themselves, especially after the Court of Appeal decision on the *Sung Wai Kiu and Li Pui Wan vs. Wong Mei Yin* case, can be said as a legitimate way for indigenous villagers to exercise their property rights on their own land, the Small House Policy presents a exploitable loophole, due to the ambiguity concerning the extent of property rights to which indigenous villagers are entitled. Apparently, to some indigenous villagers, having the exclusive right to build (and sell) a small house on either private land or government land also means that this exclusive right itself can be transacted. The Audit Commission, in its 1987 Review and 2002 Review of the Small House Policy, identifies cases of indigenous villagers selling this exclusive right to property developers for a windfall profit, which makes large-scale small house development(s) possible. Unlike the transaction of actual small houses, many of which built on private land, the transaction of the right itself constitutes an unfair transfer of wealth to 1) villagers who sell the right; and 2) those who are not supposed to be the beneficiaries of the Small House Policy, such as property developers.

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<sup>9</sup> A 3-year moratorium clause on the removal of the alienation restriction was added, in response to the 1987 Audit Commission Review, to applications for small house construction on government land under the Village Expansion Area Scheme.

Having discussed the relevant literature, in the following chapter, the research method used for the analysis of the Town Planning Board's planning control decisions, the variables included in the model(s), and the data sample are to be presented.

## Chapter 3: Research Methodology & Data

### 3.1 The Model

Aiming to meet Objectives 1 & 2, discrete choice models are to be utilized to regress the planning control decisions made by the Town Planning Board on applications for residential development, in different statutory zones, under Section 16 of the Town Planning Ordinance (as the dependent variable,  $Y$ ) on selected explanatory variables. The dependent variable takes the binary form of either approval with or without conditions (“1”) or rejection (“0”).

Presenting the above in probabilistic expressions, the probability of a planning application to be approved by the TPB (i.e.  $Y = 1$ ) is:

$$\text{Prob}(Y = 1|x) = F(x, \beta)$$

where  $\beta$  represents the effect of changes in the explanatory variables ( $x$ ) on the probability. The probability of a planning application to be rejected by the TPB (i.e.  $Y = 0$ ), by contrast, is expressed as follows:

$$\text{Prob}(Y = 0|x) = 1 - F(x, \beta)$$

As the right-hand side of the formula is essentially a regression model, this means that there is an error term ( $\varepsilon$ ) accompanying the explanatory variables. The next item to be determined is the distribution of this error term. In the econometrics literature (see Greene, 2012),  $\varepsilon$  is generally under either logistic distribution or normal distribution. Both distributions are believed to be symmetric, in that:

$$\text{Prob}(y^* > 0|x) = \text{Prob}(\varepsilon < x'\beta|x) = F(x'\beta)$$

where  $F(t)$  is the cumulative distribution function (cdf) of the random variable  $\varepsilon$ . Assuming symmetric distributions for the error term, it is expected that:

$$\lim_{x'\beta \rightarrow +\infty} \text{Prob}(Y = 1|x) = 1; \text{ and } \lim_{x'\beta \rightarrow -\infty} \text{Prob}(Y = 1|x) = 0$$

The probit (logit) model is based upon the normal (logistic) distribution of  $\varepsilon$ . Both models have been employed in previous studies on development control decisions that rely on non-aggregate planning data. In this study, the probit model, which takes the following form, is to be deployed.

$$\text{Prob}(Y = 1|x) = \int_{-\infty}^{x'\beta} \Phi(t) dt = \Phi(x, \beta)$$

in which  $\Phi(t)$  denotes the standard normal distribution function.

From a practical standpoint, a positive coefficient ( $\beta$ ) for an explanatory variable indicates that the higher it is, the high probability a planning application is approved, holding other variables constant; whereas a negative coefficient suggests a higher probability for an application to be rejected should the explanatory variable in question be larger.

### **3.2 The Selected Variables for the Study of the Town Planning Board's Planning Control Decisions**

#### ***3.2.1 Development of Residential Flats and/or Ordinary Houses***

Five groups of variables are to be included in the probit models, including: Site-specific variables (SS); Application-specific variables (APPS); Zoning-specific variables (ZS); Location-specific variables (LS); and Exogenous variables (EXO). In functional form, an application's probability to be approved by the Town Planning Board can be articulated as the following:

$$Y = f(SS, APPS, ZS, LS, EXO)$$

The following sections provide a description of these explanatory variables.

#### *Site-specific variables*

Six site-specific variables are introduced in the discrete choice models. In light of the question raised in the beginning of this chapter as to whether or not the TPB's planning control decisions are skewed towards the interests of large property developers (which makes rent-seeking behaviours possible), the scale of the proposed residential development is thus essential.

Similar to several previous studies (Lai and Ho, 2001a; Tang et al., 2000), two different sets of indicators that represent the scale of a development are considered in separate models. In Model 1, the Gross Site Area (**GSA**) (see Tang and Tang, 1999; Tang and Choy, 2000; Lai and Ho, 2002b) and the development's proposed plot ratio (**PLOT**), are included. Whereas, in Model 2, a single variable, the Gross Floor Area (**GFA**) (see for instance, Lai and Ho, 2001a; 2001b; 2001c; 2001d; 2002a; Tang and Choy, 2000), which equals GSA times PLOT, is chosen instead to test the hypothesis that the TPB's planning control decisions cater to the interests of large property developers. The rationale is that, with more financial resources (and easier access to credit), large developers are more capable of out-bidding others for larger land sites put on sale by the government in land auctions/tender, thus carrying out larger residential developments (in terms of GFA). If positive signs are found, this hypothesis is empirically supported.

However, the development density (GFA) of a development project, while critical, does not sufficiently inform us its nature. For instance, are larger (luxury) housing units or smaller (mass) housing units to be constructed under these projects? Regarding this matter, another numerical variable, namely the proposed number of housing units to be developed (**UNIT**), is to be included as well.

Besides the scale of the proposed development, another site-specific variable to be included concerns the number of previous applications for development on the same land site (**PPA**). It is found by Tang and Choy (2000) that, the more often developers (or landowners) submitted applications for development on a particular land site in the past, the current application has a higher probability to be approved by the TPB. In other words, a positive correlation between PPA and the dependent variable is expected, because previous decisions (and comments) made by the TPB provide valuable information to developers (or landowners) concerning its interpretation as to what (and how) a particular land site should be developed.

Further, the leasehold status of the land lot in question is to be taken into consideration as well. A dummy variable, **GOVT**, is established to evaluate whether a proposed development on a site with both private land and government land ("1") would have a significant difference in terms of approval probability when compared with a similar development on private land only ("0"). This is used to test the hypothesis of "Residential development applications on sites involving government land are less likely to be approved by the TPB". For this hypothesis to be supported, a negative correlation is required between GOVT and the dependent variable.

### *Application-specific variables*

Three application-specific variables are considered for this study. The first one concerns whether a planning application, under Section 16 of the Planning Ordinance, sought minor relaxations of restrictions with respect to its plot ratio and/or building height and/or site coverage. Therefore, a dummy variable (**MINOR**) is established to take these conditions into account.

The second application-specific variable is established with reference to the distinction between flat development (i.e. high-rise residential buildings) and (low-rise) ordinary house development under the B(P)R. In order to separate these two types of residential developments, a dummy variable, **HOUSE**, is incorporated into the discrete choice model(s). “1” refers to an application for a residential development that includes the building of ordinary house(s), and “0” refers to an application for flat-only development.

The third application-specific variable, by contrast, takes into account the inclusion of other non-residential use(s) in a proposed residential development. **MIXED**, which distinguishes a proposed mixed development (“1”) from a proposed residential-only development (“0”), is incorporated into the models to find out whether there exists any differences in terms of approval rates between a mixed development and a residential-only development. The hypothesis to be tested using this variable is that a mixed development application is less likely to be approved by the TPB than a residential-only development, which requires a negative correlation between **MIXED** and the dependent variable.

### *Zoning-specific variables*

As some of the proposed residential development involves land in more than one statutory zone, two zoning-specific variables<sup>10</sup> are hence introduced to control for their latent influences on an application’s probability to be approved.

The **MULTI** dummy variable is first introduced, to distinguish a planning application for a site involving other statutory land-use zones (“1”) from another application on a site which is

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<sup>10</sup> Originally, several zone-specific control dummy variables were proposed to be included to take into account their respective impacts on the likelihood of a development application to be approved, as applications for multiple statutory zones were initially grouped together for analysis. However, upon the criticism towards this approach by some anonymous reviewers during the peer review process, the research team decided to study these zones separately. Therefore, these variables were not included in the analysis.

entirely within one statutory land use zone (“0”), with the testable hypothesis being that residential development applications on sites involving multiple statutory zones are less likely to be approved by the TPB (which requires the coefficient to be negative). And the second variable (applicable to GIC and CDA zones only), **GB**, is established with reference to the planning intention of GB zones, which is to “promote the conservation of the natural environment and to safeguard it from encroachment by urban-type developments (Town Planning Board, 1991).” “1” refers to a proposed residential development on a site partially within GB zone, and “0” denotes a proposed development on a land site which does not encroach into GB zone<sup>11</sup>. The proposed hypothesis for this variable is that existing land-use policies regarding the preservation of greenbelts are compromised in TPB’s planning control decisions due to the government’s stated objective to increase the supply of housing. A negative relationship between GBZ and the dependent variable is required to support this hypothesis.

#### *Location-specific variables*

Given the disparities in development density restrictions in different parts of Hong Kong under the Building (Planning) Regulations [B(P)R] (Tables 2.1-2.3), two location-specific variables are thus included into the discrete choice models to take into account the geographical differences in terms of the likelihood of approval by the TPB for proposed residential development projects, if any. The first variable, **HKI**, separates proposed residential developments on Hong Kong Island (“1”) from others. Similarly, the second variable, **KOW**, is established, to distinguish applications for residential development in Kowloon Peninsula from those on Hong Kong Island and in the New Territories (“0”).

#### *Exogenous variables*

In addition to the factors directly related to the proposed development itself, four exogenous variables are considered as well. While the first two variables are applicable to all statutory land-use zones to be studied, the third and the fourth exogenous variables are only used in the study of CDA zones.

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<sup>11</sup> Another zoning-specific variable, AGR, was supposedly proposed for the analysis. Nevertheless, during the data collection process, it was found by the research team that the number of applications in R(D), R(E), GIC, V, GB, and GIC zones which also involved AGR zone was not sufficient (i.e. 7 in total) to yield any meaningful results. Thus, the AGR variable was not included in the analysis.

The first exogenous variable is related to the central theme of this proposed research, which is to analyze the TPB's planning control decisions on residential development applications, subject to the government's stated objective to increase housing supply. Of the three administrations since Hong Kong's handover to China (i.e. the Tung administration, the Tsang administration, and the current Leung administration), the priority to supply more housing units has been stressed by the current administration as a key policy objective. Since his inauguration, Leung has announced various measures with the aim to provide additional land (and/or floor space) for residential development, including the rezoning of non-residential land sites and the increase in development density. A dummy variable, **LEUNG**, is hence established to find out if it incurs a significant impact on a proposed residential development's likelihood of approval by the TPB, compared with the previous two administrations. "1" is assigned to planning control decisions made since the inauguration of the Leung administration (i.e. July 1<sup>st</sup>, 2012), and "0" otherwise<sup>12</sup>. A hypothesis, which denotes "The TPB's planning control decisions are subject to the government's stated objective to increase the supply of housing", is to be tested. This hypothesis is supported, should the relationship between **LEUNG** and the dependent variable be significant.

The second exogenous variable takes into account Hong Kong's history as a British colony (before July 1<sup>st</sup>, 1997) and as a Special Administrative Region under Chinese sovereignty (since July 1<sup>st</sup>, 1997). It, **COLONIAL**, is designed to assess the differences, if any, in the probability for residential development applications to be approved by the TPB in these two eras, as "1" refers to applications which were decided by the TPB before Hong Kong's handover to China, and "0" to those determined after the handover.

In addition to **LEUNG** and **COLONIAL**, two other variables are established for the study of the TPB's planning control decisions for residential development on CDA sites. Firstly, office vacancy rate (in %) (**VAC**) essentially reflects the conditions of Hong Kong's commercial sector. Office development competes with residential development for limited land. An expansion of the commercial sector indicates a lower vacancy rate, suggesting insufficient supply of office space and thus higher development pressure in the office sector. Also, the year-

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<sup>12</sup> However, as there were only 4 cases (1 in R[B] zone, 1 in R[C] zone, 1 in GIC zone, and 1 in CDA zone), decided by the TPB during the C.Y. Leung Administration, which also involved land in GB zone, the data is not sufficient to yield meaningful results as to the effects, if any, of the interaction term (i.e. interaction effects) originally proposed for this study (**LEUNG\_GB**). Therefore, only the exogenous effect of **LEUNG** is explored.

on-year growth in the number of visitors to Hong Kong (in %) (**OV**), by contrast, reflects the conditions of Hong Kong's hotel industry. An expanding hotel industry, as reflected by the growth in visitors, suggests the need for more hotel rooms without compromising Hong Kong's competitiveness in terms of accommodation costs. This, inevitably, competes with residential development for land in these areas. These two variables are to be used to test the hypothesis of "Hong Kong's business conditions influence the TPB's planning control decisions". The hypothesis is supported should the two variables be found to be statistically significant.

A summary of the variables discussed above is provided in Table 3.1 below.

<b>Variable</b>	<b>Description</b>	<b>Type</b>	<b>Expected relationship with the dependent variable</b>
<b><i>Site-Specific Variables</i></b>			
LnGSA	Gross site area (m <sup>2</sup> ) (in Natural Log form) (Model 1 only)	Numerical	+
PLOT	Plot ratio of the proposed residential development (Model 1 only)	Numerical	/
LnGFA	Gross Floor area (m <sup>2</sup> ) (in Natural Log form) (Model 2 only)	Numerical	+
UNIT	Number of housing units proposed to be built	Numerical	/
PPA	Number of previous planning applications for the same land site	Numerical	+
GOVT	1 denotes an application for residential development on a site with adjoining government land; and 0 otherwise	Dummy	-
<b><i>Application-Specific Variables</i></b>			
HOUSE	1 denotes an application for house development (or a combination of house/flat development); and 0 for a flat-only development	Dummy	/
MIXED	1 denotes an application for a mixed development; and 0 for a residential-only development	Dummy	/
MINOR	1 denotes an application for the relaxation of development restriction(s); and 0 otherwise	Dummy	/
<b><i>Zoning-Specific Variable</i></b>			
MULTI	1 denotes an application for a site involving more than one statutory zones; and 0 otherwise	Dummy	/
<b><i>Location-Specific Variables</i></b>			
HKI	1 denotes an application for residential development on Hong Kong Island; and 0 otherwise	Dummy	/
KOW	1 denotes an application for residential development in Kowloon Peninsula; and 0 otherwise	Dummy	/
<b><i>Exogenous Variables</i></b>			
LEUNG	1 denotes planning control decisions made by the TPB during the C. Y. Leung Administration (i.e. July 1 <sup>st</sup> , 2012-June 30 <sup>th</sup> , 2017); and 0 otherwise	Dummy	+
COLONIAL	1 denotes planning control decisions made by the TPB before Hong Kong's handover	Dummy	/

	to China (i.e. July 1 <sup>st</sup> , 1997); and 0 otherwise.		
VAC	Office vacancy rate (in %) in the previous year (only applicable to CDA zone)	Numerical	/
OV	Year-on-year growth in the number of visitors to Hong Kong (in %) in the previous year (only applicable to CDA zone)	Numerical	/

Table 3.1: A description of the selected variables

### 3.2.2 Construction of Small Houses

As for the explanatory variables to be included into the probit models for the study of the TPB's decisions on small house applications in Greenbelt (GB) zone and in Agriculture (AGR) zone in separate models<sup>13</sup>, they can be categorized into three groups, consisting of site-specific variables (SS), location-specific variables (LS), and exogenous variables (EXO). In functional form, an application's probability to be approved by the Town Planning Board can be articulated as the following:

$$Y = f(SS, LS, EXO)$$

#### *Site-specific variables*

Eight site-specific variables are included in this study. The first, and arguably the most important, factor to be considered is the size of the proposed small house development itself. Based on the previous studies on the TPB's decisions on small house applications, either Gross Floor Area (GFA) (Lai and Ho, 2001a; 2001b; Chau and Lai, 2004; Tang et al., 2005) or Gross Site Area (GSA) (Tang et al., 2007) is used as an indicator, with varying results. However, given that the maximum allowable GFA for a small house is stipulated at 195.09m<sup>2</sup> according to the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121), the use of GFA would be problematic as it does not take the size of the land site into account. It would also be equally problematic to use GSA<sup>14</sup>, as it does not take into consideration the number of small houses proposed to be built on the site (if the site in question is large enough for the

<sup>13</sup> As a result of this arrangement, the dummy variables GB and AGR, as originally proposed for the study, are not included as controls in the probit models.

<sup>14</sup> This was originally proposed as a site-specific variable in the proposal. Yet, due to the reasons mentioned above, the research team believed that the GSAPH variable was a better indicator, as it took into account both the unique characteristics of small house(s) (such as their standardized maximum allowable GFA) and the size of land sites on which these small house(s) were proposed to be constructed.

construction of multiple small houses). Therefore, in this study, rather than including either GFA or GSA, four separate variables are introduced. The first variable is a numerical variable that represents the GSA per small house (**GSAPH**) in the application; and the other three are binary dummy variables which denote the number of houses proposed by the applicant to be constructed on a given site (**HOUSES**): 1) 2-5 houses; 2) 6-10 houses; and 3) more than 10 houses. The inclusion of these variables is believed to lead to a better understanding as to how the TPB views the construction of small houses, with reference to the amount of land resources involved and the number of small houses to be erected.

Then, based upon Tang and Choy's (2000) finding that a higher number of previous applications for the development of a particular land site leads to a higher likelihood of the current application to be approved, a numerical variable, **PPA**, is introduced, and a positive correlation between this variable and an application's likelihood to be approved is expected. The rationale is that, the TPB's interpretation as to how a land site should be developed is revealed to an applicant through its decisions. Thus, it becomes more predictable for developers (or owner(s) of the land site in question) in terms of the criteria the planning authorities would focus on.

Also, as planning permissions by the TPB are only necessary when more than 50% of a proposed small house's footprint falls outside the V/VE zone (Town Planning Board, 2007), it results in two different scenarios: the proposed small house's footprint is either 1) partly within the V/VE zone or 2) completely outside the V/VE zone. In order to find out if there are any statistical differences in the probability of approval for applications between these two scenarios, a dummy variable named **OUT** is hence established to distinguish proposed small houses that are completely outside the V/VE zone ("1") from those at least partly within the V/VE zone ("0"). The hypothesis of "An application for small house construction on a site completely outside the Village Type Development Area (V) and its environs (VE) are less likely to be approved than that on a site partially within the V/VE zones" is supported should the relationship between **OUT** and the dependent variable is found to be negative.

Furthermore, with reference to the various small house grants for application depending on the ownership status of the land site in question, two dummy variables<sup>15</sup> are introduced to assess

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<sup>15</sup> Originally, only one variable, **GOVT**, was proposed as an explanatory variable. However, as the research team,

whether the TPB is more likely to reject one type of small house application over the other. While the first variable is applicable to proposed small house(s) on a site that is partly owned by the government (**PARTGOVT**), the second variable applies to proposed small house(s) on government land only (**FULLGOVT**). These two variables are used to test the hypothesis, which states that “Residential development applications on sites involving government land are less likely to be approved by the TPB”. For this hypothesis to be supported, either of the two variables has to have a negative relationship with the dependent variable.

The final site-specific variable is related to the proposed size of the small house(s). Even though the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) permits an indigenous villager to build a small house as large as 195.09m<sup>2</sup>, a closer look at the small house applications suggests that some applicants, instead, propose a smaller GFA for their NTEHs. Are these applications more likely to be approved by the TPB? To answer this question, a dummy variable, **NSH** (i.e. Non-standardized House), which refers to a proposed small house smaller than 195.09m<sup>2</sup>, is hence included in the models.

#### *Location-specific variables*

Considering that there are 642 recognized villages in nine districts under the Small House Policy, several location variables are incorporated into the discrete choice model with the aim to find out if there are significant differences between the approval rates for small house construction applications between these districts. A closer look at the full data sample, which includes more than 4,200 applications since January 1990, reveals that the vast majority of these small houses are proposed to be constructed in either one of these three districts: 1) Tai Po, 2) North, and 3) Yuen Long (Figure 3.1). In light of this observation, three location dummy variables, **TAIPO**, **NORTH**, and **YUENLONG**, are thus introduced to compare the chance of success for small house construction applications amongst these districts.

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during the data collection stage, discovered that some of the small house applications were proposed on government land only, some others were proposed on sites with both private land and government land. Therefore, two variables, **PARTGOVT** and **FULLGOVT**, were introduced here to identify the statistical differences, if any, in applications' likelihood to be approved by the Town Planning Board.

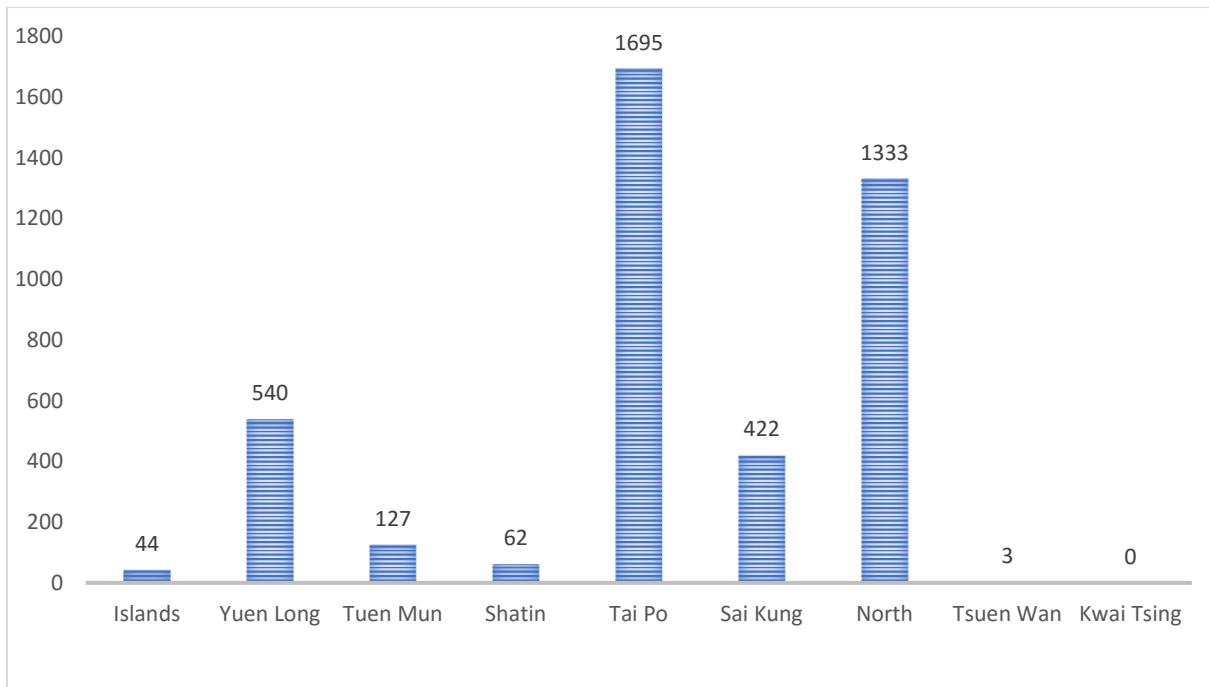


Figure 3.1: Number of small house applications decided by the TPB by District (January 1<sup>st</sup>, 1990-June 30<sup>th</sup>, 2017)

Source: The Town Planning Board

### *Exogenous Variables*

Besides the factors directly related to the application itself, as described above, two additional administration-related exogenous variables are to be considered. The first one, **LEUNG**, is established to separate all decisions made by the Town Planning Board when C.Y. Leung served as Hong Kong's Chief Executive (i.e. July 1<sup>st</sup>, 2012-June 30<sup>th</sup>, 2017) ("1"), from those reached beforehand ("0"). The hypotheses of 1) The TPB's planning control decisions are subject to the government's stated objective to increase the supply of housing; 2) Existing land-use policies regarding the preservation of greenbelts are compromised in TPB's planning control decisions due to the government's stated objective to increase the supply of housing (for GB zone only); and 3) Existing land-use policies regarding the preservation of agricultural land are compromised in TPB's planning control decisions due to the government's stated objective to increase the supply of housing (for AGR zone only) are to be tested accordingly. To provide empirical support for these hypotheses, the relationship between LEUNG and the dependent variable is needed to be significantly positive<sup>16</sup>, given that small houses, since the

<sup>16</sup> Since AGR zone and GB zone are to be studied separately, the LEUNG dummy variable itself is already able to investigate whether or not the government's stated objective to increase the supply of housing affects the TPB's planning control decisions (on small house construction applications). Therefore, it is not necessary to explore the interaction effects of the policies during the C.Y. Leung Administration.

Court of Appeal decision of 1997 which deemed the resale of small houses “not illegal”, have been viewed as another source of housing in Hong Kong.

The second variable considers Hong Kong’s history as a British colony (before July 1<sup>st</sup>, 1997) and as a Special Administrative Region under Chinese sovereignty (since July 1<sup>st</sup>, 1997). It, **COLONIAL**, is designed to assess the differences, if any, in the probability for residential development applications to be approved by the TPB in these two eras, as “1” refers to applications which were decided by the TPB before Hong Kong’s handover to China, and “0” to those determined after the handover. A summary of these selected variables is provided in Table 3.2 below.

<b>Variable</b>	<b>Description</b>	<b>Type</b>	<b>Expected relationship with the dependent variable</b>
<b><i>Site-Specific Variables</i></b>			
GSAPH	Gross site area per small house (m <sup>2</sup> ) (in Natural Log form)	Numerical	-
HOUSES	The amount of (proposed) small houses to be constructed in the application, in three binary variables: 1) 2-5 houses 2) 6-10 houses 3) more than 10 houses	Dummy	/
PPA	Amount of previous applications for the same site	Numerical	+
OUT	1 denotes a proposed small house located completely outside the Village Type Development Area (V) zone; and 0 otherwise	Dummy	-
PARTGOVT	1 denotes a proposed small house on a site that partly involves government land; 0 otherwise.	Dummy	-
FULLGOVT	1 denotes a proposed small house that is entirely on government land; 0 otherwise.	Dummy	-
NSH	1 denotes a proposed small house that is smaller than the maximum allowable size (i.e. a 3-storey house with a total GFA of 195.09 m <sup>2</sup> ); and 0 otherwise	Dummy	/
<b><i>Location-Specific Variables</i></b>			
NORTH	1 denotes an application for the construction of a small house on a site located in North District (including Fanling, Sheung Shui, Sha Tau Kok, and Ta Kwu Ling); and 0 otherwise	Dummy	/
TAIPO	1 denotes an application for the construction of a small house on a site located in Tai Po District; and 0 otherwise	Dummy	/
YUENLONG	1 denotes an application for the construction of a small house on a site located in Yuen Long District; and 0 otherwise	Dummy	/
<b><i>Exogenous Variables</i></b>			
LEUNG	1 denotes planning control decisions made by the TPB during the C.Y. Leung Administration (i.e. July 1 <sup>st</sup> ,	Dummy	/

	2012-June 30 <sup>th</sup> , 2017); and 0 otherwise		
COLONIAL	1 denotes planning control decisions made by the TPB before Hong Kong's handover to China (i.e. July 1 <sup>st</sup> , 1997); and 0 otherwise.	Dummy	/

Table 3.2: A summary of the selected variables

### 3.3 Data

The data necessary for conducting this empirical analysis came from three sources. First, planning control data was collected through the Town Planning Board's Statutory Planning Portal (SSP). The SSP is an online database, which contains records of planning applications decided by the Town Planning Board since January 1<sup>st</sup> 1990, in which information of the proposed development (such as GFA, GSA, number of housing units proposed, building height, site coverage, location, details in terms of provision of open space, GIC facilities, car parking space, loading bay(s) (if any), etc.), as well as the TPB's decision (with reasons), is proffered. And second, the office vacancy data used for the computation of the VAC dummy variable, exclusive for the study of the CDA zone, was compiled from the Rating & Valuation Department (RVD). Lastly, data with regard to the amount of visitors to Hong Kong over the years, required for the computation of the OV variable, was collected from the Hong Kong Tourism Board.

Between January 1<sup>st</sup>, 1990 and June 30<sup>th</sup>, 2017, a total of 2,026 planning applications for residential development (i.e. housing flats and/or ordinary houses) had been decided by the TPB, including 118 cases for R(A) zones, 122 cases for R(B) zones, 296 cases for R(C) zones, 47 cases for R(D) zones, 122 cases for R(E) zones, 91 cases for V zones, 721 cases for CDA zones, 298 cases for GIC zones, and 179 cases for GB zones. However, a closer look at these records reveals that they include four types of planning applications, such as:

- Planning applications under Section 16 of the Town Planning Ordinance with the TPB's decision
- Planning applications under Section 16 of the Town Planning Ordinance without the TPB's decision due to deferment on the part of applicants
- Applications for Class B amendment of approved development proposals under Section 16A(2) of the Town Planning Ordinance
- Planning applications submitted by government agencies (for instance, for development

of public housing estates)

Since this investigation only focuses on “fresh” planning applications submitted by private sector applicants under Section 16 of the Town Planning Ordinance, only the cases within the first group are included for analysis. This consists of 1,220 cases for residential development (flats and/or houses) in total, of which 80 applications are in R(A) zones, 90 applications in R(B) zones, 252 for R(C) zones, 47 cases for R(D) zones, 64 cases for R(E) zones, 73 cases for V zones, 176 applications in GIC zones, 261 applications in CDA zones, and 177 applications in GB zones.

In the meantime, there had been more than 4,200 applications for small house construction under Section 16 of the Town Planning Ordinance. However, as this research study focuses upon Greenbelt (GB) and Agriculture (AGR) zones, 3,380 cases are selected for the analysis.

The empirical findings of the investigations on the TPB’s planning control decisions on residential development and small house construction are to be presented and discussed in Chapters 4 and 5, respectively.

## **Chapter 4: Findings on the TPB's Planning Control decisions on Applications for Residential Development**

### **4.1 Descriptive Statistics**

The descriptive statistics of the sampled planning applications are provided in Tables 4.1-4.3 below. Of the nine statutory land-use zones under study, the Town Planning Board had been noticeably more likely to approve planning applications for residential development in CDA and R(E) zones, as more than three-quarters of applications relating to land sites in these areas had been approved by the TPB. In comparison, the probability for residential development applications to be rejected in V zone, and especially, in GB zone, had been much higher (both with approval rate of less than 50%).

For the site-specific variables, the land sites involved in proposed residential development in CDA zones were by far the largest (Mean = 55,103m<sup>2</sup>), followed by those in V zone (28,747 m<sup>2</sup>), in GIC zone (26,444m<sup>2</sup>), and in GB zone (20,400m<sup>2</sup>). Similarly, the average proposed GFA for the development of residential properties in CDA zone (146,270m<sup>2</sup>) was noticeably larger than the other eight statutory land-use zones. Due to the much larger Gross Site Area and GFA, the mean proposed number of housing units to be constructed on CDA sites (1,793.15) was thus also much larger than that in the remaining eight land-use zones. As to the mean proposed plot ratio, it was the highest in R(A) zone (7.14), followed by GIC zone (5.92). By contrast, the mean proposed plot ratios of housing development in R(D) and V zones were smaller than 1. The average number of previous planning applications for the same site was the largest among the sampled planning applications concerning CDA sites (1.77), followed by GIC sites (1.57), whereas repeated applications for housing development in R(C), R(E), and V zones were much less often. While more than 40% of planning applications for CDA and R(D) zones involved government land, the proportion in this regard for residential development applications on some residential sites (i.e. R[C] and R[E] zones) was much lower (less than 16%).

As for the application-specific variables, the majority of residential development applications in R(D), V, and GB zones concerned the construction of low-rise houses, while the majority of housing development applications in the remaining six land-use zones were for the building of housing units. Meanwhile, a sizeable portion of sampled applications in CDA, GIC, R(E), and

R(A) zones proposed a mixed development (at least 30%). In addition, since one of the conditions which require the TPB's permission for housing development involved modifications of existing development restrictions, the proportion of applications which had made such requests in the residential zones, in particular R(C) zone, was much higher than others.

Regarding the zoning-specific variable, MULTI, the findings show that an overwhelming majority (76%) of applications for housing development in R(A) zone also involved other land-use zones, followed by R(D) zone, CDA zone, and GB zone.

From a geographical perspective, the majority of sampled planning applications in R(A), R(C), and GIC zones concerned land sites located on Hong Kong Island. By contrast, all of the proposed residential developments in R(D) and V zones, and the overwhelming majority of those in GB zone, were in the New Territories.

With regard to other exogenous factors, on the one hand, the percentages of planning control decisions made by the TPB during the C.Y. Leung administration were the highest for R(D) and R(E) zones, and the lowest for GIC, R(B), and R(C) zones. On the other hand, while more than half of planning control decisions for residential development on R(A) and GIC sites had been made when Hong Kong was still under British colonial rule, the majority of decisions for similar development on land sites in the other seven land-use zones had actually been made after Hong Kong's handover to China.

<b>Statutory Zone</b>	<b>R(A)</b>		<b>R(B)</b>		<b>R(C)</b>	
<b>Approval Rate</b>	<b>68.8%</b>		<b>55.6%</b>		<b>61.5%</b>	
<i>Site-Specific Variables (Numerical)</i>						
<b>Variable</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>
GSA (in m <sup>2</sup> )	4151.9	6087.3	9,432.9	9,928.2	15,797	90,273
GFA (in m <sup>2</sup> )	21645	24998	29,952	37,808	8,029	23,043
UNIT	278.26*	328.232	412.14*	600.917	58.32*	194.151
PLOT	7.14	2.55	4.12	2.39	1.59	1.98
PPA	1.38	1.65	1.00	1.55	0.61	0.91
<i>Site-Specific Variables (Dummy) (in percentage)</i>						
GOVT	22.50		20.0		11.5	
<i>Application-Specific Variables (in percentage)</i>						
HOUSE	0		2.2		27.8	
MIXED	33.8		3.3		2.4	
MINOR	33.8		56.7		86.5	
<i>Zoning-specific Variables (in percentage)</i>						
MULTI	76.3		47.8		23.0	
GB	1.3		21.1		12.3	
<i>Location-specific Variables (in percentage)</i>						
HKI	67.5		47.8		57.1	
KOW	22.5		8.9		6.0	
<i>Exogenous Variables (in percentage)</i>						
LEUNG	10.0		4.4		4.4	
COLONIAL	55.0		40.0		34.9	
<b>N</b>	<b>80</b>		<b>88</b>		<b>252</b>	

Table 4.1: Descriptive statistics for R(A), R(B), and R(C) zones

\* denotes the averages of incomplete sample due to missing information

<b>Statutory Zone</b>	<b>R(D)</b>		<b>R(E)</b>		<b>V</b>	
<b>Approval Rate</b>	<b>60.4%</b>		<b>76.6%</b>		<b>47.9%</b>	
<i>Site-specific Variables (Numerical)</i>						
<b>Variable</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>
GSA (in m <sup>2</sup> )	10500	15070	4182.160	4512.989	28746.59	92092.552
GFA (in m <sup>2</sup> )	2537.85*	3747.637	18186.012	24982.970	25117.352	61545.153
UNIT	20.29	38.537	306.10*	456.013	320.02*	761.255
PLOT	0.414*	0.488	4.662	2.652	0.959	0.642
PPA	1.33	1.883	0.72	0.983	0.63	1.275
<i>Site-specific Variables (Dummy) (in Percentage)</i>						
GOVT	47.9		15.6		32.9	
<i>Application-specific Variables (in Percentage)</i>						
HOUSE	100		9.4		74.0	
MIXED	4.2		45.3		6.8	
MINOR	25.0		7.8		8.2	
<i>Zoning-specific Variables (in Percentage)</i>						
MULTI	12.5		0		12.3	
GB	2.1		0		15.1	
<i>Location-specific Variables (in Percentage)</i>						
HKI	0		6.2		0	
KOW	0		50.0		0	
<i>Exogenous Variables (in Percentage)</i>						
LEUNG	16.7		18.8		8.2	
COLONIAL	12.5		0		41.1	
<b>N</b>	<b>48</b>		<b>64</b>		<b>73</b>	

Table 4.2: Descriptive statistics for R(D), R(E), and V zones

\* denotes the averages of incomplete sample due to missing information

<b>Statutory Zone</b>	<b>GIC</b>		<b>CDA</b>		<b>GB</b>	
<b>Approval Rate</b>	<b>55.7%</b>		<b>77.4%</b>		<b>37.9%</b>	
<i>Site-specific Variables (Numerical)</i>						
<b>Variable</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>	<b>Mean</b>	<b>Std. Deviation</b>
GSA (in m <sup>2</sup> )	26444.658	110164.3	55103.435	110374	20398.861	38967.034
GFA (in m <sup>2</sup> )	45985.043	84991.81	146273.277	210866	12867.928	26805.058
UNIT	536.10*	916.84	1793.15*	2518.31	99.81*	275.85
PLOT	5.92	3.29	4.27	2.96	1.09	1.67
PPA	1.57	1.53	1.77	1.88	1.04	1.25
<i>Site-specific Variables (Dummy) (in Percentage)</i>						
GOVT	22.7		40.6		35.6	
<i>Application-specific Variables (in Percentage)</i>						
HOUSE	9.7		8.8		62.7	
MIXED	32.4		54.0		2.8	
MINOR	4.5		12.6		13.0	
<i>Zoning-specific Variables (in Percentage)</i>						
MULTI	46.6		14.9		44.1	
GB	7.4		2.7		N.A.	
<i>Location-specific Variables (in Percentage)</i>						
HKI	48.9		8.4		11.9	
KOW	25.0		24.1		0	
<i>Exogenous Variables (in Percentage)</i>						
LEUNG	1.7		11.1		5.6	
COLONIAL	64.2		31.8		48.0	
<b>N</b>	<b>176</b>		<b>261</b>		<b>177</b>	

Table 4.3: Descriptive statistics for GIC, CDA, and GB zones

\* denotes the averages of incomplete sample due to missing information

Before the presentation of the findings of the probit models in the next section, it should be noted that the numerical variable of **UNIT** is not to be included in the models, due to missing information in this regard in numerous applications (see Tables 4.1-4.3). Also, the following variable(s) are not to be included in the models for some of the statutory land-use zones, due to the lack of applications recorded:

- HOUSE (R[A] and R[D] zones)
- MULTI (R[E] zone)
- HKI and KOW (R[D] and V zones)
- KOW (GB zone)
- COLONIAL (R[E] zone)
- GB (R[A], R[D], and R[E] zones)

## 4.2 Probit Model Results

Tables 4.4-4.5 report the results obtained from the probit models for R(A), R(B), and R(C) zones, which are to be presented in the following paragraphs.

Variable	Residential (Group A)		Residential (Group B)		Residential (Group C)	
	1	2	1	2	1	2
Constant	-0.080		-0.320	-0.340	-0.499	0.445
<i>Site-specific Variables</i>						
GSA	-0.097		0.163		0.119	
PLOT	0.022		0.161		-0.054	
GFA		-0.093		0.198		0.006
PPA	0.125	0.114	0.152	0.154	-0.263**	-0.241*
GOVT	0.305	0.229	-0.562	-0.520	-0.403	-0.378
<i>Application-Specific Variable</i>						
HOUSE			-0.156	-0.113	0.379	0.373
MIXED	-0.269	-0.215	7.414	7.561	0.173	0.273
MINOR	0.432	0.520	-1.374	-1.448	0.140	0.111
<i>Zoning-specific Variables</i>						
MULTI	0.715	0.734	-0.931	-1.134	0.528	0.368
GB			0.561	0.721	-0.473	-0.272
<i>Location-specific Variables</i>						
HKI	0.030	0.119	-0.623	-0.316	0.194	-0.010
KOW	1.227	1.291	-0.414	-0.161	-0.453	-0.643
<i>Exogenous Variables</i>						
LEUNG	-0.464	-0.490	1.247	1.235	0.026	0.039
COLONIAL	0.189	0.280	-0.524	-0.331	-0.574**	-0.549**
N	<b>80</b>		<b>88 (Note 2)</b>		<b>250 (Note 2)</b>	
Chi-square	77.750	77.703	83.574	82.184	252.536	251.401

Table 4.4: Empirical findings obtained from the Probit models for R(A), R(B), and R(C) zones  
Notes: 1) \*\* denotes statistical significance at 1%; and \* at 5%; 2) The number of cases included in the Probit model for the two zones is slightly less than the sample for this land-use zone, due to missing information in 2 of the applications in the database.

Variable	Residential (Group D)		Residential (Group E)		Village Type Development		GIC		CDA		GB	
	1	2	1	2	1	2	1	2	1	2	1	2
Constant	-1.624	-3.725	-5.033	-3.069	1.604	2.276	0.218	0.564	-4.727	-5.078	-1.676	-1.475
<i>Site-specific Variables</i>												
GSA	0.415		0.051		-0.234		-0.095		0.347**		0.079	
PLOT	-4.638		1.438*		0.149		0.077		0.090		0.025	
GFA		0.534*		0.371*		-0.268*		-0.101		0.369**		0.057
PPA	0.194	0.295	0.948*	0.241	0.441*	0.445*	0.470**	0.493**	0.085	0.089	0.476**	0.488**
GOVT	-0.325	0.134	3.684	1.027	0.274	0.343	0.560	0.447	0.330	0.380	-0.380	-0.380
<i>Application-Specific Variables</i>												
HOUSE			3.497	1.131	0.106	-0.323	0.012	-0.369	-0.402	0.018	0.398	0.423
MIXED	0.558	0.495	0.275	0.065	0.007	0.186	0.457	0.599*	-0.410	-0.463*	1.715*	1.780*
MINOR	-1.083	-1.129	-0.887	-0.838	0.091	0.103	1.327*	1.162	0.181	0.251	0.505	0.508
<i>Zoning-specific Variable</i>												
MULTI	0.564	0.614			0.138	0.059	-0.345	-0.312	-0.207	-0.243	0.417	0.431
GB					9.254	9.622	-0.357	-0.354	-0.573	-0.510		
<i>Location-specific Variables</i>												
HKI			-5.316	-0.610			-0.139	0.125	0.296	0.379	0.585	0.555
KOW			-3.605	0.398			-0.638	-0.382	0.092	0.119		
<i>Exogenous Variables</i>												
LEUNG	8.475	9.164	1.663	0.206	-1.681*	-1.678*	-1.338	-1.192	1.178**	1.161**	-0.267	-0.275
COLONIAL	-0.657	-0.444			-0.955	-1.052*	-0.524	-0.381	0.170	0.195	-0.730**	-0.704**
VAC									0.150**	0.157**		
OV									-0.006	-0.007		
N	47		64		73		176		261		177	
Chi-square	36.159	36.241	37.460	60.192	61.036	61.393	175.778	177.892	264.650	254.303	182.076	181.911

Table 4.5: Empirical findings obtained from the Probit models for statutory zones in which residential development is considered a Column 2 use  
Notes: \*\* denotes statistical significance at 1%; and \* at 5%;

#### ***4.2.1 Site-Specific Variables***

First and foremost, two of the site-specific variables are found to be statistically significant (at 5% level). The findings first show that, while GSA is only significant in CDA zone (Model 1), GFA is significant (at 5% significance level) in CDA, R(D), R(E), and V zones (Model 2). The positive coefficients for these three zones reveal that a proposed residential development with a larger development potential was more likely to be approved by the TPB, other factors being constant. This is in line with the findings in the majority of studies on Hong Kong's planning control decisions (i.e. Lai and Ho, 2001a; 2001b; 2001c; 2002a; Chau and Lai, 2004; Tang et al., 2005; 2007). If anything, this finding proffers some empirical support for the hypothesis that the TPB's decisions have the tendency to lean towards the interests of entities that are financially capable of providing more housing space on sites designated for low-rise, low-density residential development, for residential development in replacement of existing industrial uses, or for comprehensive development<sup>17</sup>, including individual large property developers (or multiple developers in joint ventures)<sup>18</sup> or other affluent landowners. By contrast, this hypothesis is not supported in V zone, as GFA is negatively related with the approval rate of residential development applications. This indicates that the TPB, statistically, had found it preferable for housing development in a zone intended for village expansion, or specifically, the construction of New Territories Exempted Houses, to be as small-scale as possible. On the other hand, this variable is not found to be significant in the remaining six statutory land-use zones, which reflect that no statistically significant differences between the approval probability of proposed residential developments with varying development potential are identified. In other words, for these six land-use zones, the hypothesis that the TPB's planning control decisions cater to the interests of large property developers is neither supported nor rejected.

The plot ratio (PLOT) of a proposed residential development is also significantly related to an application's likelihood to be approved in R(E) zone, in that a positive relationship (significant at 5% level) is found between it and an application's approval rate. To put it differently, a proposed residential development with a higher density was much more likely to be approved

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<sup>17</sup> For CDA zone, it has been explicitly stated by the Town Planning Board (2016b) that a larger site inside CDA zone proffers a better opportunity "for incorporating public facilities in the development, restructuring of land uses including changes to road patterns, and optimization of development potential".

<sup>18</sup> Another possible reason for the higher likelihood for larger residential development on CDA sites to be approved by the TPB is that larger developers are more financially equipped to afford a better and bigger consultant team to tender the applications.

in a statutory land-use zone designated for residential development in replacement of existing industrial uses. Grounded on these findings, it can be said that development with a higher density in a residential zone designated with the aim to replace existing industrial uses was usually preferred over lower-density development. However, this variable is not found to be significant in explaining the approval rate of residential development applications in the other eight statutory land-use zones.

The number of previous planning applications (PPA) is found to have a statistically significant relationship (at least at 5% level of significance) with an application's likelihood to be approved in five of the nine land-use zones under study: R(C), R(E) (Model 1 only), V, GIC, and GB zones. While the effect is positive for R(E), V, GIC<sup>19</sup>, the coefficient, interestingly, is negative (significant at 5% level) for R(C) zone, which indicates that the probability of an application to be approved is actually lower (i.e. around 24-26% lower in probability) if a higher number of planning applications had previously been submitted for the same site. This finding differs from that in Tang and Choy (2000). Given that applicants should be more informed due to the receipt of the (stated) criteria taken into account by the TPB via its decision(s) on previous applications, this finding is rather surprising. Nonetheless, a number of questions are inevitably raised:

- Can those criteria be met in subsequent application(s)?;
- Does the TPB strictly adhere to these criteria all the time in its decision-making process?;
- and
- Are there any other criteria that were not explicitly stated in these decisions?

A higher probability to be rejected for a current application for housing development in R(C) zone, despite the information advantage obtained through the TPB's decisions on past applications, indicates that either 1) at least some of these stated criteria were not addressable, as a result of the land site's innate characteristics (for instance, issues regarding the landscape in the surrounding areas) or 2) the TPB did not consistently apply these stated criteria, and/or there existed other unspecified criteria (such as the statistical patterns identified in this study). While scenario 1 is predictable, scenario 2 reflects a comparatively flexible but unclear

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<sup>19</sup> The positive relationship between PPA and an application's approval probability lends further support to the findings in Tang and Choy (2000), in that the TPB's decisions in the past (and the stated comments associated with the verdicts) supply useful information to developers (or landowners) as to the thoughts of TPB members with regard to development in these land-use zones.

planning control process for low-density residential land. As for R(A), R(B), and R(D) zones, this variable is not found to be significant. This suggests that the current application's probability to be approved is not subject to (from a statistical perspective) the number of planning applications submitted previously for the same land site.

#### ***4.2.2 Application-Specific Variables***

Then, two of the three application-specific variables are found to be significant. The coefficient of the MINOR dummy variable is positive in GIC (Model 1 only) zone. This reflects that, on land sites within this statutory zone, the TPB was noticeably more likely to approve requests for minor relaxations of development restrictions under B(P)R. On the other hand, this variable is generally not found to be statistically significant in explaining the rate of approval for a residential development application involving land in the remaining eight land-use zones. Additionally, the MIXED variable has a significant, sizable, and positive, relationship with an application's likelihood to be approved by the TPB in GIC (Model 2 only) and GB zones. Surprisingly, this finding points to the tendency of the Town Planning Board to approve mixed (mostly commercial-residential) development rather than residential-only development in these two zones. These findings, if anything, reject the hypothesis that a mixed development application is less likely to be approved by the TPB than a residential-only development. However, this hypothesis is empirically supported in CDA zone. The significant, and negative, coefficient for this variable in this statutory land-use zone reflects a lesser degree of flexibility in terms of planning controls for these sites, as proposed mixed developments are more likely to be rejected by the TPB than residential-only developments.

#### ***4.2.3 Zoning-Specific Variables***

As for the pair of zoning-specific variables, neither of the two variables included in the models, namely MULTI and GB, is found to be significant. This indicates that no evidence that illustrates statistical disparities in terms of approval rates between proposed residential development on land site(s) within one statutory zone and that on land sites either in multiple statutory zones or involving GB zone. In other words, the two testable hypotheses, namely "Residential development applications on sites involving multiple statutory zones are less likely to be approved by the TPB" and "Existing land-use policies regarding the preservation of greenbelts are compromised in TPB's planning control decisions due to the government's stated objective to increase the supply of housing", are neither supported nor rejected by the findings.

#### ***4.2.4 Locational-Specific Variables***

Further, the two locational-specific variables are both insignificant determinants in the TPB's planning control decisions with respect to housing development. In other words, the findings do not provide statistical evidence which shows any geographical disparities in terms of approval rates of proposed residential development under Section 16 of the Town Planning Ordinance.

#### ***4.2.5 Exogenous Variables***

Lastly, three of the four dummy exogenous variables are both found to be significant in explaining a residential development application's likelihood to be approved. For the LEUNG variable, it yields a large and negative coefficient (significant at 5% level) for V zone. To put it differently, the TPB was much less likely (i.e. to approve a proposed residential development during C.Y. Leung's administration than during the other administrations within the sample period (before and after Hong Kong's handover to China). This provides some empirical support for the hypothesis of "The TPB's planning control decisions are subject to the government's stated objective to increase the supply of housing". Nevertheless, considering that the original intention of the Village Type Development zone is for the construction of small houses amongst indigenous villagers, as well as to preserve land considered suitable for village expansion, the lower likelihood for the development of housing flats and/or houses other than NTEHs to be approved, if anything, reflects the intention of the TPB to contain the development of small houses within V (and VE) zone as much as possible.

As for the COLONIAL variable, it is negatively related (significant at least at 5% level) with application's likelihood to be approved by the TPB in R(C), V (Model 2 only), and GB zones. The finding means that the TPB was more likely to reject residential development applications in these three zones in the Colonial Era than in the HKSAR era. This points to an increasingly pro-development stance taken by the Town Planning Board towards housing development, with reference to soaring housing demand due to a consistently-rising populace (by either newborns or one-way permit holders from the Chinese Mainland), since Hong Kong's handover to China in the late 1990s. Special attentions, however, should be paid to the significance of this variable for GB zone, as this indicates a higher likelihood of permitting development on greenbelt land since Hong Kong became a Special Administration Region of China, despite the general presumption against development in this statutory land-use zone as

stated in its planning intention. By contrast, there are no significant differences in the probability of housing development applications to be approved in R(A), R(B), R(D), and GIC zones between the Colonial Era and the HKSAR Era.

And of the two market-related dummy variables exclusive for CDA zone, while OV is not significant in affecting a residential development project's probability to be approved by the Town Planning Board, VAC is positively related (significant at 1%) with a proposed housing development's likelihood to be approved, other factors being kept constant. This finding indicates that, the TPB was more likely to approve applications concerning residential development in CDA zone when there was no urgent need for more office space to be supplied (i.e. higher office vacancy rate). If anything, this means that the Town Planning Board's decisions towards residential development in CDA zone, despite comparatively stringent regulations as articulated in the planning brief for each CDA site, was subject to market conditions of the office market, an alternative land-use permissible as a Column 2 use in this statutory land-use zone. To put it differently, the hypothesis of "Hong Kong's business conditions influence the TPB's planning control decisions" is partly supported by the findings.

## Chapter 5: Findings on the TPB’s Planning Control Decisions on Applications for “Small House” Constructions

### 5.1 Descriptive Statistics

The descriptive statistics of planning applications for the building of small house(s) are presented in Table 5.1. It is first reported that applications for small house construction in AGR zone that were approved amounted to 72.4%, which was approximately 15% higher than GB zone.

Statutory Zone	GB		AGR	
Approval Rate	57.6%		72.4%	
<i>Site-Specific Variables (Numerical)</i>				
Variable	Mean	Std. Deviation	Mean	Std. Deviation
GSA (in m <sup>2</sup> )	397.84	1447.0	267.22	550.91
GSA per small house (in m <sup>2</sup> )	157.23	154.66	180.08	144.97
PPA	0.36	0.781	0.32	0.673
<i>Site-Specific Variables (in percentage)</i>				
HOUSES				
2-5	14.9		8.6	
6-10	4.4		2.0	
>10	1.9		0.5	
VZONE	68.9		78.4	
PARTGOVT	12.5		2.2	
FULLGOVT	17.9		2.9	
NSH	6.8		1.7	
<i>Location Variables (in percentage)</i>				
NORTH	11.4		42.7	
TAIPO	53.7		42.2	
YUENLONG	5.5		10.5	
<i>Administration-related Variables (in percentage)</i>				
LEUNG	24.4		29.5	
COLONIAL	20.7		18.8	
N	1,028		2,352	

Table 5.1: Descriptive statistics of the data sample by statutory zone

Of the site-specific characteristics of the sampled small house applications, the mean Gross Site Area of GB sites on which small house(s) were proposed to be built was much larger than that of sites in AGR zone. For the number of small houses proposed to be constructed, however, the GSA per small house in GB zone was noticeably lower than that on AGR sites. On the other hand, the mean number of previous applications on the same site in GB zone was higher,

in comparison with that in AGR zone. Also, the number of applications that sought for the construction of more than one small house in a single application in GB zone (more than 20%) was much higher than that in AGR zone.

As for other site-specific variables, the statistics indicate that more than 78% of the proposed small houses in AGR zone were completely outside the V zone, compared to approximately 69% in GB zone. Also, approximately 30% of proposed small houses within the GB zone at least partly involved government land, whilst 95% of small house applications in AGR zone only involved private land. Further, a higher proportion of small houses proposed to be built on GB sites were smaller than 195.09m<sup>2</sup> (i.e. non-standardized small houses).

Geographically speaking, the vast majority of proposed small houses in the two statutory land-use zones were located in North, Tai Po, and Yuen Long districts. While the vast majority of proposed small houses in GB zone were within the Tai Po district, most of the small houses were proposed to be built on agricultural land in either North district or Tai Po district.

And lastly, while a slightly higher proportion of small house applications on GB sites had been determined by the TPB during the colonial era, the percentage of applications for small house constructions in AGR zone, during the C.Y. Leung Administration, was about 5% higher than that in GB zone.

## 5.2 Probit Model Results

The findings obtained from the Probit models are illustrated in Table 4 below, which are to be discussed in separate sections.

<b>Statutory Zone</b>	<b>GB</b>	<b>AGR</b>
<i>Site-Specific Variables</i>		
GSAPH	-0.257**	-0.428**
HOUSES		
2-5	-0.015	-0.019
6-10	-0.495*	-0.433*
>10	-1.247**	-0.903*
PPA	0.141*	0.000
OUT	-0.626**	-0.334**
PARTGOVT	0.011	-0.002
FULLGOVT	-0.292*	-0.795**
NSH	0.505**	-0.081
<i>Locational Variables</i>		
NORTH	0.724**	0.519**
TAIPO	0.494**	0.027
YUENLONG	-0.497*	-0.321*
<i>Exogenous Variables</i>		
LEUNG	-0.489**	-0.431**
COLONIAL	0.349**	0.251**
Constant	1.632**	2.985**
<b>N</b>	<b>1,028</b>	<b>2,352</b>
<b>Chi-square</b>	1,033.911	2,399.807

Table 5.2: Empirical findings obtained from the Probit models

Note: \*\* denotes statistical significance at 1%; and \* at 5%

### 5.2.1 Site-Specific Variables

With respect to the selected site-specific variables, it is first revealed that the gross site area per proposed small house (GSAPH) has a significant (at 1% level) and negative relationship with a small house application's likelihood to be approved by the TPB, in both GB zone and in AGR zone. Such a relationship indicates that the larger site area was proposed for each small house in an application, the more likely it was to be rejected. Considering that the maximum allowable GFA for a small house is the same regardless of the size of the land site on which it is constructed, this finding reflects that the TPB's stance towards small house constructions was such that the development of these houses should have occupied as little land as possible. Nevertheless, as the vast majority of these applications involved private land only (Table 3), such a stance was discriminatory against indigenous villagers who possessed larger land sites, as it put further constraints on how these people should utilize their land when they exercise their rights, protected under the Basic Law, to build small house(s).

Then, for the three dummy variables with reference to the amount of small houses proposed to be built, two of them, namely “6-10 houses” and “>10 houses”, are negatively related with an application’s probability to be approved in the two statutory zones (significant at least at 5% level). This suggests that large-scale development of small houses is usually not permitted by the Town Planning Board.

Also, the PPA variable is found to be significant in explaining the likelihood of approval for small house applications in GB zone. The positive coefficient (significant at 5% level) means that an application that involved a land site with more previous applications was more likely to be approved by the TPB than others. This, if anything, indicates that the TPB’s planning control decisions on small house constructions in this statutory zone are generally predictable, in that applicants, having obtained the TPB’s verdict(s) on previous applications (and the reasons behind the decisions), are able to fine-tune their subsequent applications to meet the (stated) requirements by the TPB.

In addition, OUT is found to be negatively correlated (at 1% level) with a small house application’s approval probability in GB zone and, to a lesser extent, in AGR zone. This means that a proposed small house on a site which was completely outside the Village Development Area was more likely to be approved by the TPB, other factors being constant. The results are expected as they are, to some extent, consistent with the original intentions of the Small House Policy, under which a male indigenous villager is entitled to building a small house within the V/VE zone. The findings support the hypothesis that an application for small house construction on a site completely outside the Village Type Development Area (V) and its environs (VE) are less likely to be approved than that on a site partially within the V/VE zones.

Further, the land site’s ownership status produces some interesting results. While FULLGOVT is found to be negatively correlated (at least at 5% significance level) with an application’s chance to be approved in AGR zone (and to a lesser extent, in GB zone), the PARTGOVT variable is not significant in both models. The latter reveals that there were no significant differences between the approval rate of proposed small houses partly on government land and that of proposed small houses entirely on private land. Based on the findings, it can be said that the hypothesis of “Residential development applications on sites involving government land are less likely to be approved by the TPB” is supported, but only when proposed small house(s) were built entirely on government land.

The final site-specific variable, NSH, is positively related with the probability to be approved for small house applications in GB zone, meaning that a proposed small house that was smaller than the maximum allowable GFA under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) was actually more likely to be approved by the Town Planning Board than standardized small houses with the maximum allowable GFA. In some ways, this finding concurs with several previous studies which identify negative correlations between the proposed GFA of a small house application and its likelihood to be approved (Lai and Ho, 2001a; Chau and Lai, 2004; Tang et al., 2005).

### ***5.2.2 Location-Specific Variables***

Meanwhile, the location variables are also identified as significant factors in explaining the TPB's planning control decisions on small house applications. Nonetheless, some interesting patterns are observed. The findings show that small house applications on GB/AGR sites in the North district (NORTH), which consists of Fanling, Sheung Shui, Sha Tau Kok, and Ta Kwu Ling, were more likely to be approved than other districts. Considering that "unspecified" land use comes into existence due to the introduction of IDPA/DPA plans in the early 1990s as a response to the 1983 Melhado Case, and that UNSP zone becomes either GB zone or AGR zone once it is incorporated into the rural OZPs, the complete contrast in the findings could be attributed to the uncertainties in terms of how land sites in the North district were to be utilized. By contrast, the prospective use of land sites in GB zone appeared much clearer in Tai Po district, as the TPB was more likely to permit small house applications involving either of these two zones than it was for other districts (with the exception of North district), as reflected by their significant (at 1% level) and positive coefficients. In addition, the significantly negative correlations (at 5% levels) between YUENLONG and an application's likelihood to be approved in both GB and AGR zones reveal that the land-use policy in this district, with reference to the construction of small houses, was more stringent than that in other areas included in the Small House Policy<sup>20</sup>. These findings, when viewed together as a whole, confirm (and at the same time extend) the conclusion reached by Tang et al. (2007) that land-use policy in Hong Kong vary geographically, not only in GB zone but also in AGR zone as well.

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<sup>20</sup> A reason behind the TPB's tougher stance towards approving small house construction applications in Yuen Long is that, which was raised during the Public Policy Research Dissemination Forum by the panel of experts, unlike the other eight districts in which small houses are permitted to be built under the Small House Policy, large lots of land within the Yuen Long district have become open storages (see Chapter 7).

### *5.2.3 Exogenous Variables*

As for the two administration-related variables, the LEUNG dummy variable, first, is found to have a significant and negative relationship with a small house application's probability to be approved by the Town Planning Board, in both GB and AGR zones (at 1% level). In other words, the hypothesis of "The TPB's planning control decisions are subject to the government's stated objective to increase the supply of housing" is supported by the findings in both GB and AGR zones. However, the hypotheses which state that "Existing land-use policies regarding the preservation of greenbelts are compromised in TPB's planning control decisions due to the government's stated objective to increase the supply of housing" and "Existing land-use policies regarding the preservation of agricultural land are compromised in TPB's planning control decisions due to the government's stated objective to increase the supply of housing" are rejected by the findings. On the other hand, the COLONIAL variable is positively related (at 1% significance level) with the probability for a small house application to receive approval by the TPB, in both GB and AGR zones.

Viewing the findings of these two variables together, it is reasonable to conclude that, holding other factors constant, the Town Planning Board was much more likely to allow the construction of small house(s) in either GB zone or AGR zone prior to Hong Kong's handover to China. Yet, since Hong Kong's handover to China, it was increasingly more difficult for indigenous villagers to obtain approval from the TPB to build small house(s) on sites at least partly outside the Village Development Area zone, especially during the C.Y. Leung administration. This points to changes in the HKSAR government's view as to how the Small House Policy should be implemented.

Having presented the empirical results in the last two chapters, the next chapter of this report is to discuss the policy implications and recommendations based upon these results.

## Chapter 6: Policy Implications and Recommendations

Grounded on the research findings presented in Chapters 4 & 5, some implications which require the attentions of the HKSAR government and applicants (i.e. developers and professionals), are to be discussed in this chapter, along with some policy recommendations with reference to these implications and the suggestions provided by a panel of experts in the area of land-use planning during a Public Policy Research Dissemination Forum organized for this project (see Chapter 7 for more details).

It should be noted that, even though numerous statutory land-use zones are studied in this research, this chapter is to focus on three particularly areas, namely 1) the lengthy development process in CDA zone, 2) the preservation of greenbelt areas, and 3) the implementation of the Small House Policy, as these areas are much more policy-related and have been receiving more attentions from the general public.

### 6.1 Regarding the Lengthy Development Process in Comprehensive Development Area (CDA) zone

#### **Policy Implication:**

- The Town Planning Board, in general, was more likely to approve a proposed residential development either on a larger site or with a larger development potential than others. In other words, this finding is in line with the TPB's stance towards preventing piecemeal development or redevelopment within a larger area designated as CDA. This specific demand by the TPB exclusive for the development of CDA sites, as pointed out in the Public Policy Research Dissemination Forum organized for this research project (see Chapter 7), is due to the "infeasibility of individual, piecemeal development" in old urban areas or in old industrial areas, in addressing the authorities' concerns towards the potential 1) environmental impact, traffic impact, drainage impact, and sewerage impacts, 2) development mix of such development (Town Planning Board, 2016b). Yet, unlike development in other land-use zones, a development project in CDA zone begins as developers acquire (and assemble) land parcels from other private landowners<sup>21</sup>. Should developers not be able to acquire all undivided shares within a (single) lot, they are

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<sup>21</sup> In case the proposed use (in this case, residential) is not permissible under the original government lease(s) of these land parcels, developers are required to apply for lease modification (and pay a premium accordingly).

required to obtain at least 90% of these shares, so that they can apply for a compulsory sale of the remaining shares for the purpose of redevelopment, in accordance with Clause 3(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545). As such, the TPB's insistence on large-scale, non-piecemeal development in CDA zone, known for its notoriously fragmented land ownership structure, inevitably requires developers to negotiate with a larger number of land title-holders. This results not only in a lengthier site assembly (hence development) process, but also in the phenomenon of developers using repeated fresh applications as a means of keeping the permissions alive while making slight adjustments to the projects in response to market changes (as well as buying additional time for assembling land) (Lai et al., 2016).

In view of this policy implication, the research team proposes a number of policy recommendations, with the explicit aim to shorten the delays in housing development as a result of fragmented land ownership in this particular statutory land use zone.

- Sub-divide large CDA sites into smaller land lots, if feasible. Otherwise, the government might consider designating specific land-use for specific lots within these sites
- Lower the Compulsory Sale Threshold required under the Land (Compulsory Sale for Redevelopment) Ordinance from “not less than 90%” to “not less than 80%” for sites designated as CDA<sup>22</sup>
- Modify the existing legislations under the Land (Compulsory Sale for Redevelopment) Ordinance to allow for the computation of one's holding of undivided shares on an aggregate-of-lot basis, instead of on a single-lot basis
- Exclude missing/untraceable owner(s) in the computation of one's holding of undivided shares<sup>23</sup>

## **6.2 Regarding the Preservation of Greenbelt Areas**

### **Policy Implication:**

- As residential development, especially the construction of flats, is itself a form of urbanized development, the higher likelihood for a residential development application in

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<sup>22</sup> This is slightly different from the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (Cap. 545 sub. leg. A), under which a lower threshold (80%) for the application for an order for the sale of the remaining undivided shares within three specific classes of lots.

<sup>23</sup> This is similar to comments made by The Real Estate Developers Association of Hong Kong (REDA) in response to the Urban Renewal Authority Bill in 1999. However, rather than focusing on redevelopment in urban areas, the research team's recommendation is applicable to CDA sites, many of which are located in the New Territories.

GB zone to be approved since Hong Kong's handover to China, despite the "general presumption against development" in this zone, encourages certain degrees of urban encroachment, as this inevitably leads to a larger population (and more vehicles) in areas designated for greenbelt use. Inevitably, in order to cater to the needs of the residents, the precedent for further development in GB zone, be it commercial, residential, or GIC-related, would be set, thus fundamentally deviating from the planning intention which is to safeguard the natural environment against urban encroachment.

In light of this policy implication, the research team proposes some policy recommendations with the objective to withhold the original intention of the GB zone, that is, the preservation of existing natural environment and containing encroachment by urban type development as much as possible.

- Limit residential development of Greenbelt sites only to public housing projects or permit housing development only on sites within GB zone that have been disturbed and cannot be recovered to serve as proper greenbelts (provided that an Environmental Impact Assessment deems development on these sites suitable). This allows the government to maintain its degree of control regarding the level of urban encroachment in Greenbelt areas and to meet housing need of the society while providing the residents with access to scenery;
- Explore other sources of non-Greenbelt vacant land for housing development, by rezoning sites that are currently undeveloped in zones where residential development is originally not permissible, such as brownfield sites in the New Territories, to allow for residential development

### **6.3 Regarding the Implementation of the Small House Policy**

#### **Policy Implications:**

- The Town Planning Board was less likely to approve applications for the construction of small houses on land either partly or entirely in GB zone and in AGR zone after Hong Kong's handover to China, particularly during the C.Y. Leung administration, even though 1) the vast majority of these small house(s) were proposed to be built solely on privatized land; and 2) the rights of indigenous villagers (to build small house[s]) are protected under the Basic Law. This finding, along with lower likelihood for proposed non-small house residential developments in V zone to be approved, points to changes in

the HKSAR government's view as to how the Small House Policy should be implemented (and thus, how it delineates the rights of indigenous villagers within the context of the preservation of greenbelt areas and agricultural land), in that the development of small houses, since Hong Kong's handover to China, had been confined within the V/VE zone. Yet, as the amount of small house applications is subject not only to the number of eligible indigenous villagers under the Small House Policy but also seemingly to housing prices at the time (Table 6.1), the expansion of the existing V/VE zone or the permission of small house constructions in AGR/GB land outside V/VE zone is still inevitable as both the number of eligible indigenous villagers and housing prices continue to rise, despite the government's more stringent stance towards small house construction outside V/VE zone.

- Indigenous villagers had been treated differently under the Small House Policy, under which a variety of small house grants are available depending on the ownership status of the land on which small house(s) are built, namely Building Licence/Land Exchange (on private land) and PTGs (on government land) (see Chapter 1 for details). Yet, the TPB was more likely to permit small house applications by land-owning indigenous villagers while encroaching on government land, than similar applications submitted by landless indigenous villagers for small house construction entirely on government land (in many cases as small as the minimum site area stipulated for a small house [65.03m<sup>2</sup>]), even though a premium payable to the government is applicable to both cases. To put it differently, landless indigenous villagers are less likely to exercise their rights under the Small House Policy, owing to concerns towards land-use planning of government land.

<b>Year</b>	<b>Number of Small House Applications Received</b>	<b>Residential Property Price Index (All Classes)</b>
2003	640	61.6
2004	742	78.0
2005	1,316	92.0
2006	1,767	92.7
2007	1,466	103.5
2008	1,810	120.5
2009	1,769	121.3
2010	1,959	150.9
2011	2,374	182.1
2012	2,538	206.2
2013	2,718	242.4
2014	2,522	256.9
2015	2,547	296.8
2016	1,297	286.1

Table 6.1: Number of small house applications received, 2003-2016  
Source: Lands Department & Rating and Valuation Department

With respect to these two policy implications, the research team proposes two recommendations to the government with the intention to contain the expansion of small house development towards areas outside V/VE zone.

- Introduce stricter conditions should be introduced with the aim to reduce indigenous villagers' incentives to resell their small house(s) to non-indigenous villagers, for instance,
  - i) applying a revised alienation restriction period, which is not removable via payment of premium, to all newly-built small houses;
  - ii) requiring a full market value premium payable to the government for small houses that are resold after the expiration of their alienation restriction period (only those which are sold to fellow landless indigenous villagers are exempted); and
  - iii) removing the "no restriction" clause for the transaction of small houses, granted via Building Licence/Land Exchange, 5 years after they were built
- Implement the Small House Policy in more stringently. The construction of small house(s) should be strictly confined within the V/VE zone. This allows for a higher degree of government control on the use of land in question, without sacrificing these villagers' rights as guaranteed by the Basic Law.

#### **6.4 Regarding the Rejection of Planning Applications in General**

In addition to the above policy implications (and recommendations), one critical point brought up by the panel members, during the Public Policy Research Dissemination Forum, is that a key reason behind the rejection of some applications by the TPB, which is not revealed through the statistical analysis of planning data, is their lack of overall quality, either due to 1) planning guidelines (particularly the requirements by different government departments) not being properly observed (or not being known) by the applicant(s) or 2) insufficient supporting documents being submitted along with the application(s).

Based upon these observations, the research team, thus, recommends that applicants should:

- Observe the planning guidelines before submission of planning applications for the TPB's approval more carefully and thoroughly
- Acquire the services of professional consulting firms for the preparation of planning applications (and of the necessary supporting documents)

## Chapter 7: Public Dissemination of Research Findings

With regard to the public dissemination of findings obtained in this research, a total of three research papers have been compiled. Of the three papers, two have been published (Yu and Hui, 2017; 2018) and the remaining paper is currently under peer review.

Aside from these academic outputs, the research findings have also been presented on two different occasions. Firstly, on March 9<sup>th</sup>, 2017, a research seminar was held at the Hong Kong Polytechnic University, in which the research team reported its preliminary findings regarding the TPB's planning control decisions on applications for small house constructions to approximately 30 members within the Department of Building and Real Estate. Then, a Public Policy Research Dissemination Forum was convened on January 8<sup>th</sup>, 2018 at the Hong Kong Polytechnic University. Unlike the previous research seminar, a panel of experts were invited to discuss a variety of issues relating to Hong Kong's planning control system. Besides Prof. Eddie HUI (i.e. The Principal Investigator of this research), three other distinguished guests agreed to attend this forum and served as panel members, including:

- Dr. Ling-hin LI (Department of Real Estate and Construction, The University of Hong Kong);
- Prof. Kar-kan LING (Former Director of Planning of the HKSAR Government); and
- Dr. Lawrence POON (Current Non-Official Member of the Town Planning Board)

In addition to the three distinguished panel members, approximately 35 people attended the forum. After a brief presentation of the findings of this study by the research team, three questions relevant to Hong Kong's planning control system were raised. The panel members' responses to each question are summarized in the following sections.

**Question 1: Considering that development on CDA sites is known to be notoriously lengthy, partly due to very long planning process, are there ways to reduce the time needed for this process? Is it necessary to stringently attach to the requirements stipulated in the Planning Brief(s) for these CDA sites, regardless of housing market conditions?**

Prof. LING, first, opined that he did not agree with most academic studies concerning Hong Kong's planning control system when it came to the lengthy development process when CDA sites were involved. He maintained that the Town Planning Board did not find piecemeal

development in CDA zone to be preferable because, in many cases, individual (and small-scale) development in these areas was not feasible. In addition, Prof. LING also disputed the notion that the TPB's decision to designate some areas as CDA was the reason behind the notoriously long residential development process, and argued that the configuration of land titles in these areas, instead, was the primary reason attributing to delays in residential development in CDA zone. Citing Yau Tong Bay as an example, he added that it was the (fragmented) ownership issue which led to development delays. Lastly, Prof. LING was not convinced that doing away with CDA zoning was able to address the current development delays, unless it was to be proved otherwise by studies that were to introduce a control group.

Dr. POON, meanwhile, suggested that the study of Hong Kong's planning control system with statistical data alone could be misleading, in that rejections of planning applications for residential development and/or small house construction could be due to factors such as the removal of trees, landscape-related issues, and etc. He then stressed the importance of studying the substance of each planning application in understanding why TPB members reached a particular decision. As to issues surrounding CDA zone, Dr. POON agreed with Prof. LING's opinion that the land assembly issue was the primary reason behind the lengthy development process in these areas, and raised a more intensive involvement by the Urban Renewal Authority (URA) as a potential solution to shorten the development process in CDA zone.

**Question 2: How should a balance between the needs for housing development and environmental preservation (i.e. the greenbelt zone) be maintained?**

Dr. LI started this session by saying that he did not favour the over-preservation of the environment. Considering that there existed a substantial housing need in Hong Kong, as reflected by the prevalence of sub-divided (rental) housing units, he found it very difficult to explicate to the people as to "environmental preservation at all costs (i.e. at the expense of people's housing need)". Dr. LI then suggested the development of "Integrated Housing", which comprised both public and private housing, as well as the development of housing flats with access to scenery.

Prof. LING, in response to a question raised by one of the attendees during this session regarding the notion of "sacrificing scenery for housing development", pointed out that high-rise housing development needed the necessary infrastructure to support it (which required

planning); and that organic development was only applicable to low-density housing development.

Dr. POON added that unlike the likes of Singapore and Macau, the primary issue with land-use planning in Hong Kong was that Hong Kong had too much land and too many options, as every stakeholder had his/her way with respect to how land resources in Hong Kong should be utilized.

**Question 3: How should a balance, in terms of land-use, between the needs for housing development and the indigenous villagers' rights to build small houses (as protected by the Basic Law) be maintained?**

Prof. LING responded to this question by stating that he respected the rights and heritage of the indigenous villagers in Hong Kong, including their right to construct small houses. Despite that, he also raised that something should be done with respect to the resale of small houses, which was (legally) permitted following the Court of Appeal verdict made for the case *Sung Wai Kiu and Li Pui Wan vs. Wong Mei Yin* (H.C. No. A 3979/94). In addition, similar to the point raised by Dr. POON in response to Question 1, Prof. LING mentioned that the innate issue with the land on which small house(s) were proposed to be built could be crucial in explaining whether a small house construction application was approved or rejected. Lastly, he provided some additional information behind the geographical disparities in approval rates for small house construction, as found in this study. According to Prof. LING, it was more likely for small house applications in Yuen Long district to be rejected, in comparison with other districts, because large lots of land within this district had already become open storages.

Dr. POON added that it was the need for new town development (in the 1970s) that gave rise to the Small House Policy, which served as a trade-off. Had this not been the case, new towns in Hong Kong would have been much smaller in scale. As to how a balance can be maintained between the needs for housing development and the indigenous villagers' rights to build small houses, he suggested the provision of an "option" for villagers to get access to public housing, but not in exchange for their rights.

Dr. LI pointed out that the Small House Policy was a historical issue which in turn was related to the issue of efficient land use. Akin to Dr. POON's point in response to Question 2, he agreed with the notion that there were too many "options" as regards the use of land in Hong Kong.

Citing urban villages in Mainland China as an example. Dr. LI suggested the conversion of village land to CDA (and the introduction of Private-Public Partnership as a means of development) use as a latent solution to balance the indigenous villagers' rights and the need for housing development.

Afterwards, one of the attendees suggested that, rather than simply an issue with land-use, the current dilemma between indigenous villagers' rights and the need for housing development (with limited land resources) could be viewed from a community perspective as well. Prof. LING, in response, pointed out that although there might have been some similarities, one major difference which distinguished the situations in Hong Kong and those in Mainland China was the land ownership structure (i.e. privatized yet fragmented in Hong Kong vs. collective in Mainland China). This was further elaborated by Dr. POON, who raised that 1) the TPB was not able to control the development of village houses and 2) the resumption of village land in Hong Kong for other types of development was problematic, due to organized resistance by indigenous villagers when the land in question was collectively owned under a "Tso Tong (祖堂)" ownership structure.

## Chapter 8: Conclusion

This study has first evaluated the planning control decisions made by the Town Planning Board concerning residential development in a total of nine statutory zones (R[A], R[B], R[C], R[D], R[E], V, GIC, CDA, and GB zones), from January 1990-June 2017, using non-aggregate planning control statistics. With the assistance of probit models, a total of 1,220 applications have been analyzed. Then, it has also studied these decisions on applications for small house construction in Greenbelt zone (GB) and Agriculture zone (AGR) during the same period, involving a total of 3,380 cases. Although the TPB claims to assess each planning application “via its individual merits”, the findings do reveal some statistical patterns among these planning control decisions, as follows:

### 8.1 Applications for Residential Development

- The approval rates for applications for residential development were the highest in CDA zone (closely followed by R[E] zone) and the lowest in GB zone
- The likelihood for applications for residential development in CDA zone to be approved was the highest during the C.Y. Leung administration after Hong Kong’s handover to China
- By contrast, the probability for an application for residential development in V zone to be approved was the lowest during the C.Y. Leung administration after Hong Kong’s handover to China
- An application for residential development in either R(C) zone, V zone, or GB zone was more likely to be approved after Hong Kong’s handover to China than it was before the handover
- A housing development application with a higher development potential (i.e. Gross Floor Area) in either R(D) zone, R(E) zone, or CDA zone was less likely to be rejected than a similar application with a lower GFA
- A higher-density housing development in R(E) zone had a higher probability of approval by the TPB than a lower-density housing development
- The likelihood for a proposed mixed development in GIC and GB zones to be approved was higher than a proposed residential-only development
- A proposed mixed development in CDA zone, however, was more likely to be rejected than a proposed residential-only development

- It was more likely for residential development application in V zone to be approved should the land site in question also involve other land-use zone(s)
- The likelihood for a proposed residential development on CDA sites to be approved was subject to office market conditions

## **8.2 Applications for Small House Constructions**

- Small house applications under Section 16 of the Town Planning Ordinance were more likely to be rejected in GB zone than in AGR zone
- The likelihood for proposed small house constructions in GB zone and in AGR zone to be approved was the highest before Hong Kong's handover to China, and the lowest during the C.Y. Leung administration after the handover
- It was more likely for an application for small house construction which proposes a larger site area per small house to be rejected
- A large-scale small house development (i.e. 6 houses or more in an application) had a lower probability to be approved
- An application which proposed the building of small house(s) entirely outside the V/VE zone was more likely to be rejected than proposed small house(s) built at least partly within the V/VE zone
- The likelihood for an application which requested the construction of small house(s) completely on government land (i.e. obtaining a Private Treaty Grant) to be approved was lower than another application that sought to build small house(s) at least partly on private land
- The construction of non-standardized small house(s) in GB zone had a higher probability to be approved than the construction of standardized small house(s)
- The approval rate of small house applications in the North district was the highest whereas that in Yuen Long district was the lowest

## **8.3 Policy Implications & Recommendations**

These findings have given rise to policy implications with respect to three areas that have received more attentions by the public, namely 1) the much lengthier development process in CDA zone, 2) the preservation of greenbelt areas, and 3) the implementation of the Small House Policy and competing land-uses (see Chapter 6). The research team, hence, proffers the following recommendations:

**For the HKSAR government:**

- Sub-divide large CDA sites into smaller land lots to reduce the delays caused by fragmented ownership in these areas (if feasible) or designate specific land-use for specific lots within these sites
- Lower the Compulsory Sale Threshold under the Land (Compulsory Sale for Redevelopment) Ordinance for sites designated as CDA from 90% to 80%
- Modify the existing legislations to allow for the computation of one's holding of undivided shares on an aggregate-of-lot basis, rather than on a single-lot basis
- Exclude missing/untraceable owner(s) in the computation of one's holding of undivided shares
- Limit the development of greenbelt sites only to public housing projects or permit housing development only on sites within GB zone that have been disturbed and cannot be recovered to serve as proper greenbelts
- Explore other vacant sources of land for housing development by re-zoning currently-undeveloped lots in statutory land-use zones in which residential development is originally not permissible (for instance, brownfield sites in the New Territories) to allow for residential development
- Introduce stricter conditions should be introduced with the aim to reduce indigenous villagers' incentives to resell their small house(s) to non-indigenous villagers, for instance,
  - i) applying a revised alienation restriction period, which is not removable via payment of premium, to all newly-built small houses;
  - ii) requiring a full market value premium payable to the government for all small house transactions after the alienation restriction period (unless they are sold to fellow landless indigenous villagers; and
  - iii) removing the "no restriction" clause for the transaction of a small house, granted via a Building Licence/Land Exchange, 5 years after it is built
- Implement the Small House Policy in a more stringent manner. For instance, any applications that propose the construction of small house(s) on sites entirely outside the V/VE zone should not be considered

**For applicants:**

- Observe the planning guidelines before submission of planning applications for the TPB's approval more carefully and thoroughly

- Acquire the services of professional consulting firms for the preparation of planning applications (and of the necessary supporting documents)

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