

TOWN PLANNING BOARD

**TPB Paper No. 10383
for Consideration by
the Town Planning Board
on 2.2.2018**

**REVIEW OF APPLICATION NO. A/SK-TMT/61
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Filling of Land of 1.2m -1.7m for Agricultural Use
Lots 402, 403, 408, 409 S.A (Part), 410, 411, 412, 427 and 430 RP
in D.D.216, Long Keng, Sai Kung, New Territories**

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1. Background

- 1.1 On 11.5.2017, the applicant, Kong Power Investment Limited, sought planning permission for filling of land of 1.2m -1.7m for agricultural use at the application site (the Site) (**Plan R-1**) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Green Belt” (“GB”) on the approved Tai Mong Tsai and Tsam Chuk Wan Outline Zoning Plan (OZP) No. S/SK-TMT/4.
- 1.2 On 22.9.2017, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons are as follows:
- (a) the applicant fails to demonstrate that there is a need for filling of land for agricultural use at the site;
 - (b) the applicant fails to demonstrate that the proposed filing of land would not cause adverse drainage and landscape impacts on the surrounding areas; and
 - (c) approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar proposals would result in a general degradation of the environment and bring about adverse impact on drainage and landscape of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/SK-TMT/61 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 22.9.2017 (Annex B)
 - (c) Secretary of the Board’s letter dated 13.10.2017 (Annex C)
- 1.4 The Site is subject to planning enforcement action under three separate cases (Cases No. E/SK-TMT/14, 16 and 17) against unauthorized filling of land (**Plan R-2**). Reinstatement Notices (RNs) requiring the notice recipients to remove the fill materials and to grass the concerned land were issued to the concerned landowners on 28.5.2015. As the requirements of the notices were not complied with, the notice recipients had been prosecuted and convicted on 17.2.2017. The Site is currently being monitored for compliance with the RNs. The recent site inspections reveals that fill materials have been removed as required under the RNs and signs of grassing works are observed. However, the steps taken have yet to comply with the RNs.

2. Application for Review

On 2.11.2017, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not provided any submission to support the review application. The justifications put forth by the applicant in support of the section 16 application are summarised in paragraph 2 of **Annex A**.

3. The Section 16 Application

The Site and Its Surrounding Area (Plans R-1 to R-3g and Site photos on Plans R-4a and R-4b)

3.1 The situation of the Site and its surrounding area at the time of consideration of the s.16 application by the RNTPC is described in paragraph 8 of **Annex A** and recapitulated below. There has been some changes of the situation since then.

(a) the Site:

- (i) is flat, partly grassed and partly covered with shrubs/trees and partly occupied by one existing shed and two containers;
- (ii) is mainly vacant with some areas used for plant nursery;
- (iii) is accessible via a haul road leading to Sai Sha Road to its east; and
- (iv) falls within the Water Gathering Grounds (WGGs).

(b) the surrounding areas have the following characteristics:

- (i) to its north, west and south are undistributed wooded areas with some temporary structures and dense vegetation of mature trees;
- (ii) to its east are some temporary structures and to the further east are vegetated steep slopes; and
- (iii) to its further south and west is a streamcourse.

Planning Intention

3.2 There has been no change of planning intention of the concerned "GB" zone which is mentioned in paragraph 9 of **Annex A** as recapitulated below:

The planning intention of the "GB" zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

Town Planning Board Guidelines

3.3 Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for 'Application for Development within "GB" Zone under section 16 of the Town Planning Ordinance' are relevant to the application (Appendix II of **Annex A**). The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development in the "GB" zone. In general, the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) applications for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning ground;
- (c) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) any proposed development on a slope or hillside should not adversely affect slope stability.

Previous Application

3.4 A major part of the Site is the subject of a planning application (No. A/SK-TMT/52) for filling of land of 1.2m for permitted agricultural use submitted by the same applicant, which was rejected by the Committee on 12.8.2016 mainly on the grounds that the applicant fails to demonstrate that the proposed development would not cause adverse drainage and landscape impacts on the surrounding areas; there is insufficient information to justify the need for filling of land for agricultural use at the Site; and approval of the application would set an undesirable precedent for similar applications within the "GB" zone. The cumulative effect of approving such similar proposals would result in a general degradation of the environment and bring about adverse drainage and landscape impacts on the area.

Similar Application

3.5 There is no similar application within the "GB" zone on the OZP.

4. Comments from Relevant Government Departments

4.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 10 of **Annex A**.

4.2 For the review application, the following government departments have been further consulted and their comments are summarised as follows:

Land Administration

4.2.1 District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

- (a) the Site comprises private lots namely Lots 402, 403, 408, 409S.A(Part), 410, 411, 412, 427 and 430RP in D.D.216 held under Block Government Lease. No structures are allowed to be erected without prior approval from his office; and
- (b) the Site falls entirely within the Village Environs of Long Keng Village and WGGs.

Environment

4.2.2 The Director of Environmental Protection (DEP) maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

DEP has no objection to the application provided that the applicant has confirmed with Water Supplies Department that no contamination to the WGG will occur with the use of fertilizers.

Landscape and Visual

4.2.3 The Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

Landscape

- (a) the Site is located in the middle part of a heavily wooded hill slope connected by an access road and a plant nursery is currently in operation. The Site is bounded by undisturbed wooded slope with dense vegetation of mature trees to its north, west and south. It is at the lower part of the slope which generally falls from east to west. According to the site visit dated 24.5.2017, some wetland plants, such as *Glochidion zeylanicum*, *Glochidion hisutum*, *Polygonum chinese*, *Polygonum barbatum* are found mainly to the south, southwest, west and north of the Site, and a seasonal stream alignment is passing near to the west of the Site. As reviewed from aerial photographs from 2011 to 2015 and site photographs, it is observed that the Site has already been formed with soil filling, and significant adverse impact on existing landscape resources, such as vegetation removal within the wetland has already been taken place;
- (b) since the completed filling of land has already disturbed the environment and the further effect to the surrounding natural drainage and stream is unknown, and approval of the application may encourage similar unauthorized development before exploration of design option(s) in this area with high landscape sensitivity, she has reservation on the application from the landscape planning point of view; and

Visual

- (c) according to the information submitted by the applicant, no permanent structure will be constructed. Considering the nature of the proposal, it is not envisaged that the application would result in any significant adverse visual impact.

Drainage

4.2.4 The Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

- (a) in the absence of the original ground levels and proposed formed ground level after the filling works of the concerned Site, DSD can only assess the application based on the scattered ground levels as revealed from base map of LandsD and the information enclosed in the application. It is noted that the Site is situated on a sloping terrain with higher existing ground level on east side of the Site. Overland flow from higher ground at east of the Site would thus generally pass through the Site and run towards the existing stream course on west of the Site. Should there be any uneven ground or local sag points within the Site, local ponding might occur;
- (b) based on the information as revealed from the base map of LandsD, there are only a few temporary structures located on both east and west sides of the Site and the existing ground levels of the temporary structures are at least 2m higher than the original ground level of the Site;
- (c) no in-principle objection to the application from a drainage maintenance viewpoint provided that adequate stormwater drainage collection and disposal facilities will be provided in connection with the proposed filling works to deal with the surface runoff of the Site or the same flowing onto the Site from the adjacent areas without causing any adverse drainage impacts or nuisance to the adjoining areas; and
- (d) according to DSD's record, the Site and the adjoining areas are not located at flood prone area. There has been no flooding report to DSD in the past 5 years.

Nature Conservation

4.2.5 The Director of Agriculture, Fisheries and Conservation (DAFC) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

- (a) no particular comment on the application;
- (b) as there is no information on the previous conditions of the Site, DAFC is unable to comment on the need to fill the land for agricultural purpose. However, the composition of the soil/fill material would not affect the

potential of the Site as agricultural use;

- (c) it appears that the proposed land filling works have already been carried out and the current application serves to regularize the existing use; and
- (d) as the land filling took place without permission from the Committee, the Committee should consider if approval of this application would set an undesirable precedent for similar activities.

Water Supply

4.2.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

- (a) the application site is located within the lower indirect WGG;
- (b) no objection to the application subject to the submission of relevant documents by the applicant to demonstrate that the use of the proposed fertilisers would not cause any material increase in pollution effect to the WGG;
- (c) the applicant shall also be reminded to observe at all times the following points in protecting the WGG against pollution, failing which, he/she would be liable for prosecution under relevant ordinances and regulations:
 - (i) no pesticide shall be used within the WGG;
 - (ii) the imported fill materials to be used for filling up the Site shall not cause any material increase in pollution effect to the WGG;
 - (iii) no discharge of effluent from the watchman's shed and the agricultural storage buildings to the WGG is allowed; and
 - (iv) fertilisers to be used shall be submitted to WSD for approval.

Geotechnical

4.2.7 Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) has no further comment on the review application and maintains his previous views on the s.16 application. His comments as stated in paragraph 10 of **Annex A** are recapitulated below:

- (a) no in-principle objection to the application;
- (b) based on the information provided, it is noted that the proposed filling of land including the concrete block for retaining soil had already been carried out on Site yet application is still being processed;
- (c) CEDD has no record of receiving any geotechnical design submission relating to the land filling works. The works should not be considered to be constructed in accordance with the required geotechnical safety standards and there is uncertainty in respect of the stability condition of the works. His office would not provide retrospective approval to the site formation works. Remedial proposal, which meets the required geotechnical safety standard, should be provided as condition of planning approval; and

- (d) the applicant should clarify (preferable consulting with an Authorized Person) if the case involves any “Building Works” in accordance with the provisions of Buildings Ordinance.

4.3 The following government departments have no comment on the review application:

- (a) District Officer (Sai Kung), Home Affairs Department;
- (b) Director of Fire Services;
- (c) Commissioner for Transport;
- (d) Chief Highway Engineer/New Territories East, Highways Department;
- (e) Chief Building Surveyor/ NTE2 & Rail, Buildings Department;
- (f) Chief Engineer (Works), Home Affairs Department; and
- (g) Project Manager (East), Civil Engineering and Development Department

5. Public Comments on the Review Application Received During Statutory Publication Period

5.1 On 10.11.2017, the review application was published for public inspection. During the three-week statutory public inspection period, which ended on 1.12.2017, 5 public comments were received from the Kadoorie Farm & Botanic Garden Corporation, the Hong Kong Bird Watching Society, the World Wide Fund for Nature Hong Kong, the Sai Kung Rural Committee (SKRC) and an individual of the public (**Annex E**).

5.2 Four public comments object to the application. The main grounds of objection are summarized as follows:

- (a) adverse environmental and ecological impacts are anticipated;
- (b) no strong reasons for massive land filling project;
- (c) filling of land would further worsen flooding problem;
- (d) approval of the application would set an undesirable precedent;
- (e) ‘Destroy first, apply later’ is not an acceptable approach; and
- (f) the proposed development is not in line with the planning intention of the “GB” zone.

5.3 The SKRC supports the application on the grounds that the Site is located in low-lying ground and previously subject to drainage and environmental problems such as accumulation of rubbish and breeding of mosquitoes. Filling of land for agricultural use could improve the hygienic condition and solve the drainage and environmental problems.

6. Planning Considerations and Assessments

6.1 The applicant seeks planning permission for filling of land for agricultural use at the Site. The application was rejected by the RNTPC on 22.9.2017 on the grounds that the applicant fails to demonstrate that there is a need for filling of land for agricultural use at the site; the applicant fails to demonstrate that the proposed filling of land would not cause adverse drainage and landscape impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar proposals would result in a general degradation of the environment and bring about adverse impact on drainage

and landscape of the area. The applicant has not provided any submission to substantiate the review application. There is no change in planning circumstances pertaining to the case. The planning assessments as stated in paragraph 12 of the RNTPC paper at Annex A are still valid.

- 6.2 The planning intention of the “GB” zone is to define the limits of urban and sub-urban development areas by nature features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within the “GB” zone. Although agricultural use is always permitted in the “GB” zone, the proposed filling of land for agricultural use requires planning permission from the Board primarily to ensure that it would not result in adverse landscape and drainage impacts on the adjacent areas.
- 6.3 The Site is bounded by undisturbed wooded areas with dense vegetation of mature trees to its north, west and south. Based on the aerial photos from 2011 to 2017 (**Plans R-3a to 3g**), it is noted that vegetation removal has occurred at the Site and the Site has been formed for soil filling. CTP/UD&L, PlanD has reservation on the application as the completed filling of land has disturbed the environment and further effect to the surrounding natural drainage and stream is unknown, the approval of the application may encourage similar unauthorized development before exploration of design options in this area with high landscape sensitivity. DAFC also has concern that approval of the application would set an undesirable precedent for similar activities.
- 6.4 The applicant indicates in the s.16 submission that there is a need to fill the land for agricultural use as the Site comprises low lying fields with problems of flooding and mosquito breeding. However, CE/MS, DSD advises that the Site and the surrounding areas are not located at flood prone area. There has been no flooding reported to DSD in the past five years. The applicant has not provided information to elaborate why the original state of land is not suitable for planting purpose. CE/MS, DSD also advises that adequate stormwater drainage collection and disposal facilities should be provided in connection with the filling works to deal with surface runoff of the Site or the same flowing onto the Site from the adjacent areas without causing adverse drainage impacts or nuisance to the adjoining areas.
- 6.5 The applicant has not provided sufficient information to justify the need for filling of land for agricultural use up to 1.7m high at the Site. DAFC advises that the composition of the soil/fill material would not affect the potential of the Site as agricultural use. Detailed proposal of the filling works is not submitted in the application. No section has been provided to show the original ground levels and the proposed formed ground level after the filling works of the Site.
- 6.6 The Site is the subject of a previous planning application (Application No. A/SK-TMT/52) rejected by the RNTPC on 12.8.2016 as the RNTPC had concerns on the drainage and landscape impacts of the proposed development on the surrounding areas; the need for filling for agricultural use; and undesirable precedent effect for similar applications. The applicant has not provided any information in the current application to address these concerns. Since the rejection of the previous application, there is no change in planning circumstances. In the current application, the site area involved for land filling is even larger (+44.7%) and the depth of land filling has been increased (+41.7%).
- 6.7 As there is no previous planning approval at the Site and in the subject “GB” zone on the OZP for land filling for agricultural use, the approval of the application would set an

undesirable precedent and the cumulative effect would result in a general degradation of the environment and bring about adverse impact on drainage and landscape of the area.

- 6.8 The Site is subject to planning enforcement actions. RNs requiring the notice recipients to remove the fill materials and to grass the land have been issued. While recent site visits show that fill materials have been removed and signs of grassing works are observed, the requirements under the RNs have not yet been complied with. Approval of the application may encourage similar unauthorized developments under the 'destroy first and build later' approach.
- 6.9 Regarding the public comments objecting to the application, the assessments in paragraphs 6.1 to 6.8 above are relevant.

7. Planning Department's Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 and given that there is no change in the planning circumstances since the consideration of the application by the RNTPC, PlanD maintains its previous view of not supporting the review application for the following reasons:
- (a) the applicant fails to demonstrate that there is a need for filling of land for agricultural use at the Site;
 - (b) the applicant fails to demonstrate that the proposed filling of land would not cause adverse drainage and landscape impacts on the surrounding areas; and
 - (c) approval of the application would set an undesirable precedent for similar applications within the "Green Belt" zone. The cumulative effect of approving such similar proposals would result in a general degradation of the environment and bring about adverse impact on drainage and landscape of the area.
- 7.2 Alternatively, should the Board decide to approve the application on review application, it is suggested that the permission shall be valid until 2.2.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following condition of approval and advisory clauses are suggested for Members' reference.

Approval Condition

the submission and implementation of a geotechnical remedial proposal to the satisfaction of the Head of the Geotechnical Engineering Office, Civil Engineering and Development Department or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 8.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reasons for rejection should be given to the applicant.

9. Attachments

Plan R-1	Location plan
Plan R-2	Site plan
Plans R-3a to 3g	Aerial photos
Plans R-4a and 4b	Site Photos
Annex A	RNTPC Paper No. A/SK-TMT/61
Annex B	Extract of Minutes of the 588 th RNTPC on 22.9.2017
Annex C	Secretary of the Board's letter dated 13.10.2017
Annex D	Letter dated 2.11.2017 from the Applicant
Annex E	Public comments received on the review application
Annex F	Recommended advisory clauses

**PLANNING DEPARTMENT
FEBRUARY 2018**

Advisory Clauses

- (a) to note the comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD) that adequate stormwater drainage collection and disposal facilities will be provided in connection with the proposed filling works to deal with the surface runoff of the Site or the same flowing onto the Site from the adjacent areas without causing any adverse drainage impacts or nuisance to the adjoining areas;
- (b) to note the comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) that:
- (i) the current site conditions and proposed remedial proposal (e.g. level filled platform, location/profile/gradient of the fill slopes and location/details of the concrete blocks/rocks for retaining soil) should be clearly shown on the geotechnical submission. Appropriate cross sections should also be provided to indicate the relationship between the newly formed platform and the adjacent ground; and
 - (ii) the applicant should clarify (preferable consulting with an Authorized Person) if the case involves any "Building Works" in accordance with the provisions of Building Ordinance.
- (c) to note the comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD) that:

the applicant shall submit relevant documents to demonstrate that the use of the proposed fertilizers would not cause any material increase in pollution effect to the WGG and observe at all times the following points in protecting the WGG against pollution, failing which, he/she will be liable for prosecution under relevant ordinances and regulations:

- (i) no pesticide shall be used within the WGG;
- (ii) the imported fill materials to be used for filling up the subject site shall not cause any material increase in pollution effect to the WGG;
- (iii) no discharge of effluent from the watchman's shed and the agricultural storage buildings to the WGG is allowed; and
- (iv) fertilizers to be used shall be submitted to WSD for approval.