

REVIEW OF APPLICATION NO. A/HSK/84
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Cargo Handling and Forwarding Facility
with Ancillary Warehouses and Car Parking Facilities for a Period of 3 Years
in “Government, Institution or Community” and “Village Type Development” Zones,
Lots 1094 (Part), 1095 (Part), 1096 (Part) and 1097 (Part) and
adjoining Government Land in D.D.124, Hung Shui Kiu, Yuen Long, New Territories**

1. Background

- 1.1 On 12.6.2018, the applicant, Gainman Development Limited represented by Land Chartering Limited, sought planning permission for temporary cargo handling and forwarding facility use with ancillary warehouses and car parking facilities at the application site (the Site) for a period of 3 years under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area partly zoned “Government, Institution or Community” (“G/IC”) and partly zoned “Village Type Development” (“V”) on the approved Hung Shui Kiu and Ha Tsuen Outline Zoning Plan (OZP) No. S/HSK/2 (currently in force) [draft Hung Shui Kiu and Ha Tsuen OZP at the time of review submission¹] (**Plan R-1**).
- 1.2 On 3.8.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the planning intention of the “G/IC” zone on the OZP is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. The applied use is not in line with the planning intention of the zones. No strong planning justification has been given in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applied use is not compatible with the surrounding land uses which are predominantly residential in nature intermixed with cultivated agricultural land and vacant land;
 - (c) the application does not comply with the Town Planning Board Guidelines No. 13E in that no previous approval has been granted for the Site, and there are adverse departmental comment and local objection against the application. The applicant fails to demonstrate that the applied development would not

¹ There was no change in provision of the “G/IC” and “V” zones under the two OZPs.

generate adverse environmental impact; and

- (d) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the same “G/IC” and “V” zones. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

1.3 For Members’ reference, the following documents are attached:

- (a) RNTPC Paper No. A/HSK/84 (Annex A)
- (b) Extract of minutes of the RNTPC Meeting held on 3.8.2018 (Annex B)
- (c) Secretary of the Board’s letter dated 17.8.2018 (Annex C)

2. Application for Review

On 3.9.2018, the applicant, under section 17(1) of the Ordinance applied for a review of the RNTPC’s decision to reject the application (**Annex D**). In support of the review, the applicant submitted the following documents:

- (a) Letter of 3.9.2018 from the applicant applying for review (Annex D)
- (b) Letter of 14.11.2018 accompanying the applicant’s information document to the Appeal Board Panel (Town Planning) of the previous application No. A/YL-PS/541² (*Further information accepted but not exempted from publication and recounting requirement*) (Annex E)

3. Justifications from the Applicant

The justifications/responses put forward by the applicant in support of the review application are detailed in the letter at **Annex E**. They can be summarised as follows:

Lots No. 1094 and 1095 covered by Short Term Waivers (STW) for non-agricultural use

- (a) Lots No. 1094 and 1095 are currently covered by STW for non-agricultural uses and for the erection of a food factory. Hence, the use of open storage, loading and unloading and the parking of goods vehicles within these two whole lots could be permitted under the STW.

Structure for warehouse purpose at Lots No. 1096 and 1097 as 'Existing Use'

- (b) The Site has long been used for non-agricultural use, and it has been accepted by Planning Department (PlanD) that warehouse use at Lots No. 1096 and 1097 could be tolerated as being termed as 'Existing use'.

² On 21.12.2017, the applicant submitted a Notice of Appeal against the RNTPC’s decision in respect of his previous application No. A/YL-PS/541 rejected by the RNTPC on 3.10.2017. Since the Appeal Board Panel (Town Planning) only had the power to process the appeal case of which the concerned decision was reviewed by the Board under s.17 of the Ordinance, the Secretary of Appeal Board Panel (Town Planning) on 9.1.2018 informed the applicant that they were unable to accept the appeal for processing.

No active agricultural activities in the vicinity

- (c) The surrounding areas of the Site is mostly being used for non-agricultural purposes instead of being intermixed with cultivated agricultural land and vacant land.

Planning intention of the "V" zone not realised

- (d) Lots No. 1095, 1096 and 1097 are all 'Tso' properties and according to their traditions, these lots will only be rented out and will not be assigned to private developers, or other indigenous villagers for Small House development.

4. Background of the Site

- 4.1 According to the Covering Notes of the OZP, if the use of land or building was in existence immediately before the first publication in the Gazette of the notice of the draft Ping Shan Development Permission Area (DPA) Plan, i.e. 18.6.1993, provided such use has continued since it came into existence, no action is required to make the use of land or building conform to the OZP until there is a material change of use or the building is redeveloped. According to the aerial photo taken of 19.6.1993 (**Plan R-3b**), there were structures erected at the southern portion of the Site. Currently, the concerned area is occupied by a large structure, and another structure is erected at the eastern portion of the Site (**Plan R-3a**).
- 4.2 The Site is the subject of an on-going enforcement action against an unauthorised development (UD) involving storage use. Enforcement Notice was issued to the responsible persons on 17.1.2017 (**Plan R-2b**). Prosecution action was instigated. The defendants pleaded guilty and were fined \$125,000 on 8.3.2018. As the UD has not been discontinued, second round of prosecution action may be followed.

5. The Section 16 Application

The Site and Its Surrounding Areas

- 5.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC were described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
- (a) currently occupied by the applied use; (**Plans R-2a, 3a, 4a and 4b**)
 - (b) fenced and hard-paved with two covered structures; and
 - (c) accessible by a local track leading from Hung Chi Road (**Plan R-3a**).
- 5.3 The surrounding areas have the following characteristics: (**Plans R-2a and 3a**)
- (a) to the immediate northwest is a food factory which may be tolerated under the Town Planning Ordinance (TPO), and to the further northwest are an area for parking of vehicles, another food factory and open storage of construction

materials and machinery;

- (b) to the north and northeast are a logistic centre, a real estate agency and a vehicle repair workshop. To the east are car services, a residential dwelling, warehouse and storage use at Hung Shui Kiu Main Street;
- (c) to the immediate southeast are storage use, car services and a refuse collection point at Hung Shui Kiu Main Street. To the further southeast are residential development (Bellevue Court) and residential dwellings; and
- (d) to the southwest is a shrine and residential dwellings. To the west are residential dwellings, Small House (SH) under construction, active agricultural land and vacant land.

Planning Intention

- 5.4 There has been no change in planning intention of the concerned “G/IC” and “V” zones as mentioned in paragraph 9 of **Annex A** which is recapitulated below.
- 5.5 The planning intention of the “G/IC” zone is primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishments.
- 5.6 The planning intention of “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

Previous Applications

- 5.7 The Site is the subject of one previous application No. A/YL-PS/541 for the same use submitted by the same applicant of the current application, which was rejected by the RNTPC on 13.10.2017 on grounds of no strong planning justification has been given to deviate from the planning intention of the zones, the applied use is not compatible with the surrounding land uses which are predominantly residential in nature, the application does not comply with the TPB PG-No.13E and approval of the application would set an undesirable precedent. Detailed information of the previous application is summarised at **Appendix III** of **Annex A** and its location is shown on **Plan R-1**.
- 5.8 Since then, another application for temporary shop and services (furniture retail shop) for a period of 5 years at the Site (application No. A/HSK/114) was submitted by another applicant. The consideration of the application was deferred by the Committee as requested by the applicant on 4.1.2019.

Similar Applications

5.9 There is no similar application within the subject “G/IC” and “V” zones on the OZP.

6. Comments from Relevant Government Departments

6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 10.1 and 10.2 of **Annex A**.

6.2 The following government departments have been further consulted and their comments are summarised as follows:

Land Administration

6.2.1 Comments of the District Land Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) He maintains his previous view on the s.16 application.
- (b) The subject lot is currently in breach of the Short Term Waiver³ issued and will be subject to lease enforcement action if the breach is not rectified as required.

Environment

6.2.2 Comments of the Director of Environmental Protection (DEP):

He remains his previous stance of not supporting the application as the applied use would generate heavy vehicles traffic, and there are sensitive uses within 100m from the site (nearest residential dwelling at about 4m away to the south) (**Plan R-2a**). Environmental nuisance is expected.

6.3 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of **Annex A**.

- (a) Secretary for Education;
- (b) Assistant Commissioner for Transport/New Territories (AC for T/NT);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W)), CEDD);
- (d) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (e) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (f) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (h) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);

³ Lots No. 1094 and 1095 were covered by STW for food factory and quarter and food factory purposes respectively.

- (i) Director of Fire Services (D of FS);
- (j) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (k) Director of Leisure and Cultural Services (DLCS).

6.4 The following government departments maintain their previous views of having no comment on the s.16 application as stated in paragraph 10.2 of **Annex A**.

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Commissioner of Police (C of P);
- (c) Antiquities and Monuments Office, Commissioner for Heritage Office (AMO, CHO); and
- (d) District Officer (Yuen Long) (DO(YL)).

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

On 14.9.2018 and 23.11.2018, the review application was published for public inspection for three weeks accordingly. During the first and second statutory public inspection periods, which ended on 5.10.2018 and 14.12.2018 respectively, a total of two public comments from two private individuals were received. Both commenters objected to the application on the grounds that the application was rejected in 2017 and there was no change to the Site since then (**Annexes F-1 and F-2**).

8. Planning Considerations and Assessments

8.1 The application is for a review of RNTPC's decision on 3.8.2018 to reject the subject application for proposed temporary cargo handling and forwarding facility with ancillary warehouses and car parking facilities at the Site zoned "G/IC" and "V" on the OZP (**Plan R-1**). The application was rejected for the reasons of not in line with the planning intention of "G/IC" and "V" zones; not complying with TPB-PG No. 13E; failure to demonstrate no adverse environmental impact; and setting of an undesirable precedent for similar applications within the "G/IC" and "V" zones. To substantiate his review application, the applicant has submitted responses to the rejection reasons in support of the review mainly on grounds that part of the Site (Lots No. 1094 and 1095 in D.D.124) are currently covered by existing STW for non-agricultural uses; PlanD accepted that warehouses use at Lots No. 1096 and 1097 in D.D.124 could be tolerated; surrounding areas are mostly used for non-agricultural purpose instead of agricultural use; and Lots No. 1095, 1096 and 1097 in D.D.124 are all 'Tso' properties and will only be rented out, but not for Small House development. Planning considerations and assessments on the review are appended below.

Planning intention of "V" and "G/IC" zones

8.2 The Site straddles areas zoned "G/IC" (60%) and "V" (40%) on the OZP. The "G/IC" zone is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishments. The planning intention of

the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. According to DLO/YL, there are 10 Small House applications under processing and 11 Small House applications approved in the vicinity of the Site. The applicant claims that Lots No. 1095, 1096 and 1097 in D.D. 124 are 'Tso' properties and will only be rented out but will not be assigned to other indigenous villagers for Small House development. The ownership of land is not a material consideration in the assessment of planning application. As such, the applied use is not in line with the planning intention of the “G/IC” and “V” zones of the OZP and there is no strong justification provided in the submission for a departure from the planning intention, even on a temporary basis.

Incompatible with surrounding areas

- 8.3 The applicant has argued that the site and the surrounding areas are mostly being used for non-agricultural purpose and not intermixed with cultivated agricultural land and vacant land. As shown on **Plans R-2a and 3a**, the Site is situated in an area mainly planned for Government, institution or community facilities and village type development, and is predominated by residential dwellings intermixed with active agricultural land and vacant land. The applied use, which is industrial in nature, is not compatible with the surrounding environment, in particular the village cluster to the immediate south of the Site. Although there are open storage yards, warehouses, workshops and industrial uses in the vicinity of the Site, majority of them are suspected unauthorised developments subject to enforcement action by the Planning Authority.

Adverse environmental impact

- 8.4 DEP does not support the application. There are domestic uses in the vicinity of the Site, and the nearest domestic use is located about 4m from its site boundary (**Plans R-2a and 3a**). DEP anticipates that the operation of the temporary cargo handling and forwarding facility and the traffic of heavy vehicles so generated will cause environmental nuisance to the nearby sensitive users. In this regard, the applicant has not provided further information in the review to demonstrate that the development would not generate adverse environmental impact on the nearby sensitive receivers, nor to propose any mitigation measures to minimise such impact to an acceptable level.

Not in line with TPB PG-No. 13E

- 8.5 According to the TPB PG-No. 13E, the Site falls within Category 4 areas. The following considerations in the Guidelines are relevant:

Category 4 areas: applications would normally be rejected except under exceptional circumstances. For applications on sites with previous planning approvals, and subject to no adverse departmental comments and local objection, sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the applications relevant technical assessments/ proposals to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. The intention is however to encourage the phasing out of such non-conforming uses as early as possible. Since the planning intention of Category 4 areas is to phase out the open

storage and port back-up uses, a maximum period of 2 years may be allowed upon renewal of planning permission for the applicant to identify suitable sites for relocation. No further renewal of approval will be given unless under very exceptional circumstances and each application for renewal of approval will be assessed on its individual merit.

- 8.6 The application does not comply with the TPB PG-No.13E in that the Site falls within Category 4 area where applications would normally be rejected except under exceptional circumstances. In this, the Site is not the subject of any previous planning approval and there is no special circumstance in the application that justify sympathetic consideration; there is adverse departmental comment from DEP and local objection on the application; and the applicant fails to demonstrate in the review that the applied use would not have adverse environmental impact on the surrounding areas.

Undesirable precedent

- 8.7 The Site is the subject of a previous application (No. A/YL-PS/541) for the same use, which was rejected by the RNTPC on 13.10.2017 on grounds of no strong planning justifications to support deviation from the planning intention of the zones, incompatible land uses, not comply with TPB PG-No. 13E and approval of the application would set an undesirable precedent. There is no change in planning circumstances since the last application. The RNTPC has not approved any application for cargo handling and forwarding facility involving the subject “G/IC” and “V” zones. Approval of the current application would set an undesirable precedent and encourage other applications for similar developments within the subject “G/IC” and “V” zones. The cumulative effect of approving such application would result in a general degradation of the environment of the area.

Planning and lease enforcement against the Site

- 8.8 Whilst the applicant argued in his application that the Site has long been used for non-agricultural use and that the warehouse use at Lots No. 1096 and 1097 in D.D. 124 could be tolerated, according to the Notes of the OZP, no action is required to make the existing use of such land or building conform to the OZP until there is a material change of use or the building is redeveloped. As the structures on the Site at the time of first publication of the draft DPA Plan had been redeveloped, the current use on the Site needs to conform to the prevailing OZP (**Plans R-3a and 3b**). In this regard, it is noted that majority of the Site is subject to on-going enforcement action against an unauthorised development involving storage use with prosecution action being taken and defendants convicted (**Plan R-2b**). Also, DLO/YL has advised that the subject STW covering part of the Site was in breach, and lease enforcement action would be taken if the breach is not rectified as required.

Public comments

- 8.9 There are two public comments from two private individuals both objecting to the review application on ground that there was no change to the Site since the application was rejected in 2017. The planning considerations and assessments above are also relevant.

9. Planning Department's Views

- 9.1 Based on the assessments made in paragraph 8, having taken into account the public comments as mentioned in paragraph 7, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 3.8.2018, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the planning intention of the “G/IC” zone on the OZP is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. The applied use is not in line with the planning intention of the zones. No strong planning justification has been given in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applied use is not compatible with the surrounding land uses which are predominantly residential in nature intermixed with cultivated agricultural land and vacant land;
 - (c) the application does not comply with the Town Planning Board Guidelines No. 13E in that no previous approval has been granted for the Site, and there are adverse departmental comment and local objection against the application. The applicant fails to demonstrate that the applied development would not generate adverse environmental impact; and
 - (d) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the same “G/IC” and “V” zones. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- 9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 25.1.2022, 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 conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 a.m. on Mondays to Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 1:00 p.m. and 8:00 a.m. on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;

- (d) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **25.7.2019**;
- (e) in relation to (d) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **25.10.2019**;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of a landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **25.7.2019**;
- (h) in relation to (g) above, the implementation of the landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **25.10.2019**;
- (i) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **25.7.2019**;
- (j) in relation to (i) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **25.10.2019**;
- (k) the provision of boundary fencing within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **25.7.2019**;
- (l) if any of the above planning conditions (a), (b), (c) or (f) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (m) if any of the above planning conditions (d), (e), (g), (h), (i), (j) or (k) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

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

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.

- 10.2 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.
- 10.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

11. Attachments

Drawing R-1	Lot Index plan
Drawing R-2	Vehicular Parking Layout
Plan R-1	Location Plan
Plans R-2a and 2b	Site Plan
Plans R-3a and 3b	Aerial Photo
Plans R-4a and 4b	Site Photos
Annex A	RNTPC Paper No. A/HSK/84
Annex B	Extract of minutes of the RNTPC Meeting held on 3.8.2018
Annex C	Secretary of the Board's letter dated 17.8.2018
Annex D	Letter of 3.9.2018 from the applicant applying for review
Annex E	Further information received on 14.11.2018
Annexes F-1 and F-2	Public comment received during statutory publication periods of the review application
Annex G	Recommended advisory clauses