

REVIEW OF APPLICATION NO. A/YL-PN/58
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Crops and Vegetables Collection Station
for a Period of 3 Years and Filling of Land in “Agriculture” Zone,
Lot 74 (Part) in D.D.133, Nim Wan Road,
Ha Pak Nai, Lau Fau Shan, Yuen Long, New Territories**

1. Background

- 1.1 On 14.8.2019, the applicant, TANG Wai-cheung, sought planning permission for temporary crops and vegetables collection station for a period of 3 years and filling of land under s.16 of the Town Planning Ordinance (the Ordinance) at the application site (the Site). The Site falls within an area zoned “Agriculture” (“AGR”) on the Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9 (**Plan R-1**).
- 1.2 On 4.10.2019, the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact on the surrounding areas; and
 - (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications for other developments within the “AGR” zone, the cumulative effect of which will result in a general degradation of the rural environment of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-PN/58 **(Annex A)**
 - (b) Extract of minutes of the RNTPC Meeting held on 4.10.2019 **(Annex B)**
 - (c) Secretary of the Board’s letter dated 18.10.2019 **(Annex C)**

2. Application for Review

- 2.1 On 3.11.2019 and 7.11.2019, the applicant, under section 17(1) of the Ordinance submitted two letters for a review of the Committee's decision to reject the application (**Annex D**).
- 2.2 *In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 31.1.2020 for consideration of the review application has been rescheduled, and the Town Planning Board (the Board) has agreed to adjourn consideration of the application. The review application is now scheduled for consideration by the Board at this meeting.*

3. Justifications from the Applicant

The applicant does not provide any justification to support the review application.

4. Background of the Site

The Site is subject to planning enforcement action (No. E/YL-PN/53) against an unauthorized development (UD) involving filling of land. Reinstatement Notice (RN) was issued on 27.6.2019 requiring reinstatement of the concerned land. As subsequent site inspection revealed that the Site has not been reinstated upon expiry of the RN, 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 the Committee was described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
- (a) currently vacant and paved with gravel without valid planning permission (**Plans R-2, R-3a, R-4a and R-4b**); and
 - (b) accessible via a local track from Nim Wan Road.
- 5.3 The surrounding areas have the following characteristics: (**Plans R-2, R-3a, R-4a and R-4b**)
- (a) the surroundings are predominated by cultivated or fallow agricultural land, ponds and vegetated areas;
 - (b) to its further north are a storage yard for open storage of recycling materials and some residential structures. To its further northwest are some ponds and the coastal area of Deep Bay;
 - (c) to its further east are some temporary structures for storage; and
 - (d) to its south-west are some residential structures and village office. An existing vegetable collection facility is located about 55m to its southwest.

Planning Intention

- 5.4 There has been no change in planning intention of the concerned “AGR” zone as mentioned in paragraph 8 of **Annex A**. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

Previous Application

- 5.5 There is no previous application at the Site.

Similar Application

- 5.6 There is no similar application for crops and vegetable collection station or filling of land within the “AGR” zone on the Sheung Pak Nai and Ha Pak Nai OZP.

6. Comments from Relevant Government Departments

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 9.1 and 9.2 of **Annex A**.
- 6.2 The following Government departments have no further comments on the review application and maintain their previous views on the S.16 application in paragraph 9.1 of the RNTPC paper in **Annex A**. The main views are recapitulated below:

Nature Conservation

- 6.2.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) The Site falls within the “AGR” zone and possesses potential for agricultural rehabilitation. It is noted that the Site is currently a paved vacant land and is located near the vegetables collection centre operated by the Ha Tsuen Vegetable Marketing Co-operative Society Limited (**Plan R-2**). Given that there is already an existing vegetables collection centre nearby, the applicant should provide more details on the agricultural activities (e.g. transaction volume of vegetables, market channel for the vegetables) to be carried out at the Site to justify why an additional vegetables collection centre under the current application is required.
- (b) Furthermore, as regards the proposed paved area, the applicant should minimize the proposed paved area as far as possible, justify the need for the proposed paved area and filling of land of about 600m², reinstate the land after the approval period, and suggest a reinstatement proposal for the Board’s consideration.

Landscape

- 6.2.2 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) The Site falls within an area zoned “AGR” near the Ha Tsuen Ha Pak Nai Village Office. The Site is not subject to any previous planning application. The current application seeks planning permission for temporary crops and vegetable collection station for a period of 3 years and filling of land.
- (b) With reference to the site photos dated 23.8.2019 and aerial photo of 2018, the Site is formed with crushed gravel. No existing tree is observed within the Site. The Site is situated in an area of rural coastal landscape character predominated by farmlands, ponds and vegetated areas. The extensive hard paving of the Site is not entirely in line with the surrounding landscape character.
- (c) When comparing the aerial photos of 2011 (**Plan R-3b**), 2013 and 2018 (**Plan R-3a**), the Site was originally covered with dense woodland. However, since 2013 onwards, all the trees were removed and the Site was formed with gravel paving and used as a vehicle park. Landscape impact had taken place.
- (d) Approval of the application would set an undesirable precedent which would encourage other similar development to clear and form the Site prior to obtaining planning permission. The cumulative impact of which would result in a general degradation of the rural landscape character of the area.
- (e) In view of the above, he has reservations on the application from landscape planning perspective.
- (f) As the Site is not facing any prominent public frontage and there are existing trees surrounding the Site, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

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 9.1 of **Annex A**.

- (a) District Land Officer/Yuen Long, Lands Department (DLO/YL, LandsD);
- (b) Director of Environmental Protection (DEP);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (d) Commissioner for Transport (C for T);
- (e) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (f) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (g) Director of Fire Services (D of FS);
- (h) Director of Food and Environmental Hygiene (DFEH);
- (i) Antiquities and Monument Office (AMO); and
- (j) District Officer (Yuen Long) (DO(YL)).

- 6.5 The following government departments maintain their previous views of having no comment on the review application.
- (a) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD);
 - (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
 - (c) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
 - (d) Director of Leisure, Cultural and Services (DLCS);
 - (e) Commissioner of Police (C of P); and
 - (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

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

7.1 On 15.11.2019, the review application was published for public inspection for three weeks. During the statutory public inspection period, which ended on 6.12.2019, 4 public comments were received from the Hong Kong Bird Watching Society (HKBWS), Designing Hong Kong (DHK), Kadoorie Farm & Botanic Garden Corporation (KFBG) and an individual objecting to the review application (**Annex E**). The main objecting reasons are summarized below:

- (a) the proposed development is not in line with the planning intention of the “AGR” zone;
- (b) the proposed development would generate adverse landscape impact on the surrounding areas;
- (c) approval of the application would set an undesirable precedent for similar applications and cumulative effect of which would result in general degradation of the environment of the area;
- (d) the applicant should provide more details to justify an additional vegetables collection centre given that an existing one is nearby; and
- (e) the Board should not encourage “destroy first, build later” of unauthorized developments.

7.2 Eight public comments were received at the s.16 application stage and are set out in paragraph 10 of the RNTPC Paper in **Annex A**.

8. Planning Considerations and Assessments

8.1 The application is for a review of the Committee’s decision on 4.10.2019 to reject the subject application for temporary crops and vegetables collection station for a period of 3 years and filling of land at the Site zoned “AGR” on the OZP (**Plan R-1**). The application was rejected for the reasons that the proposed development was not in line with the planning intention of the “AGR” zone, the applicant failed to demonstrate the proposed development would not generate adverse landscape impact on the surrounding areas and approval of the application would set an undesirable precedent for similar applications.

- 8.2 The applicant does not submit written response to substantiate the review application (**Annex D**) and there is no change in planning circumstances. Planning considerations and assessments on the review application are appended below.

Planning Intention of “AGR” Zone

- 8.3 The subject application is for temporary crops and vegetables collection station for a period of 3 years and filling of land at the Site zoned “AGR” on the OZP. The planning intention of the “ARG” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The applicant proposes to hard pave the Site with asphalt for an area of 600m² (57% of the Site). In this regard, DAFC maintains his previous view of requiring the applicant to justify the need for the proposed paved area as the Site has potential for agricultural rehabilitation. The applicant has not provided any justification for the need of hard paving the Site. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

Land Use Compatibility

- 8.4 The Site is situated in an area of rural landscape character predominated by active or fallow agricultural land, ponds and vegetation (**Plans R-2 and R-3a**). The extensive hard paving for the proposed use is not entirely compatible with the surrounding landscape character. In this regard, CTP/UD&L maintains his view of having reservation on the application from the landscape planning perspective.

Vegetable Collection Station in the Vicinity

- 8.5 DAFC maintains his previous view that there is an existing vegetable collection station operated by the Ha Tsuen Vegetable Marketing Co-operative Society Limited located 55m southwest of the Site (**Plan R-2**) and the applicant fails to justify why an additional vegetable collection station is required.

Other Departmental Comments

- 8.6 Other relevant Government departments, including DEP, C for T, DSD and D of FS maintain no adverse comment on the application. Significant adverse environmental, drainage and traffic impacts on the surrounding area are not expected.

Previous Application

- 8.7 There is no similar application within the “AGR” zone on the Sheung Pak Nai and Ha Pak Nai OZP for temporary uses or filling of land. In this regard, approval of the application, which involves filling of land, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area.

Public Comments

- 8.8 There are 4 public comments from the HKBWS, KFBG, DHK and an individual

objecting to the review application mainly on grounds stated in paragraph 7. The planning considerations and assessments in paragraphs 8.1 to 8.7 are 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 Committee on 4.10.2019, the Planning Department maintains its previous view of not supporting the review application for the following reasons:

- (a) the development is not in line with the planning intention of the subject "Agriculture" zone which is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission to merit a departure from such planning intention, even on a temporary basis;
- (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact on the surrounding areas; and
- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone, the cumulative effect of which will result in a general degradation of the rural environment.

9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until ~~31.1.2023~~ 13.3.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation from 10:00 p.m. to 5:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to public roads or reverse onto/from public roads at any time during the planning approval period;
- (c) the submission of the drainage proposal including the mitigation measures for the proposed land filling works 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 ~~31.7.2020~~ 13.9.2020;
- (d) in relation to (c) 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 ~~31.10.2020~~ 13.12.2020;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;

- (f) the submission of a reinstatement proposal within **6 months** from the date of planning approval to the satisfaction of Director of Agriculture, Fisheries and Conservation or of the Town Planning Board by ~~31.7.2020~~ 13.9.2020;
- (g) if any of the above planning conditions (a), (b) or (e) 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;
- (h) if any of the above planning conditions (c), (d) or (f) 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; and
- (i) in relation to (f) above, upon expiry of the planning permission, the reinstatement of the Site according to the approved reinstatement proposal to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board.

Advisory clauses

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

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of the Committee’s decision and decide whether to accede to the application.
- 10.2 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.
- 10.3 Alternatively, 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 period of which the permission should be valid on a temporary basis.

11. Attachments

Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3a to 3b	Aerial Photos
Plans R-4a to 4b	Site Photos
Annex A	RNTPC Paper No. A/YL-PN/58
Annex B	Extract of minutes of the RNTPC Meeting held on 4.10.2019
Annex C	Secretary of the Board’s letter dated 18.10.2019
Annex D	Letters of 3.11.2019 and 7.11.2019 from the applicant applying for review
Annex E	Public comments received during statutory publication periods of the review application
Annex F	Recommended advisory clauses

Agenda Item 6

Replacement Cover Page of

TPB Paper No. 10619

For consideration by TPB on 13.3.2020

TPB Paper No. 10619

**For Consideration by
the Town Planning Board on ~~31.1.2020~~ 13.3.2020**

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