

REVIEW OF APPLICATION NO. A/TM-SKW/104
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Barbecue Area for a Period of 3 Years in “Green Belt” Zone,
Lot 206 RP in D.D. 374 and adjoining Government Land, So Kwun Wat, Tuen Mun**

1. Background

1.1 On 16.9.2019, the applicant, Ms CHUNG Yuk Ying, sought planning permission for temporary barbecue area 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 zoned “Green Belt” (“GB”) on the approved So Kwun Wat Outline Zoning Plan (OZP) No. S/TM-SKW/13 (**Plan R-1**).

1.2 On 15.11.2019, 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 proposed use is not in line with the planning intention of the “GB” zone, which is 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. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the proposed use is not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that the applicant fails to demonstrate that the proposed use would not generate adverse traffic, noise, sewerage, wastewater, odour and landscape impacts on the surrounding areas; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar 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/TM-SKW/104

(Annex A)

- (b) Extract of minutes of the RNTPC Meeting held on 15.11.2019 (Annex B)
- (c) Secretary of the Board's letter dated 29.11.2019 (Annex C)

2. Application for Review

On 20.12.2019, the applicant, under section 17(1) of the Ordinance, applied for review of the RNTPC's decision to reject the application (Annex D). In support of the review, the applicant submitted the following documents:

- (a) Supplementary information (SI) dated 24.12.2019 providing clarifications on the use of the Government land (GL) within the Site (Annex E)
- (b) Further information (FI) dated on 28.1.2020 providing response to comments of the Transport Department (TD) *(accepted and exempted from publication and recounting requirements)* (Annex F)
- (c) FI dated 24.2.2020 providing response to comments of TD *(accepted and exempted from publication and recounting requirements)* (Annex G)
- (d) FI dated 25.2.2020 providing response to comments of TD *(accepted and exempted from publication and recounting requirements)* (Annex H)
- (e) FI dated 2.3.2020 providing clarifications on the use of the GL within the Site *(accepted and exempted from publication and recounting requirements)* (Annex I)

3. Justifications from the Applicant

The justifications/responses put forward by the applicant in support of the review application are detailed in the emails at **Annexes D to I**. They are summarised as follows:

- (a) Since the Site is conveniently located and within walking distance from franchised bus stops and green minibus stops, visitors will be encouraged to access the Site by public transport. No parking spaces and loading and unloading spaces will be provided.
- (b) Drainage and wastewater facilities including wastewater holding tank and drain pipes will be provided at the Site to avoid environmental impacts on the surrounding areas (**Drawing R-1**).
- (c) The applicant had resided in the area for a long time. She recalled that the Site was previously used for general agricultural purpose instead of hydroponic cultivation. Only local birds are observed and there are no migratory birds at the Site.

- (d) The applicant was not aware that the Site was zoned “GB” when she purchased the land. She paved the overgrown land to keep away snakes and prevent possible illegal use of the Site by other people.
- (e) Considering the small scale of the barbecue area with only two grills and its distance (about 1,300m) from the neighbouring residential development namely Aegean Coast, it is unlikely that the barbecue area will cause noise and light nuisance to the residents of Aegean Coast (**Plan R-1**). The barbecue area will not operate after 11:00 p.m. to minimise nuisance to the nearby residents.
- (f) At the initial stage of operation, the barbecue area will operate three to four days a week and will accommodate a maximum of approximately 30 customers.
- (g) The applicant noted that Lands Department will not grant approval for using the GL within the Site. Therefore, she will not use the GL portion of the Site.

4. **Background of the Site**

- 4.1 The Site forms part of a larger site which is subject to on-going planning enforcement action against unauthorised development (UD) involving use for eating place. Enforcement Notice (EN) was issued on 9.5.2018 requiring the discontinuance of the UD. Since the UD had not been discontinued upon expiry of the EN, the EN recipients were prosecuted and convicted on 26.6.2019.
- 4.2 The Site also involved filling of land without prior planning permission from the Board. Reinstatement Notice requiring the reinstatement of the concerned land would be followed accordingly.

5. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-2 to R-4b)

- 5.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC was described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no change in the situation since then.
- 5.2 The Site:
 - (a) is paved with concrete and debris (**Plans R-4a and R-4b**);
 - (b) is partly occupied by five converted containers with unfinished works (**Plans R-4a and R-4b**); and
 - (c) is accessible from So Kwun Wat Road via a local track (**Plans R-2 and R-3d**).
- 5.3 The surrounding areas have the following characteristics:
 - (a) predominantly rural in character with scattered agricultural activities intermixed with residential dwellings and vacant land set against green and vegetated land/ hillslopes (**Plans R-2 and R-3d**); and

- (b) about 450m to the north of the Site is Tai Lam Country Park (**Plan R-1**).

Planning Intention

- 5.4 There has been no change in planning intention of the concerned “GB” zone as mentioned in paragraph 8 of **Annex A**. The planning intention of “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. However, limited development may be permitted if they are justified on strong planning grounds.

Previous Application

- 5.5 There is no previous application covering the Site.

Similar Application

- 5.6 There is no similar application within the “GB” zone 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 9.1 and 9.2 of **Annex A**.
- 6.2 For the review application, relevant Government departments have been further consulted. The following departments have further comments as follows:

Land Administration

- 6.2.1 Comments of the District Lands Officer/ Tuen Mun, Lands Department (DLO/TM, LandsD):
- (a) The Site falls within Lot No. 206 RP in D.D.130 (‘the Lot’) and the adjoining Government land (GL). The Lot is an Old Schedule Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
 - (b) Site inspection revealed that container-converted structures were erected straddling over the Lot and the adjoining lots. No prior approval has been given. The owner of the Lot has submitted an application for Short Term Waiver (‘STW’) to regularise the existing structures and the application is being withheld pending decision of the planning application. However, the layout and configuration of the existing structures are found different from the proposal shown on the application.
 - (c) The application site is accessible via GL adjoining a road branching off from the Tuen Mun Road. This office does not carry out maintenance works for the access and road nor guarantee that

right-of-way will be given to the application site.

- (d) If planning permission is given, the applicant should apply to his Office to reactivate the processing of the STW. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administration fee etc.
- (e) It is noted that Polyvinyl Chloride (PVC) underdrain and U channel are proposed to be constructed on the GL nearby. The applicant is reminded that prior approval will be required for laying any drains and channels on any GL and any unauthorized excavation of GL may be subject to enforcement action and prosecution. There is no guarantee that approval will be given and in the event that approval is given, it will be subject to such terms and conditions, including payment of fees as may be considered appropriate.
- (f) Notwithstanding the above, his Office reserves the right to take enforcement actions as considered appropriate against any unauthorised erection/extensions/alternations of the structures affected irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures be found erected without any prior approval given by his Office or any unauthorised occupation of GL.

Traffic

6.2.2 Comments of Commission for Transport (C for T):

Noting that there will be no ingress/ egress of vehicles and loading/unloading area for the operation of the barbecue area, TD has no comment on the subject planning application from traffic engineering point of view.

Environment

6.2.3 Comments of Director of Environmental Protection (DEP):

He notes that a manhole would be constructed and a 100mm pipe would be adopted to connect to existing drainage system (**Drawing R-1**). A wastewater holding tank will be constructed for storing wastewater generated from the barbecue site which will be cleaned regularly. Given the above new information, he has no objection to the application subject to the imposition of the following approval condition and advisory clause:

- (a) The submission and implementation of sewerage and wastewater treatment/disposal facilities to his satisfaction;
- (b) Besides, the applicant should be advised to provide mitigation

measures, such as silt trap and rubbish traps to prevent pollution from entering the drainage system.

Drainage

6.2.4 Comments of Chief Engineer/ Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) Noting that the applicant has mentioned that a drainage system is proposed to be constructed at the subject site, he has no objection in principle to the proposed application from public drainage viewpoint.
- (b) However, only descriptive information with no details of such drainage plan are provided for review. Should the application be approved, the applicant is reminded to make reference to DSD Technical Note to prepare a “Drainage Submission” for his further consideration. An approval condition should be included to request the applicant to submit and implement a drainage proposal to the satisfaction of Director of Drainage Services to ensure that the proposed use will not cause any adverse drainage impact to the adjacent area.
- (c) DSD’s technical comments on the s.16 application as stated in paragraph 9.1.8 of **Annex A** are still valid.

6.3 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:

Landscape

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

- (a) He has reservation on the application from the landscape planning perspective.
- (b) The Site is located near Tuen Mun Road, in an area of miscellaneous rural fringe landscape surrounded by natural woodland, and some temporary structures are found to its further west. With reference to his site visit conducted on 11.10.2019, the Site is mostly hard paved, occupied by some temporary structures, and without existing vegetation within the Site.
- (c) It is noted from aerial photos of 2015 (**Plan R-3a**) and 2018 (**Plan R-3d**) that the Site had been extensively modified during this period, and existing vegetation had been cleared prior to planning permission that landscape impact has been taken place. Although further adverse landscape impact on the surrounding area is not anticipated, the proposed development, if approved, would set an undesirable precedent to encourage similar site modification and vegetation clearance prior to planning approval. The cumulative

impact of such approval would further degrade the landscape quality of the surrounding environment and the integrity of the subject “GB” zone.

6.3.2 Comments of Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) The Site falls within the “GB” zone on the approved So Kwun Wat OZP No. S/TM-SKW/13. Upon site inspection, the Site is paved and mostly disturbed.
- (b) With reference to past aerial photos, it is noted that the Site was largely vegetated in July 2016 but was paved in April 2017. It is trusted that the Board would take into account the history of the Site when considering the application. ‘Destroy first, Develop later’ approach should not be encouraged.

6.4 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) Chief Building Surveyor/ New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Director of Fire Services (D of FS); and
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD)

6.5 The following Government departments maintain their previous views of having no comment on the s.16 application as stated in paragraph 9.2 of **Annex A**:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P);
- (e) Director of Leisure and Cultural Services (DLCS);
- (f) Director of Electrical and Mechanical Services (DEMS); and
- (g) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO).

7 Public Comments Received During Statutory Publication Periods

7.1 On 3.1.2020, the review application was published for public inspection for three weeks. During the statutory public inspection period, which ended on 24.1.2020, seven public comments were received from World Wide Fund For Nature Hong Kong, the Hong Kong Bird Watching Society, Designing Hong Kong Limited, two members of Tuen Mun District Council, Aegean Coast Owners’ Committee and an individual (**Annex J**). Six of them objected to the review application mainly on the grounds of not being in line with the planning intention of “GB” zone; being a “destroy first, build later” case; setting an undesirable precedent to similar applications; causing adverse environmental nuisance and drainage impact; generating traffic burden to the nearby road network; causing potential

environmental, hygienic and safety concerns to the neighbouring residents; leading to a general degradation of the rural environment of the area; and having sufficient barbecue sites in the surrounding area to fully satisfy residents' demand for barbecue facilities. One public comment submitted by a member of TMDC indicated no objection as there is no residential development at the Site and there are low traffic flow and sufficient car parking spaces in the area.

- 7.2 Five public comments, all objecting to the application, received at the s.16 application stage are set out in paragraph 10 of **Annex A**.

8 Planning Considerations and Assessments

- 8.1 The application is for a review of RNTPC's decision on 15.11.2019 to reject the subject application for temporary barbecue area for a period of 3 years at the Site zoned "GB" on the OZP (**Plan R-1**). The application was rejected mainly for the reasons that the proposed use was not in line with the planning intention of the "GB" zone, the applicant failed to demonstrate that the proposed use would not generate adverse traffic, noise, sewerage, wastewater, odour and landscape impacts on the surrounding areas and approval of the application would set an undesirable precedent for similar applications within the "GB" zone.
- 8.2 In support of the review application, the applicant has provided justifications to address the concerns raised by relevant departments on traffic, sewerage, wastewater and environmental aspects including justifications on the non-provision of parking and loading/unloading facilities at the Site, proposed drainage and wastewater treatment/disposal facilities, operation hours of the proposed use. Having considered the applicant's submission, DEP has no objection to the application subject to the imposition of approval conditions on the provision of sewerage and wastewater treatment/disposal facilities, and CE/MN of DSD considers that an approval condition should be included to request the applicant to submit and implement a drainage proposal. C for T has no comment on the application from traffic engineering point of view noting that no ingress/ egress of vehicles and loading/ unloading area for the operation of the barbecue area will be provided.
- 8.3 Notwithstanding that some technical issues are addressed in the review application, the issues related to planning intention, land use compatibility and landscape impact have not been addressed by the applicant. The assessments on these aspects are set out below.
- 8.4 The Site falls entirely within an area zoned "GB". The proposed use is not in line with the planning intention of the "GB" zone which is 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. The applicant has not provided any strong planning justification in the submission to merit a departure from such planning intention, even on a temporary basis.
- 8.5 The Site is situated in an area which is predominantly rural in nature with scattered agricultural activities intermixed with abandoned farmland and vegetated land/hillslopes linking to Tai Lam Country Park (**Plans R-1, R-2 and R-3d**). The proposed use is not entirely compatible with the surrounding landscape character.

- 8.6 To respond to the concerns of CTP/UD&L of PlanD and DAFC on vegetation clearance and paving of the Site, the applicant explained that it was to keep away snakes and prevent possible illegal use of the Site by other people. In this regard, CTP/UD&L maintains his view of having reservation on the proposed use as clearance of vegetation had taken place prior to granting of the planning approval. Cumulative impact of such approval would further degrade the landscape quality of the surrounding environment and the integrity of the subject “GB” zone. DAFC also maintains his previous concern as the Site has been paved and mostly disturbed recently which should not be encouraged.
- 8.7 Taking into account the comments of DAFC and CTP/UD&L of PlanD, the application does not meet the TPB Guidelines (TPB PG No. 10) in that the applicant fails to demonstrate that the proposed use would not have adverse landscape impact on the surrounding areas.
- 8.8 There is no similar application for temporary barbecue area within the subject “GB” zone on the So Kwun Wat OZP. Although the proposed development is small in scale, approval of the application would set an undesirable precedent for similar uses to proliferate into the “GB” zone. The cumulative effect of approving such similar applications, even on a temporary basis, would result in a general degradation of the rural environment and landscape quality of the area.
- 8.9 Regarding the public comments objecting to the review application as mentioned in paragraph 7.1 above, the planning considerations and assessments in paragraphs 8.1 to 8.8 are relevant.

9 Planning Department’s Views

- 9.1 Based on the assessments made in paragraph 8, and having taken into account the public comments mentioned in paragraph 7 and the new information submitted by the applicant in support of the review application, the Planning Department maintain its previous view of not supporting the review application for the following reasons:
- (a) the proposed use is not in line with the planning intention of the “GB” zone, which is 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. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the proposed use is not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that the applicant fails to demonstrate that the proposed use would not generate adverse landscape impact on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar 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 on a temporary basis for a period of 3 years until **13.3.2023**. 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 11:00 a.m. is allowed on the Site during the planning approval period;
- (b) the submission of the fire services installation 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 13.9.2020;
- (c) in relation to (b) above, the implementation of fire services installation 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 13.12.2020;
- (d) the submission of 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 13.9.2020;
- (e) in relation to (d) above, the implementation of 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 13.12.2020;
- (f) the submission of sewerage and wastewater treatment/disposal proposal within 6 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 13.9.2020;
- (g) in relation to (f) above, the implementation of sewerage and wastewater treatment/disposal proposal within 9 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 13.12.2020;
- (h) in relation to (e) and (g) above, the implemented drainage, sewerage and wastewater treatment/disposal facilities shall be maintained at all times during the planning approval period;
- (i) if any of the above planning conditions (a) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (b), (c), (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.
- (k) upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 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

Drawing R-1	Layout plan
Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3a to 3d	Aerial Photos
Plans R-4a to 4b	Site Photos
Annex A	RNTPC Paper No. A/TM-SKW/104
Annex B	Extract of minutes of the RNTPC Meeting held on 15.11.2019
Annex C	Secretary of the Board's letter dated 29.11.2019
Annex D	Email from the applicant applying for review received on 20.12.2019
Annex E	SI by the applicant dated 24.12.2019
Annex F	FI by the applicant dated 28.1.2020
Annex G	FI by the applicant dated 24.2.2020
Annex H	FI by the applicant dated 25.2.2020
Annex I	FI by the applicant dated 2.3.2020
Annex J	Public comments received during statutory publication period of the review application
Annex K	Recommended advisory clauses