

RNTPC Paper No. A/TM-LTY Y/472A
For Consideration by the
the Rural and New Town
Planning Committee
on 20.9.2024

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTY Y/472

Applicant : Highways Department

Site : A site to the northeast of the Permitted Burial Ground (PBG) No. BURGD21

Site Area : About 23,000m²

Land Status : Government Land (GL)

Plan : Approved Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTY Y/12 (LTY Y OZP) (22,700m² or 98.7%); and
Approved Tuen Mun OZP No. S/TM/39 (TM OZP) (300m² or 1.3%)

Zoning : “Green Belt” (“GB”) on both LTY Y OZP and TM OZP

Application : Proposed Burial Ground

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed burial ground at the application site (the Site) zoned “GB” on both LTY Y OZP and TM OZP (**Plan A-1**). According to the Notes for the “GB” zone on both OZPs, ‘Burial Ground’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently covered with trees and vegetation with scattered graves (**Plans A-2a, and 4a to 5b**).
- 1.2 The Site is located between Fu Tei Ha Tsuen and an existing PBG No. BURGD21 and accessible via footpaths leading from Fu Tei Ha Tsuen (**Plan A-2b**). A plan showing the boundary of the Site submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 26.4.2024 (**Appendix I**)
 - (b) Supporting Planning Statement (SPS) received on 26.4.2024 (**Appendix Ia**)
 - (c) Supplementary Information (SI) received on 26.4.2024 (**Appendix Ib**)
 - (d) SI received on 9.5.2024 (**Appendix Ic**)
 - (e) Further Information (FI) received on 25.7.2024* (**Appendix Id**)
**accepted but not exempted from publication and recounting requirements*

- 1.4 On 21.6.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months as requested by the applicant.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at the SPS (**Appendix Ia**) and FI (**Appendix Id**). They can be summarised as follows:

- (a) the alignment of the proposed Route 11 (section between Yuen Long and North Lantau) (the Project) would pass through the central portion of an existing PBG No. BURGD22 (**Drawing A-1**). The Site is about the same size as the area of the affected PBG under the Project;
- (b) during the public consultation of the Project, local communities represented by the Tuen Mun Rural Committee (TMRC) and village representatives (VRs) had expressed grave concerns on burial spaces for the villages affected and strongly requested the Government to assist in finding a new burial ground. While the Site is proposed by the local communities to address their concerns, the Government has agreed to provide assistance in applying for a new burial ground. The Home Affairs Department (HAD) was consulted and had no adverse comments on the proposal;
- (c) past aerial photos indicate that hill fire had not occurred in PBG No. BURGD22 in the past 30 years. The risk of hill fire at the Site would be low;
- (d) the applicant has conducted an Ecological Impact Assessment (EcoIA) (**Appendix Ia**) to support the application. The Site is covered with mixed woodland with low to medium ecological value. No registered Old and Valuable Tree nor tree of particular interest is identified. It is anticipated that tree felling from burial activities would be limited and thus loss of trees and/or the habitat would be minimal;
- (e) the Heritage Impact Assessment (**Appendix Ia**) concludes that while the Site is located to the southeast of Fu Tei Ha Site of Archaeological Interest, it is not expected to have significant archaeological potential;
- (f) according to the Traffic Review Report (**Appendix Id**), the proposed use would not induce adverse impact on the surrounding road network; and
- (g) given the above and as the proposed burial ground will not involve any site clearance, construction works or erection of boundary fence, it is anticipated that there will have insignificant traffic, environmental, landscape, visual, ecological, geotechnical, drainage, sewerage, air ventilation and heritage impacts on the locality and surroundings.

3. Compliance with the “Owner’s Consent/Notification” Requirements

As the Site involves GL only, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of Town Planning Ordinance (TPB PG-No. 31B) are not applicable.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to this application. Relevant extract of the Guidelines is at **Appendix II**.

5. Background

5.1 According to the HAD, PBG No. BURGD22 is to serve the indigenous villagers of Nai Wai (泥圍) and Sun Fung Wai (順風圍). Based on the Route 11 (section between Yuen Long and North Lantau) project gazetted on 22.9.2023, a significant portion of PBG No. BURGD22 (including 87 graves and 55 urns) will be affected (**Plan A-1**).

5.2 The Site is not subject to any active planning enforcement action.

6. Previous Application

There is no previous application concerning the Site.

7. Similar Application

There is no similar application on the same OZP.

8. The Site and Its Surrounding Areas (Plans A-1 to A-5b)

8.1 The Site is:

- (a) located at the foothill of a knoll covered with trees, vegetation and scattered graves;
- (b) adjoining PBG No. BURGD21 to the southwest; and
- (c) accessible via footpaths leading from Fu Tei Ha Tsuen and a local vehicular track leading from Fu Fuk Road and Chui Fuk Road (**Plan A-2b** and site photo at **Plan A-4a**).

8.2 The surrounding areas are rural in nature and predominantly occupied by active farmland, temporary domestic structures, woodland and graves/urns. The Tai Lam Country Park and Lam Tei Irrigation Reservoir are located to the south and there is a nullah to the east.

9. Planning Intention

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.

10. Comments from Relevant Government Bureau/Departments

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) no objection to the application from land administration point of view;
- (b) the Site comprises GL only. No occupation of GL is allowed without the Government's prior approval;
- (c) the Site is currently not covered by any Short Term Tenancy (STT); and
- (d) should the application be approved, LandsD would proceed with the required procedures in designating the Site as a PBG when the Tuen Mun District Office renders support to the burial ground.

Traffic

10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) the Site is only assessable via Fu Fuk Road and Chui Fuk Road which are not managed by the Transport Department (TD); and
- (b) as the existing PBG No. BURGD22 and the Site are both connected with Fuk Hang Tsuen Road, no additional traffic generation is anticipated to be imposed on Fuk Hang Tsuen Road and other public roads managed by TD. Therefore, she has no in-principle objection to the application from traffic engineering viewpoint.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

As the existing access road from Fu Fuk Road connecting the Site is not and will not be maintained by HyD, he has no comment on the application from highways maintenance point of view.

Environment

10.1.4 Comment of the Director of Environmental Protection (DEP):

He has no adverse comment on the application and his advisory comments are in **Appendix III**.

Landscape

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

- (a) the Site is situated in an area of settled valleys and miscellaneous rural fringe landscape character predominantly covered by woodlands and vegetation. Lam Tei Irrigation Reservoir and Tai Lam Country Park are located closely to the south, and PBG No. BURGD21 is located at the immediate southwest. The proposed use is considered not incompatible with the surrounding landscape character;
- (b) with reference to the submitted broad brush tree survey (**Appendix Ia**), the Site is “*covered with woodland/plantation with lush undergrowth*” and “*densely vegetated with trees*”. A total of about 1,508 trees are found within the Site. As “*only localised excavation at minimum may be involved in burial practices*” and “*in case any grave construction would require the trees removal in the operation stage, the future burial application should obtain consent from relevant authorities*”, significant landscape impact arising from the proposed use is not anticipated. She has no comment on the application from landscape planning perspective; and
- (c) her advisory comments are in **Appendix III**.

Nature Conservation

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

Given that the potential ecological impacts of the proposed burial ground would be minor or insignificant according to the EcoIA submitted by the applicant, he has no strong view on the application from nature conservation perspective.

Drainage

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

- (a) she has no in-principle objection to the application from a drainage point of view; and
- (b) her advisory comments are in **Appendix III**.

Building Matters

10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

As the proposed works for excavation and filling of land are carried out on GL, he is not in a position to comment on the application.

Others

10.1.9 Comments of the Director of Food and Environmental Hygiene (DFEH):

He has no adverse comment on the application and his advisory comments are in **Appendix III**.

District Officer's Comments

10.1.10 Comments of the District Officer (Tuen Mun) (DO(TM)) of HAD:

- (a) his office has no adverse comments on the application;
- (b) PBG No. BURGD22 is mainly used by villagers in Nai Wai and Sun Fung Wai. Owing to the Project, PBG No. BURGD22 will be affected;
- (c) in line with established village traditions, villagers shall conduct hillside burial activities at the PBG nearest to their villages (or following the customs of their clans), upon obtaining the support from respective indigenous inhabitant representative(s). Villagers of a certain village do not normally conduct burial activities in other PBGs. With the commencement of the Project, TMRC and VRs have expressed grave concerns of insufficient burial spaces for the villages affected and have strongly requested the Government to provide assistance with the application for a new PBG;
- (d) TMRC, VRs and villagers support the application. The Site will be roughly the same size as the area of PBG No. BURGD22 affected by the Project; and
- (e) should the application be approved, this office shall render assistance in processing burial certificate applications for the Site as per hillside burial under HAD's policy, and will follow the prevailing guidelines for usage control including tree felling and fire safety for burial activities for the Site, which is also applicable to other PBGs.

10.2 The following government bureau/departments have no objection to/ no comment on the application:

- (a) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau (AMO);
- (b) Geotechnical Engineering Office, Civil Engineering and Development Department (GEO, CEDD);
- (c) Project Manager (West), CEDD (PM/W, CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Fire Services (D of FS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comment Received During Statutory Publication Period

On 30.4.2024 and 30.7.2024, the application and relevant FI were published for public inspection. During the statutory public inspection periods, a total of four public comments were received. A member of Tuen Mun District Council supports the application (**Appendix IVa**); two individuals objects to the application (**Appendix IVb**) as the Site is too excessive and not justifiable and it is in close proximity to existing residential areas; and one individual has concerns (**Appendix IVc**) on the application as the proposed use might involve tree felling, cause hill fire and bring about adverse safety, ecological, traffic and psychological impacts; and the site area could be reduced and be located further away from the residential areas.

12. Planning Considerations and Assessments

- 12.1 The proposed burial ground falls within an area zoned “GB” on both LTYO OZP and TM OZP. 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 and there is a general presumption against development within this zone. Although the proposed use is not entirely in line with the planning intention of the “GB” zone, the provision, maintenance or repair of a grave of an indigenous New Territories villager or a locally based fisherman and his family members for which permission has been obtained from Government is always permitted under the “GB” zone according to the covering Notes of the LTYO OZP while the maintenance or repair of grave is always permitted under the “GB” zone according to the covering Notes of the TM OZP. In view of the above and taking account of the planning assessments below, sympathetic consideration may be given to the application.
- 12.2 Part of the existing PBG (about 23,000m²) for villagers in Nai Wai and Sun Fung Wai (No. BURGD22) will be affected by the implementation of Route 11 project (section between Yuen Long and North Lantau) (**Drawing A-1**). The proposed burial ground with a similar site area is to accommodate the traditional customs and burial needs of the indigenous villagers. In this regard, DLO/TM of LandsD and DO(TM) of HAD have no objection to/no adverse comment on the application. Should the application be approved, DO(TM) of HAD expresses that his office shall render assistance in processing burial certificate applications and usage control for burial activities for the Site according to HAD’s policy for hillside burial. Besides, DLO/TM of LandsD will proceed with the required procedures in designating the Site as a PBG when DO(TM) renders support to the burial ground.
- 12.3 The Site is located at the foothill of a knoll covered with trees, vegetation and scattered graves. The Site is also adjoining an existing PBG No. BURGD21 (**Plan A-1**). The proposed use, which will not involve any excessive site clearance nor construction works, is considered not incompatible with the surrounding areas which are rural in nature predominantly occupied by active farmland, temporary domestic structures, woodland and graves/urns. In this regard, CTP/UD&L of PlanD considered that the proposed use is not incompatible with the landscape character and has no adverse comment on the application from landscape planning perspective. According to the EcoIA submitted by the applicant (**Appendix Ia**), the Site is covered with mixed woodland with low to medium ecological value. DAFC has no strong view on the application from nature conservation perspective.

- 12.4 The proposed burial ground is accessible via footpaths and a local vehicular track leading from Fu Fuk Road (**Plans A-2b and 4a**). The applicant has submitted a traffic review report in support of the application which concluded that adverse traffic impact on the surrounding road network is not anticipated. In this regard, C for T has no in-principle objection to the application from traffic engineering viewpoint.
- 12.5 The proposed use is to accommodate the traditional customs and burial needs of the local villagers who will be affected by the Project. The application is generally in line with the TPB PG-No.10 in that the proposed use is not incompatible with the surroundings areas, would not affect the existing natural vegetation and landscape, would not overstrain the capacity of infrastructure and entail adverse impacts in terms of environmental, drainage and slope stability. Concerned Government departments including DEP, CE/MN of DSD, GEO of CEDD and D of FS have no adverse comment on or no objection to the application.
- 12.6 Regarding the public comments received during the statutory publication periods as summarised in paragraph 11 above, the planning considerations and assessments in paragraphs 12.1 to 12.5 are relevant. Regarding the concerns on tree felling and hill fire, according to established practice, tree felling within GL should be under the current hillside burial policy and land administration mechanism while preventive measures should be taken by relevant authorities to prevent hill fires especially during the grave sweeping periods.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and have taken into account the public comments summarised in paragraph 11, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until **20.9.2028**, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The recommended advisory clauses are at **Appendix III**.
- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed use is not in line with the planning intention of the "Green Belt" zone which 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. No strong planning justification has been provided in the submission for a departure from the planning intention.

14. Decision Sought

- 14.3 The Committee is invited to consider the application and decide whether to grant or

refuse to grant permission.

- 14.4 Should the Committee decide to approve the 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.
- 14.5 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

| | |
|--------------------------|---|
| Appendix I | Application Form received on 26.4.2024 |
| Appendix Ia | SPS received on 26.4.2024 |
| Appendix Ib | SI received on 26.4.2024 |
| Appendix Ic | SI received on 9.5.2024 |
| Appendix Id | FI received on 25.7.2024 |
| Appendix II | Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10) |
| Appendix III | Recommended Advisory Clauses |
| Appendix IV | Public Comments |
| Drawing A-1 | Layout Plan Showing the Affected PBG No. BURGD22 and the Application Site |
| Plan A-1 | Location Plan |
| Plans A-2a and 2b | Site Plans |
| Plan A-3 | Aerial Photo |
| Plans A-4a and 4b | Site Photos |
| Plans A-5a and 5b | Unmanned Aerial Vehicle Photos |

**PLANNING DEPARTMENT
SEPTEMBER 2024**