

TOWN PLANNING BOARD

**TPB PAPER NO. 10761
FOR CONSIDERATION BY
THE TOWN PLANNING BOARD
ON 20.8.2021**

**REVIEW OF APPLICATION NO. A/SK-TMT/69
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed House and Associated Filling and Excavation of Land at
Lots 65, 96 and 98 RP in D.D. 252 and Adjoining Government Land,
Tai Mong Tsai, Sai Kung, New Territories**

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1. Background

- 1.1 On 28.10.2020, the applicant, CHIN Yee Man represented by Fairmile Consultants Limited, sought planning permission for proposed house and associated filling and excavation of land at the application site (the Site). The Site falls within an area mainly zoned “GB” (about 460m² or 96%) with minor portions within areas zoned “V” (about 8.6m² or 1.8%) and shown as ‘Road’ (about 10.6m² or 2.2%) (**Plan R-1**). According to the Notes of the OZP, ‘House’ development within the “GB” and “V” zones and area shown as ‘Road’ requires planning permission from the Town Planning Board (the Board). The Notes for the “GB” zone also stipulate that filling and excavation of land within “GB” zone requires planning permission from the Board.
- 1.2 On 16.4.2021, the Rural and New Town Planning Committee (RNTPC) of the Board decided to reject the application and the reasons were:
 - (a) the proposed development was not in line with the planning intention of the “GB” zone which was 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 was a general presumption against development within this zone. The applicant failed to provide strong justifications in the submission for a departure from the planning intention;
 - (b) the proposed development did not meet the Town Planning Board Guidelines No. 10 for ‘Application for Development within Green Belt Zone’ in that there were no exceptional circumstances for approving the application and the proposed development would affect the existing natural landscape of the area; and
 - (c) the approval of the application would set an undesirable precedent for other similar applications encroaching onto the existing “GB” zone. The cumulative effect of approving similar applications would result in adverse impact on the landscape character of the area.
- 1.3 The proposed development involves one 3-storey house (not more than 9m (29.33mPD) in height) with plot ratio (PR) of 0.37. The major development parameters of the proposal are summarised at paragraph 1.2 of **Annex A**.

- 1.4 The proposed development also involves filling of land of about 239m² in area and 0.9m in depth for site formation (Drawing A-9 of **Annex A**), and excavation of land of about 109.1m² in area including 86.8m² and 1.5m in depth for the house footing, about 20m² and 3m in depth for sewage holding tank, and about 2.3m² and 1m in depth for the drainage path from the house to the sewage holding tank (Drawing A-8 of **Annex A**).
- 1.5 The vehicular ingress and egress for the proposed development will be located at the southeastern part of the Site on government land and connected to Tai Mong Tsai Road (Drawing A-1 of **Annex A**).
- 1.6 A stormwater drainage system will be constructed to collect the stormwater discharge from the Site, with a stormwater pipe constructed in the area north of the Site to discharge the stormwater into the existing terminating surface channel to the northwest of the Site, of which excavation of land of about 29m² and 1m in depth will be involved (Drawings A-8 and A-9 of **Annex A**). However, the majority part of the proposed drainage path for stormwater discharge does not form part of the Site and falls within the “GB” zone.
- 1.7 For Members’ reference, the following documents are attached:
 - (a) RNTPC Paper No. A/SK-TMT/69A (**Annex A**)
 - (b) Extract of minutes of the RNTPC meeting held on 16.4.2021 (**Annex B**)
 - (c) Secretary of the Board’s letter dated 30.4.2021 (**Annex C**)

2. Application for Review

On 20.5.2021, the applicant applied, under section 17(1) of the Town Planning Ordinance (the Ordinance), for a review of the RNTPC’s decision to reject the application (**Annex D**).

3. Justifications from the Applicant

The applicant has not put forward any justifications to support the review application.

4. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-1 to R-4b)

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by the RNTPC is described in paragraph 7 of **Annex A**. There has been no material change in the situation of the area since then.
 - (a) The Site is:
 - (i) on a gently downward slope from Tai Mong Tsai Road which is currently vacant and covered with vegetation, with part of the Site fenced (**Plans R-4a to 4b**); and
 - (ii) abutting and accessible from Tai Mong Tsai Road (**Plan R-2**).

(b) The surrounding areas have the following characteristics:

- (i) to the east is a low-rise residential development namely The Capri within “R(C)2” zone;
- (ii) to the west is an area zoned “V” (outside recognized village) and occupied by a few domestic structures. To its further west across Yan Yee Road is a low-rise residential development namely Forest Hill Villa within “R(C)2” zone;
- (iii) to the north is a densely vegetated area within the same “GB” zone; and
- (iv) to the south across Tai Mong Tsai Road is Sai Kung West Country Park, and to the further south are Outward Bound Hong Kong and Victoria Recreation Club within “Recreation” zone.

Planning Intention

4.2 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 outlet. There is a general presumption against development within this zone.

Previous Application

4.3 There is no previous application at the Site.

Similar Applications

4.4 There is no similar application within the “GB” zone on the same OZP.

5. Comments from Relevant Government Departments

5.1 The following government departments maintain their previous comments on the s.16 application as stated in paragraph 8 of **Annex A**, which are recapitulated below:

Land Administration

5.1.1 Comments of the District Lands Officer/Sai Kung, LandsD (DLO/SK, LandsD):

- (a) the Site comprises both private lots and government land. It is not situated within any known village environ. The private lots under the application are Old Schedule agricultural lots held under Block Government Lease. According to his office’s record, the respective site areas of the affected private lots are set out as follows:

<u>D.D. 252</u>	<u>Site Area</u>
Lot No. 65	0.01 acre
Lot No. 96	0.01 acre
Lot No. 98 RP	3,710 sq. ft

- (b) as stated in the planning statement, a portion of Lot No. 98 RP in D.D. 252 is encroached by the adjoining lot owner of Lot No. 61 RP in D.D. 252 and such encroached portion does not form part of the Site (Drawing A-2 of **Annex A**). His office cannot verify the respective site area of the Site and the government land involved nor the net site area stated in the planning statement. The applicant should clarify with justification the calculation of the respective site areas; and
- (c) should the application be approved by the Board, the lot owner shall apply to his office for a land exchange to effect the proposal with the vehicular access on government land. However, there is no guarantee that such application will be approved by the Government. Such application, if eventually approved, will be subject to such terms and conditions including payment of premium and an administrative fee as the Government considers appropriate at its discretion.

Traffic

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

- (a) the applicant should clarify with the land management authority in relation to the management, operation and maintenance of the proposed vehicular access. Transport Department (TD) will not manage the proposed vehicular access as it is an access for a single user;
- (b) the proposed vehicular access connecting the Site and Tai Mong Tsai is sloping down. Meanwhile, plenty of the vegetation are grown on the land adjoining the Site. Motorists driving from the Site to Tai Mong Tsai Road could only acquire a clear sightline at the spot close to the roadside. As a result, the sight line between the proposed vehicular access and Tai Mong Tsai Road would be affected by vegetation resulting in road safety concerns in the vicinity. The applicant should seek confirmation from relevant government department to carry out routine arboricultural maintenance of overgrown vegetation outside the Site such that a clear sight line could be maintained; and
- (c) the following approval condition should be incorporated:

the submission of design and provision of ingress/egress for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board.

5.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) the applicant shall be responsible for construction of a proper vehicular run-in/out arising from the proposed development.

The design and details of the vehicular run-in/out shall follow HyD's prevailing departmental standards and requirements; and

- (b) the applicant shall be responsible for construction and maintenance of the proposed driveway connected the proposed development and Tai Mong Tsai Road.

Environment

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

- (a) the application is for development of a 3-storey house with vehicular access. In view of the small scale of the development, with implementation of the proposed mitigation measures recommended in the submitted Air Quality and Traffic Noise Assessment Report, the development is unlikely to cause insurmountable environmental impacts;
- (b) no objection to the application subject to the following approval condition:

the submission of Noise Impact Assessment (NIA) and implementation of the noise mitigation measures identified therein to meeting Hong Kong Planning Standards and Guidelines (HKPSG) requirements to the satisfaction of the Director of Environmental Protection or of the Town Planning Board; and
- (c) the applicant is advised to follow up the comments on the NIA section of the revised Air Quality and Traffic Noise Assessment Report in the NIA submission stage as follows:

General Comments

- (i) Drawing No. A004 in Appendix A: Please revise the typo NAP identified on 1/F" to read as NAP identified on 2/F" in Drawing No. A004.

Road Traffic Noise Model

- (ii) The spot height of the road ID 86, 91, 99 and 104 in GIS is 24.4m. However, the heights of the roads in the noise model are 21m. Please check and revise.
- (iii) The angle of view of NAP2 is incorrect. Please check and revise.

Urban Design and Landscape Aspects

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

Urban Design

- (a) the Site is currently vacant with a number of existing trees. It is bounded by Tai Mong Tsai Road to the south, a single-storey structure to the immediate west, The Capri (12 houses of 3 storeys) and existing vegetation to the north. To the west across Yan Yee Road are low-rise residential developments and village houses of 2-3 storeys, namely Forest Hill Villa and Green Villas. Further to the south lies the Outward Bound School and the Tai Mong Tsai BBQ Site Area. The proposed low-rise development is considered compatible with the surrounding environment;
- (b) it is noted that some existing trees on the proposed vehicular access on the government land will be felled. Nevertheless, in view of the small scale of the proposed development and with the proposed peripheral planting and landscape treatment, no significant visual impact on the surrounding area arising from the proposed development is envisaged;

Landscape

- (c) reservations on the application from landscape planning perspective;
- (d) with reference to the aerial photo of 2020, the Site is fully covered by existing tree groups. The Site is situated in an area of settled valleys landscape character dominated by dense woodland connecting to the north of the Site, and some houses are located to the east and west of the Site. As the Site is sandwiched between the “R(C)2” zone to the immediate east and “V” zone to the immediate west of the Site, the proposed development is considered not entirely incompatible with the landscape setting in proximity;
- (e) the proposed excavation area for drainage path to northwest of the Site lies within a dense woodland covered by existing trees and shrubs. However, no information on existing landscape resources for the concerned area and their proposed treatments is provided by the applicant. Moreover, there is insufficient information on how the natural stream connecting to the proposed drainage will be affected (i.e. at construction and operation phase). As such, the potential adverse landscape impact to the existing landscape resources arising from the proposed works cannot be reasonably ascertained; and
- (f) there is a concern that approval of the application would encourage other similar applications in the vegetated area of

“GB” zone. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding area and the planning intention of “GB” zone.

Nature Conservation

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

no comment on the application from the nature conservation perspective.

Drainage and Sewerage

5.1.7 Comments of the Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD):

(a) no in-principle objection to the application from a drainage maintenance viewpoint;

(b) the following approval conditions should be incorporated:

(i) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and

(ii) the provision of sewage holding tank, as proposed by the applicant, to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

5.1.8 Comments of DEP:

according to the submitted Sewerage Impact Assessment, a sewage holding tank of 16.65m³ capacity would be constructed by the project proponent for treatment of sewage generated from the proposed development. Tankering away would be conducted on a daily basis with regular inspections of the sewage holding tank and desludging. He has no objection to the sewerage proposal.

5.2 The following government departments maintain their previous comments on the s.16 application as stated in paragraph 8 of **Annex A:**

- (a) Chief Building Surveyor/New Territories East 2 & Rail, Buildings Department; and
- (b) Director of Fire Services.

5.3 The following government departments maintain their previous views of having no objection to or no comment on the review application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) District Officer/Sai Kung, Home Affairs Department (HAD); and

(d) Chief Engineer (Works), HAD.

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 28.5.2021, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 18.6.2021, 3 public comments have been received on the review application from Kadoorie Farm & Botanic Garden Corporation and two individuals objecting to the application (**Annex E**). The grounds of objection include not in line with the planning intention of the “GB” zone; setting a precedent for other similar developments within the “GB” zone and the cumulative effect would result in a general degradation of the landscape quality of the surrounding area; does not comply with Town Planning Board Guidelines No. 10; potential adverse impacts on the landscape resources; and no justification for using government land for access to serve only the proposed development.
- 6.2 At the stage of s.16 application, 9 public comments on the application were received objecting to the application. Details are in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC’s decision on 16.4.2021 to reject the subject application for proposed house and associated filling and excavation of land at the Site. The application was rejected for the reason that the proposed development is not in line with the planning intention of “GB” zone; the proposed development does not meet the Town Planning Board Guidelines No. 10 for ‘Application for Development within Green Belt Zone’ in that there are no exceptional circumstances for approving the application and the proposed development would affect the existing natural landscape of the area; and the approval of the application would set an undesirable precedent for other similar applications encroaching onto the existing “GB” zone. The applicant has not submitted any information to support the review application. There has been no material change in planning circumstances for the Site since the rejection of the application by the RNTPC. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid.
- 7.2 The Site is currently vacant and covered with vegetation (**Plans R-3, R-4a and R-4b**), and is mainly zoned “GB” with minor portions within areas zoned “V” and shown as ‘Road’. According to DLO/SK, the private lots of the Site are Old Schedule agricultural lots without building entitlement. There are no exceptional circumstances or strong planning grounds in the submission for a departure from the planning intention.
- 7.3 The Site is bounded by Tai Mong Tsai Road to the south, a single-storey structure to the immediate west, The Capri (12 houses of 3 storeys) to the immediate east, and existing dense vegetation to the north. The proposed 3-storey house development is not incompatible with the surrounding area which is characterised by similar low-rise residential developments and significant adverse visual impact is not anticipated. However, CTP/UD&L, PlanD has reservations on the application from landscape planning perspective. With reference to the aerial photograph of 2020, the Site is fully covered by existing tree groups and the area to the north is dominated by dense

woodland. It is noted that most of the existing trees within the Site will be felled and the natural landscape will be affected. There is a concern that approval of the application would encourage other similar applications within the vegetated area of "GB" zone. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding area and the planning intention of "GB" zone. In this regard, the application does not comply with TPB-PG No. 10 in that new development within "GB" zone should not affect the existing natural landscape of the area.

- 7.4 The applicant also indicates in the s.16 submission that there will be a drainage path for stormwater discharge leading to the terminating surface channel to the northwest of the Site, of which excavation of land will be involved. The drainage path for stormwater discharge and the associated excavation area lies within the dense woodland and does not form part of the application (Drawings A-8 and A-9 of **Annex A**). No information on existing landscape resources for the concerned area and their proposed treatments is provided by the applicant. Moreover, there is insufficient information on how the natural stream connecting to the proposed drainage path will be affected. As such, the potential adverse landscape impact to the existing landscape resources arising from the proposed works cannot be reasonably ascertained.
- 7.5 The private lots portion of the Site is not abutting Tai Mong Tsai Road, and a strip of government land is included for the proposed vehicular access. There is no justification of using government land for access to serve only the proposed development, which requires clearance of existing tree and natural vegetation. C for T advises that the sight line between the proposed vehicular access and Tai Mong Tsai Road would be affected by existing vegetation adjoining the proposed ingress/egress resulting in road safety concerns in the vicinity. Additional clearance of vegetation would be needed to maintain a clear sight line to address road safety concerns.
- 7.6 There are no previous application and similar application for house development within the "GB" zone on the OZP. Approval of the application would set an undesirable precedent for other similar applications encroaching onto the "GB" zone. The cumulative effect of approving similar applications would result in adverse impact on the landscape character of the area.
- 7.7 Regarding the public comments objecting to the review application on the grounds as detailed in paragraph 6 above, government department's comments and the planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6, and given that there is no change in the planning circumstances, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the "GB" 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. The applicant fails to provide strong justifications in the submission for a departure from the planning intention;

- (b) the proposed development does not meet the Town Planning Board Guidelines No. 10 for 'Application for Development within Green Belt Zone' in that there are no exceptional circumstances for approving the application and the proposed development would affect the existing natural landscape of the area; and
- (c) the approval of the application would set an undesirable precedent for other similar applications encroaching onto the existing "GB" zone. The cumulative effect of approving similar applications would result in adverse impact on the landscape character of the area.

8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 20.8.2025, 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 approval conditions and advisory clauses are suggested for Members' consideration:

Approval Conditions

- (a) the submission of Noise Impact Assessment and implementation of the noise mitigation measures identified therein to meeting Hong Kong Planning Standards and Guidelines requirements to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (b) the submission of design and provision of ingress/egress for the proposed development to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (c) the submission and implementation of drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) the provision of sewage holding tank, as proposed by the applicant, to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (e) the submission and provision of fire service installations and water supply proposals for firefighting to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory Clauses

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

9. Decision Sought

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

- 9.2 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.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to 4b	Site Photos
Annex A	RNTPC Paper No. A/SK-TMT/69A
Annex B	Extract of minutes of the RNTPC meeting held on 16.4.2021
Annex C	Secretary of the Board's letter dated 30.4.2021
Annex D	Applicant representative's letter dated 20.5.2021
Annex E	Public Comments
Annex F	Advisory Clauses

**PLANNING DEPARTMENT
AUGUST 2021**