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For information

Amendments to the Notes for "Agriculture" Zone on Outline Zoning Plans to Strengthen Planning Control on Land Filling Activities

Purpose

This paper is to inform the Council of the amendments to Outline Zoning Plans (OZPs) to strengthen planning control on land filling activities in the rural New Territories.

Background

2. Land filling activities on private land in the rural New Territories have aroused public concerns and complaints from local residents for adversely affecting the rural environment. Public attention has particularly been drawn to the case at She Shan Tsuen in Lam Tsuen, Tai Po. The concerned site is zoned "Agriculture" ("AGR") on the Lam Tsuen OZP. As land filling itself was not controlled under the "AGR" zoning on the then OZP and the concerned landowners claimed that the land filling activity carried out on the site was to facilitate future agricultural use which was permitted in the zone, there was insufficient evidence to institute prosecution action under the Town Planning Ordinance (the TPO).

3. A paper on the existing regulatory regime in dealing with the land filling activities at She Shan Tsuen (ACE Paper 13/2004) was submitted to the Council on 13.4.2004. The Council expressed concern on the matter and considered that concerned Government departments should work together to resolve the problem. On the possibility of strengthening planning control, the Planning Department (PlanD) has reported progress at subsequent meetings of the Council.

4. The She Shan Tsuen case has been closely monitored by relevant Government departments. The Buildings Department (BD) in September 2004 issued 22 Dangerous Hillside Orders under the Buildings Ordinance to the concerned landowners to request them to carry out necessary investigation and remedial works to ensure safety of the man-made slopes found on the filled land. In response, the

concerned landowners have employed consultants to carry out site investigation for the relevant slopes. In addition, the Drainage Services Department has issued warning letters to the concerned landowners to request them to take immediate actions to alleviate the flood risk caused by the land filling activity. Recent site inspections by the PlanD revealed that there has been no significant increase in the land filling area since December 2004, and no ‘unauthorized development’ under the TPO has been detected.

Amendments to the OZPs

5. As part of the Government’s efforts to tackle the problem, the PlanD, in consultation with concerned bureaux and departments including the Housing, Planning and Lands Bureau, Environment, Transport and Works Bureau, Department of Justice, Agriculture, Fisheries and Conservation Department (AFCD), Lands Department (LandsD) and BD, has reviewed the existing planning control mechanism with a view to identifying suitable means to help address the problem. While there are already provisions included in the Notes for various conservation-related zonings, i.e. “Conservation Area”, “Coastal Protection Area”, “Site of Special Scientific Interest”, and “Green Belt” zone to control filling of land, there is scope to strengthen planning control on land filling activities on agricultural land by including a similar clause in the Notes for the “AGR” zone on the relevant OZPs.

Revised Notes for “AGR” zone

6. On 25.2.2005, the Town Planning Board (the Board) agreed to amend the Notes for the “AGR” zone on OZPs to stipulate that planning permission from the Board is required for any filling of land. To avoid unduly affecting genuine agricultural practice, laying of soil not exceeding a thickness of 1.2 metres for cultivation is exempted from the planning control. According to the advice of the AFCD, the depth of soil needed for vegetable farming and tree planting is generally about 0.3 to 0.45 metres and 1 to 1.2 metres respectively.

7. Apart from the above, local subsistence farmers may build raised platforms of just some 10 cm thick on which agricultural structures such as greenhouse or chicken shed are constructed for mainly flood prevention purpose. Construction of such structures on agricultural land will normally require prior approval from the LandsD and vetting by the AFCD. Since there is an established mechanism to deal with the construction of genuine agricultural structures, filling of land for such structures with prior written approval from the LandsD is also exempted from the

planning control.

8. The Board also agreed on 25.2.2005 that the 26 OZPs with “AGR” zone should be amended to incorporate the control. The first batch of 10 amended OZPs, including the draft Lam Tsuen OZP No. S/NE-LT/9 covering the She Shan Tsuen site, was exhibited for public inspection under section 7 of the TPO on 1.4.2005. The second batch of 15 OZPs was gazetted on 29.4.2005. The remaining OZP will be amended upon the Chief Executive in Council’s reference of the approved plan to the Board for amendment.

9. With the above provision incorporated in the OZPs, land filling activities within the “AGR” zone will be subject to statutory planning control and enforcement action under the TPO can be taken against any unauthorized land filling activities in future. A copy of the revised Notes for the “Agriculture” zone, with the amendments highlighted, is attached at **Annex A**.

Revised Definitions of Terms used in Statutory Plans (DoTs)

10. There was previously no definition of ‘filling of land’ in the DoTs adopted by the Board. To provide a clear interpretation, the Board has agreed to include a definition of this term in the DoTs. The definition of ‘Agricultural Use’ has also been refined correspondingly. A copy of the relevant definitions is attached at **Annex B**.

Limitations in Planning Enforcement

11. While the said amendments would help strengthen planning control on land filling activities in the “AGR” zone, it should be noted that the problem cannot be resolved by planning control alone as planning enforcement is subject to some limitations. Due to constraints in resources, it is not possible to conduct regular site inspections of all “AGR” zones, which cover about 3,000 ha of land. In addition, the instigation of enforcement and prosecution actions will depend on whether there is sufficient evidence on the increase in the thickness of the filled land. Enforcement will rely heavily on aerial photos taken by the LandsD, and special helicopter flights may be needed in order to provide aerial photos to show changes in site levels over time. Past experience indicates that the investigation process will be very time-consuming and difficult. It is envisaged that enforcement action will be more effective in respect of blatant unauthorized land filling activities, like those which occurred in She Shan Tsuen.

12. Given the above limitations, concerted efforts by relevant Government bureaux/departments are still required to tackle the problem, including the control of destination of building/construction waste materials at source.

Planning Department
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