



**Processing of Tree Preservation and Removal Proposals
for Building Development in Private Projects -
Compliance with Tree Preservation Clause under Lease**

This Practice Note (“PN”) sets out the streamlined arrangements of the Lands Department (“LandsD”) in processing a Tree Preservation and Removal Proposal (“TPRP”) arising from building development in private projects for compliance with the tree preservation clause contained in a lease¹ (“Tree Preservation Clause”)². This PN should be read in conjunction with the “Guidance Notes on Tree Preservation and Removal Proposal for Building Development in Private Projects - Compliance with Tree Preservation Clause under Lease” (“the Guidance Notes”), which contains flow charts on the procedures and forms specified for the submissions related to TPRP under this PN, as available on LandsD website (www.landso.gov.hk).

2. Where a lease contains a Tree Preservation Clause, the lot owner has the responsibility to ensure that trees³ are not removed or interfered with without the prior written consent of the Director of Lands (“the Director”). The lot owner should seek advice from an Authorized Person (“AP”) or Registered Landscape Architect (“RLA”) before applying for the Director’s prior written consent under the Tree Preservation Clause (“the Prior Written Consent”) for any removal of or interference with the trees on the lot or adjacent thereto by submitting a TPRP covering the trees on the lot and outside the lot respectively. In granting the Prior Written Consent, the Director may impose such conditions as to transplanting, compensatory landscaping or replanting as he deems appropriate.

¹ All references to “lease” in this PN shall include Government Lease or Conditions of Sale/Grant/Exchange, etc. (as the case may be) and “lease” shall be construed accordingly.

² The standard tree preservation clause provides, inter alia, that “No tree growing on the lot or adjacent thereto shall be removed or interfered with without the prior written consent of the Director who may, in granting consent, impose such conditions as to transplanting, compensatory landscaping or replanting as he may deem appropriate.”

³ A plant is considered to be a tree if its trunk diameter measures 95mm or more at a height of 1.3m above the ground level. Guidance on measurement of tree diameter is given in Agriculture, Fisheries and Conservation Department (AFCD)’s Nature Conservation Practice Note No. 2 “Measurement of Diameter at Breast Height (DBH)”, which can be viewed from AFCD’s internet homepage (www.afcd.gov.hk)

Planning and Design Stage of a Proposed Development

3. The AP and RLA of a proposed development should assess the impact of the proposed development on the existing trees on the lot or adjacent thereto at the planning and early design stage in parallel with the preparation and submission of the general building plans (“GBP”) for approval by the Buildings Department (“BD”). The AP or RLA should also be responsible for advising the lot owner that existing trees should be taken care of as part and parcel of a Landscape Submission⁴ (if applicable).

TPRP Within Lot

TPRP within lot in connection with the Landscape Submission of a Planning Application

4. If the TPRP of a proposed development covers existing trees within a lot and forms part and parcel of a Landscape Submission which has been approved by the Town Planning Board (“TPB”)/ Planning Department (“PlanD”), LandsD will not vet the TPRP submission so as to avoid duplication of work. The lot owner should submit an application for deemed approval of TPRP (“Deemed Approval Submission”) to District Lands Office (“DLO”)⁵ or BPU in a form specified in the Guidance Notes (“Specified Form”) together with the entire TPRP submission⁶ indicated in the approved Landscape Master Plan (“LMP”) or Landscape Proposal (“LP”) and a certificate of the RLA that the TPRP submitted is part and parcel of Landscape Submission for compliance with planning conditions and/or in support of planning application and approved by TPB or PlanD. DLO or BPU will issue an acknowledgement letter within 10 working days from the date of receipt of the valid submission, signifying deemed approval of the TPRP, and the Prior Written Consent within lot is deemed to be given. The Prior Written Consent shall be subject to completion of tree works as referred to in paragraph 5 below.

5. Upon PlanD’s approval of the completion of landscape works under the planning conditions, the lot owner should through his RLA submit to DLO an application for deemed compliance of completion of the tree removal works and transplanting, compensatory landscaping or replanting (collectively “tree works”) (“Deemed Compliance Submission”) in a

⁴ Landscape Submission means submission and implementation of a Landscape Master Plan (“LMP”) or Landscape Proposal (“LP”) for a proposed development as required under planning regime and/or under lease.

⁵ DLO includes Railway Development Section and other specialized sections of LandsD. DLO may refer a TPRP associated with GBP to Building Plan Unit (“BPU”) of LandsD for processing as appropriate and hence subsequent submissions may be referred to BPU direct for handling.

⁶ PlanD’s Practice Note for Professional Persons No. 1/2019 sets out the requirement of Landscape Submissions in the form of LMP or LP for private developments, which include, among others, proposed treatments of existing landscape resources including trees. Noting the Landscape Submission approved by TPB/PlanD consists of tree survey information, tree treatment and planting proposal, it will be accepted as a valid TPRP for deemed approval application.

Specified Form together with PlanD's approval of the completion of landscape works under the planning conditions. Upon receipt of a Deemed Compliance Submission, DLO will issue an acknowledgement letter within 10 working days from the date of receipt of the valid submission, signifying deemed compliance with the completed TPRP.

6. The arrangements for Deemed Approval Submission and Deemed Compliance Submission set out in paragraphs 4 to 5 above respectively do not apply to a TPRP in cases where the lot boundary is substantially different from the boundary of planning application site approved by TPB or consultation with Government bureau/ department on the TPRP is required. The latter include cases where the tree to be felled or interfered with or any transplanting, compensatory replanting is (i) on an area within the lot to be handed back to the Government in accordance with the lease conditions; or (ii) on an area outside lot boundary and designated by colour on the lease plan ("Coloured Area").

TPRP within lot NOT in connection with the Landscape Submission of a Planning Application

7. If the TPRP of a proposed development does not form part and parcel of a Landscape Submission of a planning application, the lot owner should through his RLA apply to DLO or BPU in a Specified Form for the TPRP to be approved pursuant to paragraphs 8 to 12 below respectively.

Submission Stage

- Approval of TPRP within lot subject to vetting

8. LandsD would consider giving a Prior Written Consent subject to vetting of the TPRP prepared on the basis of the latest GBP, Foundation Plans, and Site Formation Plans, including Excavation and Lateral Support ("ELS") Plans (if required to be submitted) submitted to or approved by BD provided that there is (i) no adverse landscape technical advice on the TPRP as confirmed by the Landscape Advisory Team ("LAT") of the BPU; (ii) no removal or interference with trees of particular value⁷ as designated and preserved under lease; and (iii) fulfillment of one or more of the criteria set out in paragraph 2 of the Guidance Notes. The processing time of a TPRP will normally not be more than 8 weeks from the date of receipt of a valid submission. The approval of TPRP, if given, may be subject to the following conditions and other conditions as the Director deems appropriate :-

- (a) the lot owner shall implement the tree preservation measures and compensatory planting proposal in accordance with the TPRP as approved by LandsD ("Approved

⁷ Trees of particular value refer to Old and Valuable Trees ("OVT"), trees that are potentially registrable in the Register of OVT, trees of rare species and other trees (stonewall trees, trees of particular interest, etc.) as designated and preserved under lease.

TPRP”) in all respects to the satisfaction of LandsD; and

- (b) no tree removal works under the Approved TPRP shall be commenced and conducted before the approval of Foundation Plans and Site Formation Plans (including ELS Plans)(if any) by BD.

Approval of TPRP within lot in a proposed land transaction

9. LandsD will adopt facilitation measures to expedite the processing of TPRP within the lot when an application for land exchange, land grant or lease modification containing a Tree Preservation Clause (“the Proposed Land Transaction”) is in progress. After the acceptance of a binding basic terms offer and payment of the requisite deposit for the Proposed Land Transaction, the lot owner may through his RLA submit a TPRP to DLO or BPU for consideration. If the submission is considered acceptable and all relevant conditions and criteria in this PN are satisfied, formal approval for the TPRP will be given after completion of the Proposed Land Transaction.

Approval of TPRP within lot by Self-Certification of Compliance

10. The lot owner may submit in a Specified Form through his RLA to DLO or BPU, a self-certification of compliance certifying that the TPRP submitted (“SCC of TPRP Submission”) complies with the following requirements and relevant lease conditions :-

- (a) there is no removal of or interference with trees of particular value as designated and preserved under lease;
- (b) no tree is unnecessarily removed or excessively pruned, and best endeavours have been made to compensate for the trees felled and optimize the greenery provision having regard to the site conditions and actual circumstances; and
- (c) the 1:1 compensatory tree replanting ratio⁸ in terms of number can be met within the lot.

11. Valid SCC of TPRP Submissions will be selected at random (at a rate to be determined by LandsD from time to time) for compliance checking. The RLA will be notified within 10 working days from the date of receipt of the valid submission whether it is selected or otherwise for compliance checking. For the submission not selected for compliance checking, a letter of acknowledgement will be issued within the said 10 working days by LandsD, signifying deemed approval of the TPRP submitted and the Prior Written Consent within lot is

⁸ Generally, compensatory tree planting should be of a ratio of not less than 1:1 in terms of number, i.e. the number of compensatory trees should not be lower than that of the number of trees removed including dead trees, but excluding trees of undesirable species.

deemed to be given. The Prior Written Consent is subject to completion of the approved tree works as referred to in paragraph 14 below. For the submission selected for compliance checking, the RLA will be informed of the checking result within 8 weeks from the date of receipt of the valid SCC of TPRP Submission. If the SCC of TPRP Submission is not acceptable after checking, a re-submission to DLO or BPU would be required.

12. The arrangement for SCC of TPRP Submission set out in paragraphs 10 and 11 above does not apply to cases where comments from future maintenance Government departments have to be sought, for instance compensatory trees are proposed to be planted within portion or portions of the lot required to be carved out and surrendered to the Government under lease and for situations which the requirements specified in paragraph 10 cannot be met. In such cases, the RLA should submit to DLO or BPU a TPRP for approval in accordance with paragraph 8 above.

Effective Date

13. The SCC arrangement in paragraphs 10 and 11 above takes effect from 20 June 2023. It will be applicable to all new TPRPs submitted to LandsD for approval on or after 20 June 2023.

Completion Stage - Implementation of TPRP within lot

SCC for Completion of Approved TPRP

14. For compliance checking of tree removal works and transplanting, compensatory landscaping or replanting under an Approved TPRP ("approved tree works"), a RLA must submit to DLO, in a Specified Form, a self-certification that he has inspected and checked the tree works carried out by the lot owner, and the approved tree works have been completed to his satisfaction ("SCC of TPRP Completion").

15. If changes are made to the Approved TPRP, the RLA shall indicate clearly the changes in a Specified Form and provide relevant supporting documents with certification by the RLA, where appropriate. If the changes are minor in nature (such as preservation of more trees/ planting of more trees/ minor changes in planting locations/ minor changes in size and species for compensatory replanting within lot), re-submission of the updated TPRP for approval will not be necessary. The decision of LandsD on whether the changes are minor in nature and a revised TPRP is required to be submitted shall be final.

16. All valid SCC of TPRP Completion will be selected at random (at a rate to be determined by LandsD from time to time) for on-site compliance checking. The RLA will be

notified by DLO the selection result within 10 working days from the date of receipt of the valid SCC of TPRP Completion. If the submission is not selected, DLO will issue a letter of acknowledgement, signifying deemed compliance with the completed TPRP.

17. If the SCC of TPRP Completion is selected for on-site compliance checking, DLO will conduct on-site checking and notify the RLA of the result within 8 weeks from the date of receipt of the valid submission of the SCC of TPRP. If rectification works has to be carried out, the RLA shall, upon completion of all rectification works, submit a consolidated submission of completion of the approved tree works. If no rectification works is required, DLO will issue a letter confirming compliance with the completed TPRP.

18. The lot owner, or his AP or RLA, should ensure that the approved tree works is implemented on site fully and with due care. All the approved tree works shall be supervised and carried out by Qualified Professionals⁹. Attention to the tree requirements under lease should be drawn to other on-site contractors/staff and consultants.

TPRP Outside Lot

19. If any trees are (i) on areas outside lot boundary and the maintenance of the trees may be taken over by a Government bureau/ department other than LandsD (“B/D”¹⁰); or (ii) on a Coloured Area to be handed back under lease to a B/D, such as the Leisure and Cultural Services Department and the Highways Department, the TPRP on the affected area should be submitted to the concerned maintenance B/D direct for agreement. Upon obtaining the concerned B/D’s agreement to the TPRP, an application for the TPRP should be made to DLO in a Specified Form together with the letter from the concerned B/D confirming its agreement to the TPRP. LandsD will issue an acknowledgement letter to the RLA within 10 working days upon receipt of the valid application, signifying approval of the TPRP and giving of the Prior Written Consent outside lot. Thereafter, upon notification of tree works completion, the concerned maintenance B/D will carry out the compliance checking when the approved tree works is completed.

20. For a TPRP which involves more than one B/D, LandsD will take a coordinating role. The lot owner shall through his RLA prepare and submit the TPRP to LandsD for distribution to the relevant B/Ds for comments. Upon receipt of confirmation of agreement to the TPRP from the relevant B/Ds, LandsD will issue a letter to the RLA signifying approval of the TPRP

⁹ “Qualified Professional” refers to a service provider or an individual with recognised qualifications and expertise to undertake tree risk assessment and associated arboricultural works / operations as defined in Appendix I – “Requirements of Qualified Professionals for Arboricultural Works” of the “Handbook on Tree Management” promulgated by the Greening, Landscape and Tree Management Section of the Development Bureau.

¹⁰ Development Bureau Technical Circular (Works) No. 6/2015 for the maintenance responsibilities of vegetation and hard landscape features.

and giving of the Prior Written Consent outside lot. In case where a part of the area with trees thereon maintained by the lot owner is to be handed back to more than one B/D, clear demarcation should be made on the TPRP to differentiate the areas for ease of identification.

21. For trees (i) on a Coloured Area to be maintained by the lot owner in accordance with the lease conditions; or (ii) on Government land and the maintenance of the trees may be taken over by LandsD, the lot owner shall through his RLA prepare and submit the TPRP to LandsD for approval, and the mechanism of SCC of TPRP Completion as set out in paragraphs 14 to 17 above shall apply.

Workshop Approach

22. The workshop approach introduced under Lands Administration Office (“LAO”) PN No. 4/2018 (“PN 4/2018”) shall be applicable to a TPRP associated with GBP submission. When requesting for a workshop arrangement pursuant to paragraph 7 of LAO PN 4/2018, the AP or RLA should state clearly the purpose of the proposed workshop, which may include the presentation of TPRP in relation to building design/ layout, fundamental issues of concern relating to GBP and TPRP and provide relevant documents e.g. drawings for discussion. A request for workshop will be considered by DLO or BPU in accordance with LAO PN 4/2018. Where appropriate, representatives from LAT may be invited to join the workshop.

Emergency Tree Felling/Pruning Due to Natural Causes by Lot Owners

23. Trees are exposed to natural hazard such as lightning, typhoon, torrential rain, landslide or emergency situations where safety is at stake. It is the responsibility of a lot owner to manage and maintain all existing trees on his lot and subject to the terms of the lease, trees on a Coloured Area to the satisfaction of the Director including timely and appropriate horticultural maintenance with reasonable precautionary/ protection measures as well as emergent tree felling/ pruning due to natural cause as part of the preservation requirement.

24. It is advisable to take full photographic record of the concerned trees before emergent removal or severe pruning of the damaged trees due to natural causes. Where possible, the party carrying out the emergency works should take full photographic record of the trees concerned before removal of or interference with the trees. However, for expeditious emergency action, photograph taking and tree removal could be carried out on the same occasion if considered necessary. In any case, the lot owner should satisfy himself as to the qualification or expertise of his representative, acting upon relevant expert advice including but not limited to RLA’s advice and report to LandsD in writing within 21 calendar days after the emergency tree felling/ pruning incident. The report shall set out the emergent action taken and the reasons for taking the action with supporting photographic records taken before and after the incident. The photographs, which should be in colour and imprinted with date, should clearly cover the ground

condition surrounding the trees concerned and the fallen stem/ branch/ canopy/ root-collar/ root-zone/ exposed root-ball with close-up snapshots as appropriate.

25. For development projects with planning conditions imposed, any emergent tree felling/ pruning due to natural causes after approval of Landscape Submission by TPB/PlanD shall be reported to LandsD in the manner described in paragraph 24 above and the updated LMP/ LP should be resubmitted to PlanD for approval. For development projects without planning conditions imposed, any emergent tree felling/ pruning due to natural causes shall be reported in the RLA's re-submission or amended submission of TPRP with compensatory replanting where appropriate, to LandsD for approval.

Others

26. Site monitoring staff of BD make regular visits to private development sites for auditing purposes and will report any tree removal activities to LandsD for further action. If unauthorized tree removal is detected, lease enforcement action will be taken against the lot owner. BD will also include an advisory statement in the approval/consent letter for site formation and/or building works to remind the AP to obtain tree removal approval under lease prior to commencement of works.

27. Lot owners, and their appointed AP and RLA should note that any approval/deemed approval of TPRP given by LandsD is related to and given under the Tree Preservation Clause only and is not intended and should not be construed as an acknowledgement of compliance with any other lease conditions in any respect. Such approval or deemed approval shall not in any way prejudice the Government's right to reject building plans which are consistent with the said approval or deemed approval but inconsistent with other lease conditions. Where there is non-compliance with the Tree Preservation Clause under lease, without prejudice to any other rights and remedies available to the Government, the Director may withhold issue of pre-sale consent or certificate of compliance until and unless the terms and requirements imposed by the Director including without limitation, the payment of premium and administrative fee and completion of compensatory replanting proposal, are complied with.

28. It must be noted that nothing in this PN shall in any way fetter or affect or prejudice the rights of the Government, the Director and their officers under the relevant lease or the Government's rights as lessor/landlord, and all such rights are hereby reserved. Nothing in this PN including any words and expressions used shall in any way be construed as any waiver of any provisions under lease or affect or bind the Government in relation to the interpretation or enforcement of the terms and conditions of the relevant lease or otherwise.

29. LAO PN No. 2/2020 and No. 2/2020A are hereby superseded.



(Andrew LAI)

Director of Lands

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