

19 June 2013

Mr. CHAN Mo Po, Paul, MH, JP

Secretary for Development, Development Bureau
18/F, West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

Dear Mr. Chan,

**Review of Environment, Transport and Works Bureau Technical Circular (Works)
No. 3/2006 and Lands Administration Office Practice Note No. 7/2007**

The protection of trees as well as related issues such as tree risk assessment, tree maintenance and greening measures have become a sensitive issue in the eyes of the public in recent years. There is currently no ordinance governing tree preservation on development sites. Tree preservation is mainly regulated through development control measures in the form of tree preservation clauses in lease conditions and guidelines such as **Environment, Transport and Works Bureau Technical Circular (Works) No. 3/2006 – Tree Preservation (ETWB TCW 3/2006)** as well as its counterpart for private development, **Lands Administration Office Practice Note No. 7/2007 – Tree Preservation and Tree Removal Application for Building Development in Private Projects (LAO PN 7/2007)**. There are obvious gaps in tree protection such as sites under old leases with no tree preservation clause. As part of its on-going review and evaluation of government guidelines relevant to the profession of landscape architecture, the Hong Kong Institute of Landscape Architects (HKILA) has recently undertaken an in-depth study of the tree preservation and tree removal application process. The following document represents a distillation of the conclusions of this study, which the HKILA hopes will aid and inform any review of ETWB TCW 3/2006 and LAO PN 7/2007.

Review of Tree Removal Application Guidelines

Any review of the guidelines should be undertaken **simultaneously** and involve all stakeholders including all relevant units within the government as well as HKILA. Although ETWB TCW 3/2006 is related to government projects, the actual application for tree removal is commonly undertaken by consultants on behalf of the government department in question. Furthermore, if ETWB TCW 3/2006 is revised before

commencing the review of LAO PN 7/2007, the format of the latter will already be fait accompli.

To ensure that the guidelines continue to evolve towards a more streamlined, rigorous and effective system the early involvement of HKILA is imperative. The former practice of publishing a guideline and asking for comments after the fact cannot be seen as an effectual method given that there is then no scope for introducing amendments or correcting shortfalls. The government is thus urged to make use of the professional and practical experience of the HKILA from the beginning of the review process pertaining, not only to ETWB TCW 3/2006 and LAO PN 7/2007, but all guidelines related to the scope of landscape architecture.

1) Eligible Persons for Application

The guidelines do not have clear requirements regarding eligible persons for submission of tree removal applications, and the line of responsibility for tree preservation is vague. ETWB TCW 3/2006 and LAO PN 7/2007 have different approaches to this:

The introduction of LAO PN 7/2007 mentions that “*Lot Owners and their APs have a responsibility in certain leases to ensure that trees are not unnecessarily felled or interfered with [...]*”. This does not address situations where there is no appointed AP (as there may not be a building project), nor does it specify the AP has to be the one appointed for the project. LAO PN 7/2007 states, “*during the planning and early design stage, the AP should submit a tree survey [...]*” (para. 6), “*The AP is encouraged to assess the impact of the proposed development on existing tree(s) at the planning and early design stage in parallel to the preparation and submission of GBP*” (para. 7), “*the AP may continue with the current practice of submitting the Application separately from GBP to DLO [...]*” (para. 8), “*AP may choose to submit the Application at the same time of GBP [...]*” (para. 9), etc. up until para 13.

The wording conveys the AP as the only person eligible to submit tree preservation and removal applications, yet in practice DLO accepts applications by others including a ‘Competent Person’. This term starts to appear under “*Compliance of Tree Works*” (para. 15): “*it is recommended that all works associated with trees shall be supervised and carried out by a competent person(s) who possess vocational knowledge on horticulture, arboriculture and/or tree care*”. It is, however, stated in the same paragraph that “*AP should ensure all works [...] are fully implemented on site with due care and regard*”, therefore the ultimate responsibility remains on the AP. In practice,

DLO accepts submissions from so-called ‘Competent Person(s)’ for sites with or without building development. In cases where the ‘Competent Person’ is directly appointed by the Lot owner, which is far from uncommon, even AP cannot be held responsible for any resulting unnecessary felling and/or interference with the trees. Only RLA are eligible to conduct Self-Certification of Compliance under in LAO PN 7/2007. It is however difficult to reconcile this with the fact that the application itself may not be conducted by an RLA, even more so when considering AP is the only person responsible to ensure compliance of “*all works under the Application*” if the wording in paragraph 15 is strictly adhered to.

In Appendix II of LAO PN 7/2007, ‘Competent Person’ is defined as “any person who possesses a professional or vocational qualification in horticulture, arboriculture and/ or tree care [...] minimum 1 year closely related post-qualification local experience”. It is not clear whether this definition applies only when preparing the tree assessment schedule or to all instances of ‘Competent Person’ used throughout the practice note. Part (b) of the same paragraph says, “Assessment on existing tree(s) [...] by a RLA or competent person”, which rules out AP. Thus, from both the main text and Appendix II it seems that the RLA or ‘Competent Person’ shall carry out the assessment for the AP to make the submission, which is not the current practice

Another problematic area is emergency felling or pruning due to natural causes. Part III of Appendix II states that the “Land Owner/ AP/ RLA are reminded that timely and appropriate horticultural maintenance [...]” and “[...] land owner/ AP/ RLA should inform LandsD in writing within 21 calendar days [...]”. From the wording no ‘Competent Person’ other than AP or RLA can prepare or submit a report for emergency felling but, again, in practice reports by non AP/ RLA are accepted by DLO for the purpose. Emergency felling measures are largely a reflection of the unnecessarily long response time for tree felling applications (see point 8), below), but they may be considered to provide opportunity for the unwarranted removal of undesirable trees. To avoid ambiguities a case could be made to remove this condition from the process altogether: in case of poor health the hazard is rarely immediate and an application could be made through the normal channels, whereas, if a tree suddenly becomes hazardous due to storm conditions or similar, then the emergency services can be called upon to remove it. In the latter case a photo record would still be submitted, of course.

ETWC TC No. 3/2006 (para. 34) states that “tree surgery work [...] should be approved by the Senior Landscape Architect (SLA) of the project office for contracts managed by in-house staff, or the Project Director of the landscape consultants for consultant-managed contracts.” Such proposals should be endorsed by the Project RLA rather than the SLA or Project Director of the consultant.

In contrast, BD has a stringent control on building plan submissions and statutory control throughout building operations, and a specific form on appointment of AP has to be submitted and acknowledged by the Department beforehand. No other AP or other persons are eligible to submit plans or otherwise become involved in the submission and approval, or the liaison process throughout. This gives a very clear responsibility and effective enforcement of the relevant measures.

It must be noted that arborists in Hong Kong are not formally trained (to degree level) and are not disciplined within a recognised profession so are not accountable for their actions and advice. ‘Years of relevant experience’ is not an adequate measure for competence as there have been very wide interpretations as to what ‘relevant experience’ is, and there is no effective measure for checking or policing claims of experience. For these reasons arborists should not be considered ‘Competent Persons’ in this context.

In order to promote the efficient approval and consistent quality of tree and landscape related submissions, HKILA proposes that the term ‘Competent Person’ should be deleted and that RLA should be the **only** eligible person for such submissions. It is appropriate to require RLA as the **only** eligible person for such submission as they are the **only** profession in Hong Kong governed by Ordinance that has been active in landscape development and tree preservation, with a clear code of professional conduct requiring members to provide the highest standards of professional service to the client and for the benefit of the general public. HKILA further proposes that each project/ site should be handled by one RLA at a time, which would greatly reduce the possibility of duplicated applications or more than one proposal being submitted for the same project/ site. Under the HKILA’s code of professional conduct, members are required to communicate with each other in case they are being approached to proceed with professional work on which, to their knowledge, another member is already employed. This would establish single point of responsibility for all submissions and set a standard of quality ensured by a professional qualification. In order to ensure the quality of tree

removal applications by RLA, the Landscape Architects Registration Board (LARB) welcomes positive discussion with relevant departments and institutes.

In addition to this core issue, there are a number of other items the HKILA task force has highlighted in relation to the two guidelines, as outlined below:

2) Consistency of Approach

While there are differences in the application procedure and approval process for tree removal under government versus private development, the technical aspects as pertain to the trees themselves should be identical for both types of project. However, there are a number of significant differences between ETWB TCW 3/2006 and LAO PN 7/2007 in this respect, such as treatment of undesirable species, usage of girth or DBH, and so forth. For this reason we strongly urge that the guidelines be reviewed at the same time and with close reference to one another to avoid exacerbating the discrepancies that exist at present.

3) Early Assessment of Tree Impact for Development Projects

For development projects requiring no planning application and lacking any landscape/tree preservation requirement under lease, early tree impact assessment by RLA should be mandated before approval of GBP. The great advantage of this recommendation is to expand the concept of tree preservation to areas currently not covered by development control measures. As such developments are normally small-scale re-development under old lease conditions, the potential or significant disturbance to the industry would be minimal while effectively extending the scope of tree protection to all development projects.

4) Single Source of Advice on Tree Issues

At present tree removal applications and other horticultural submissions related to developments are vetted by a number of different departments (and a number of different sections within departments) such as HyD, LCSD, AFCD, etc., who then advise DLO. Where a lease includes coloured areas (e.g. green area, yellow area, etc.) the developer is required to liaise directly with future maintenance parties on tree removal and compensatory planting issues. Not only are maintenance parties not qualified to advise on design issues such as tree species (which should properly be the purview of ArchSD, HyD Landscape, or the other design departments responsible for such areas), because these departments do not operate under the performance pledges of the guidelines liaison for comments, responses, approval and (if applicable) handover

frequently takes far longer than other aspects of the application causing unreasonable delay in project programmes. In addition, there have been cases where maintenance parties refuse to take on maintenance of trees planted in these areas or where they have insisted that compensatory planting be planted within the private lot instead. The principle should be enforced that any compensatory planting for trees felled or lost to natural causes within coloured areas should also be compensated within the same coloured areas.

To ensure a timely, consistent and arboriculturally sound approach, **all** advice on tree removal applications should come from a single, dedicated source. The most logical and appropriate source would be **LAO Tree Unit**. This would ensure a consistent quality of applications and approvals that is not possible under the present regime.

5) Transplanting of Unsuitable Trees

Currently trees which are neither cost-effective nor beneficial to the landscape are unnecessarily transplanted as a result of request by some vetting departments. Much of the current approach to transplanting is not fact based. Transplantability of trees should be evaluated by a number of criteria such as cost-effectiveness, size and age of the trees, species, survival rates, site conditions, etc. The survival rate of certain species cannot be used as the only reason for tree transplanting. On-going research at HKU indicates that, of those trees thought suitable for transplanting, only some 70% of survive and of these little more than half have any value afterwards. The practice of transplanting overly mature trees, often with severe pruning, should cease. Off-site transplanting is only successful on a consistent basis for young trees, which could be replaced by new, healthy specimen of equal or greater landscape value at a fraction of the environmental and financial cost.

The current technical guidance for undertaking tree surveys is inadequate and gives rise to inconsistent levels of quality. A detailed review needs to be undertaken (by suitable researchers) based on best international practice, to define the methodology and assessment criteria used in tree surveys (e.g. metrics for tree health, tree form, size, amenity value, and so forth).

6) Compensatory Tree Planting Ratio

The commonly mandated compensatory planting ratio of 1:1 in terms of DBH is creating an undesirable situation in terms of landscape design and sustainability. This approach inevitably greatly increases the number of trees in a space that is at the same

time decreased due to the development itself. This is anathema to good landscape design and we strongly recommend that this uncritical quantitative method is abandoned in favour of a qualitative approach which stresses landscape design and environmental value.

7) Compensatory Tree Size

The size of compensatory trees should be appropriate to each location and should not be strictly limited to ‘heavy standard’. Whips or even seedlings are more appropriate to slopes and smaller standards could be provided in areas where planting of heavy standard trees is not practical. Conversely, larger trees may be considered to suit the design intent and the context, such as street planting in urban areas.

8) Processing Time

ETWB TCW 3/2006 (para. 19) gives the performance pledge that tree removal applications should be processed within 10 weeks. Nevertheless, this is not followed in many occasions, resulting in disproportionate delays to project programmes and applications can take as long as 18 months. Even a 10 week turnaround is longer than many other submissions such as General Building Plan, Planning Permission and Landscape Proposal. A performance pledge of 6 to 8 weeks for tree removal applications would be appropriate by comparison, and it should also apply to applications under LAO PN 7/2007. A performance pledge should also apply for vetting of any resubmissions and this period should be shorter than the vetting period for the original TRA on the basis that less time would be required to review amendments. Furthermore, comments made on submissions within the pledged periods should be detailed substantive comments and not simply vague and general comments “with detailed comments to follow”, which often happens on current submissions under ETWB TCW 3/2006. If applications are confined to a single RLA per project/ site (as outlined above) the resultant improvement in quality, consistency and clarity of submissions would facilitate speeding up the process.

There is a performance pledge of either 8 weeks (non-BC III) or 10 weeks (BC III) for processing ‘straightforward’ combined submissions under LAO PN 7/2007, there is no such pledge for streamlined or separate submissions and the term ‘straightforward’ is entirely open to interpretation.

With regard to self-certification of compliance under LAO PN 7/2007, there is some uncertainty surrounding the 14-day period after submission after which, if notice is not

received from DLO the tree works are deemed to have been complied with. However, there is no mechanism for acknowledging receipt of applications, so it is often the case that comments are received some time after the 14 days, e.g. if the SCC submission is not in order. It is hoped that the number of incomplete or incorrect submissions would be drastically reduced if they are limited to submission by RLA, nevertheless, some means of acknowledging receipt is required to reintroduce certainty into the process.

9) Clear Specification of Application Content

While both ETWB TCW 3/2006 and LAO PN 7/2007 are quite clear on the contents required, it has been found that LCSD in particular requests far more detailed information without any particular justification, to the extent of requiring an individual 1 to 2-page report on each tree proposed to be felled or transplanted. This particularly emphasises the need for a consistent single source of advice to DLA as per point 7) above. Whilst most private practices have no choice but to comply with this request so as not to further delay the approval process, we strongly request that all government departments strictly follow the requirements in the promulgated circulars and provide clear and justified grounds for any further information requested.

The three different application processes under LAO PN 7/2007 should also be reviewed and clarified, amalgamated or deleted according to their usefulness in practice. For instance, although a combined submission seems to be desirable in terms of aligning GBP and landscape submissions it is rarely, if ever, used.

10) Undesirable Species

The interpretation of the treatment of *Leucaena leucocephala* and 'other undesirable species' in ETWB TCW 3/2006 should be clarified, and the same applied under LAO PN 7/2007. Even under ETWB TCW 3/2006, different departments and officers seem to have different interpretation in terms of treatment and the compensation. *Leucaena leucocephala* was purposely introduced to Hong Kong as a forestry species, as was *Acacia confusa*. The fact that they are now considered to be undesirable indicates the need for a more robust approach to tree planting and management. It is vital that our native ecology is preserved and enhanced, and that we achieve a sustainable approach to our urban forests, and not just short term cosmetic 'greening'. A consistent approach should be adopted by both guidelines, either by generating list of undesirable species carefully selected for sound ecological reasons.

11) Tree Management and Maintenance

Given that ETWB TCW 3/2006 and LAO PN 7/2007 deal specifically with development, we propose that a new TC and PN be promulgated to deal specifically with the issue of tree pruning, tree surgery and tree felling for the purposes of management and maintenance, including tree thinning. Tree protection clauses in lease conditions preclude any interference with trees without prior approval, and thus technically necessitate a TRA for regular pruning to maintain healthy trees, which should not be the purpose of the tree protection clauses. A PN should identify various types of tree pruning, from minor to major, and identify when prior approval is required, with a view to promoting regular and small scale tree pruning to promote long term tree health and safety. Tree thinning will become more of an issue as a result of the strict implementation of the 1:1 compensation in terms of DBH in past years which has resulted in overly dense tree planting to the detriment of the further healthy development of said trees.

12) Hazardous Trees

In recent years a great deal of attention has been focussed on the issue of hazardous trees, resulting in a number of more-or-less effective responses to the matter. In terms of tree removal a clear path should be laid out for dealing with reports of hazardous trees in projects, whether through formal Tree Risk Assessment or as a result of accidental damage, weather, deteriorating health or other natural causes. In addition, clarification of the procedure for dealing with dead trees identified at site possession is needed. We propose that such should **not** be counted as trees for the purpose of tree removal or compensation as they are not contributing to the greening of the site.

In summary, we urge a comprehensive and coherent review of both ETWB TCW 3/2006 and LAO PN 7/2007 to tighten up control of the landscape and tree related submissions in line with other technical submissions; to clarify and streamline the process in order to ensure a speedy and consistent approach on the part of both the submitting and the vetting parties; and to establish single point of responsibility for submission as well as vetting in the form of the Project RLA and LAO Tree Unit, respectively.

Furthermore, we firmly believe that this review of the wording of ETWB TCW 3/2006 and LAO PN 7/2007 should be seen only as a starting point. The problems highlighted above indicate a thorough, holistic, evidence based review and adjustment of the entire system of tree planting and management in Hong Kong is urgently required. If we are to



attain the status of a world-class 'green' city then comprehensive action is urgently required.

We trust you share our concern and will carefully consider our proposals, and we look forward to your favourable reply. We hope this letter will help facilitate further communication between the Bureau and related departments and the HKILA, which is certain to enhance the progress of greening and tree issues in Hong Kong.

Yours sincerely,

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President, HKILA

c.c.

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