

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/732

<u>Applicant</u>	: Mr. Tang Pui Yin
<u>Site</u>	: Lot 32 RP (Part) in D.D. 109, Kam Tin, Yuen Long
<u>Site Area</u>	: About 8,069.5 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Village Type Development” (“V”) [Maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Filling of Pond for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for filling of pond for permitted agricultural use at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP, ‘Agricultural Use’ is a Column 1 use in the “V” zone which is always permitted. However, any filling of pond, including that to effect a change of use to any of those specified in Columns 1 and 2, requires planning permission from the Town Planning Board (the Board). The Site is previously an existing pond, but has been largely covered by fill materials and is vacant at present.

- 1.2 According to the applicant, the area of pond filling is about 8,069.5m² with a depth of about 2m up to the existing ground level of about 4.6mPD for agricultural use. The Site is accessible from Chi Ho Road and Shui Tau Road via a local track. The site plan is at **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application form with plans received on 10.5.2020 with plans **(Appendix I)**
- (b) Further Information (FI) received on 25.11.2020 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
- (c) FI received on 27.11.2020 and 30.11.2020 in response to departmental comment **(Appendix Ib)**
[exempted from publication requirement]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form and FIs in **Appendices I to Ib**. They can be summarized as follows:

- (a) According to the applicant, the filling of pond is to facilitate agricultural use at the Site. The level of land upon filling of pond will be similar to the surrounding area. Only soil that is suitable for farming will be used and no construction waste will be involved. A light goods vehicle will be used to transport the farming produce from the Site.
- (b) Existing trees within the Site will be protected based on relevant guidelines. Drainage proposal will be submitted after planning approval is granted. Implementation works of pond filling will be carried out mainly between 11am and 4pm to minimize noise nuisance.

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

The applicant is not the “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and published notices in local newspapers. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action (No. E/YL-KTN/548) against unauthorized pond filling. Reinstatement Notice (RN) was issued on 26.8.2020 requiring the reinstatement of the land including removal of the leftovers, debris and fill materials from the pond. The requirements under the RN have not been complied with.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There are three similar applications for filling of pond for open space or New Territories Exempted House (NTEH) uses in the same "V" zone, with one rejected and two approved. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTN/116 for proposed pond filling for open space (with a site area of about 19,290m²) was rejected by the Committee in 2000 mainly on the grounds that the pond filling activity was considered excessive and would generate impacts on the general and ecological environment of the area; there was no strong justification to demonstrate that pond filling was necessary for the provision of open space at the application site; and there was no information to demonstrate that the development would not generate adverse drainage impact on the surrounding areas.
- 6.3 Applications No. A/YL-KTN/22 (with an area of about 2,386m²) and A/YL-KTN/299 (with an area of about 4,788m²) for filling of pond for NTEHs were approved with conditions by the Committee in 1996 and 2008 respectively mainly on the considerations that the pond filling to facilitate NTEHs was in line with the planning intention; and relevant departments including Drainage Services Department generally had no adverse comments on the application.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

7.1 The Site is:

- (a) previously an existing pond and currently largely covered by fill materials and vacant; and
- (b) accessible from Chi Ho Road and Shui Tau Road via a local track.

7.2 The surrounding areas is rural in character predominated by vacant/ unused land, residential structures/ dwellings and pond:

- (a) to its west, northwest and southwest are a pond, residential structures/ dwellings and unused/ vacant land in the "Agriculture" ("AGR") zone; and
- (b) to its north is vacant land. To its east and southeast across a nullah and Shui Tau Road are residential structures/ dwellings and vacant land.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site, i.e. Lot No. 32 RP in D.D. 109, is an Old Scheduled Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) His office does not guarantee any right-of-way to the Site.
- (c) The Site falls partially on the Village Environs Boundaries of Shui Tau Tsuen and Shui Mei Tsuen (**Plan A-1**). There is no Small House application approved or under processing at the Site.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Chi Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and road drains.

Environment

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

- (a) There are two environmental complaints on waste aspect concerning the Site received by DEP in 2020.
- (b) He has no objection to the application.
- (c) The applicant is advised that (i) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances (e.g. Noise Control Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance, Waste Disposal Ordinance, etc.); (ii) during construction, the applicant shall implement appropriate pollution control measures to minimize any nuisance to the residents and prevent polluting the watercourse adjacent to the Site. A full set of the "Recommended Pollution Control Clauses for Construction Contracts" is available at the EPD's website for reference; (iii) during operation, to provide adequate supporting infrastructure / facilities for proper collection, treatment and disposal of waste / wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" including percolation test.

Drainage

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

He has reservation on the subject development as the filling area is not small and appears to cover the whole Site but there is no substantiation to show how the overland flow from adjacent area would not be interrupted by the proposed works.

Agriculture and Nature Conservation

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

- (a) The Site possesses potential for agricultural rehabilitation. According to his site inspection, the Site is currently a vacant land, not a pond. The applicant should provide more details on the agricultural activities (e.g. cultivated area, types of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site and justify the need for filling of pond/ land (2m) for agricultural use for the consideration of the Board.
- (b) According to the aerial photos, the subject area was vegetated in October 2019. However, his recent site inspection in October 2020 revealed that the area had been formed and the vegetation had been cleared. The site history, among others, should be taken into account and consideration should be given to whether the application is a “destroy first, build later” case which should not be encouraged from nature conservation perspective.

Landscape

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

- (a) She has reservation to the application from the landscape planning point of view.
- (b) Based on the aerial photo taken on 18.2.2020, the Site is situated in an area of rural landscape character comprising scattered tree groups, fish ponds, village houses, active and abandoned farmlands. It is noted that similar application (No. A/YL-KTN/116) of filing of pond for open space and agricultural use within the “V” and “AGR” zones in proximity to the Site were rejected by the Board.
- (c) Referring to the site visit dated 4.11.2020, the south-western portion of the Site comprising of abandoned fish pond covered with self-seeded aquatic vegetation, while a large portion of the Site has already been filled. A number of existing trees of common species including *Bauhinia sp.* (羊蹄甲屬), *Celtis sinensis* (朴樹), *Ficus subpisocarpa* (筆管榕), *Melia azedarach* (楝), *Sapium sebiferum* (烏桕) and *Tetradium glabrifolium* (棟葉吳茱萸) in fair conditions are found along the northern and western boundary. 1 nos. of *Aquilaria sinensis* (土沉香), a protected plant species under Cap 586 in fair condition is found at the western part of the Site. In comparing the site visit and aerial photos taken in 2020, it is noted that filling of pond has commenced prior to obtaining planning permission. There is concern that approval of the application may encourage

more unauthorized site alteration within the area.

- (d) Should the application be approved, approval condition on submission and implementation of landscape proposal should be included in the planning permission.

Building Matters

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

- (a) Site formation works are building works under the control of the Buildings Ordinance (BO). Before carrying out the proposed filing works on the Site, prior approval and consent from the Building Authority (BA) should be obtained and an Authorized Person (AP) should be appointed as the co-ordinator for the proposed works in accordance with the BO.
- (b) Notwithstanding the above, the Director of Lands may issue a certificate of exemption in respect of site formation works in the New Territories under the Buildings Ordinance (Application to the New Territories) Ordinance and the applicant may approach DLO/YL or seek AP's advice for details.

Fire Safety

9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no comment on the application.
- (b) In case of any erection of structure inside the Site in the future, the applicant is advised to submit relevant layout plans incorporated with the proposed fire services installations to his department for approval. The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

Environmental Hygiene

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

For any waste generated from such activity/ operation, the applicant should arrange disposal properly at their own expenses. Such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.

District Officer's Comment

9.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from the locals and has no comments on the application.

9.2 The following Government departments have no comment on/ no objection to the application:

- (a) Commissioner of Police;
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (c) Project Manager (West), Civil Engineering and Development Department;
- (d) Director of Electrical and Mechanical Services; and
- (e) Chief Engineer/Construction, Water Supplies Department.

10. Public Comments Received During Statutory Publication Period

On 14.10.2020, the application was published for public comment. During the three-week statutory publication period, six comments (**Appendices III-1 to III-6**) were received from Kadoorie Farm and Botanic Garden Corporation and individuals objecting to the application mainly on the grounds that the Site was originally fish ponds and has been illegally filled for small house development; the Site is subject of enforcement action against fill of pond and “destroy first, building later” practice should not be encouraged; the fill materials are illegally excavated from nearby mountain which causes landslide; the existing fill materials are not suitable for agricultural purpose and pollute the nearby rivers; approval of the application would set an undesirable precedent; and there is no information on the proposed farming activity at the Site.

11. Planning Considerations and Assessments

11.1 The application is for filling of pond for permitted agricultural use. The Site falls within the “V” zone. The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. While agricultural use is always permitted within the “V” zone, filling of pond to effect a change of use to any of those specified in Columns 1 and 2, requires permission from the Board. The applicant fails to demonstrate that the applied pond filling is justifiable for the potential agricultural use

11.2 The application involves filling up of a substantial area of about 8,069.5m² by about 2m. CE/MN, DSD has reservation on the application as the fill area is not small and there is no substantiation to show how the overland flow from adjacent area would not be interrupted by the proposed works. CTP/UD&L, PlanD also

has reservation on the application as approval of the application may encourage more unauthorized site alteration with the area. Besides, concerns raised by DAFC including details of agricultural activities to be conducted at the Site and justification of the need of pond filling for agricultural use have not been addressed. On the other hand, the Site is subject to planning enforcement action. RN requiring removal of the fill materials from the pond has been issued and the requirements under the RN have not been complied with.

- 11.3 The Site is not subject to any previous application. There are three similar applications for filling of pond within the same "V" zone, with one rejected and two approved as detailed in paragraph 6 above. The two approved applications are subject to difference circumstances for filling of pond to facilitate NTEHs and there was generally no adverse departmental comments on the application. On the other hand, relevant departments including CE/MN of DSD and CTP/UD&L, PlanD have reservation on the current application. Also, the site area of these two approved applications (2,368m² and 4,788m²) are much smaller than the current application (8,069.5m²).
- 11.4 Six public comments were received during the statutory publication period, objecting to the application as stated in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as stated above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reason:

the applicant fails to demonstrate that the applied pond filling is justifiable for the potential agricultural use and that it would not generate adverse drainage impact on the surrounding area.

- 12.2 Alternatively, should the Board decide to approve the application, no time clause for commencement of development is proposed as the pond has already been filled. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 4.9.2021; and
- (b) if the above planning condition (a) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Appendix IV**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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.

14. Attachments

Appendix I	Application Form received on 5.10.2020
Appendix Ia	FI received on 25.11.2020
Appendix Ib	FI received on 27.11.2020 and 30.11.2020
Appendix II	Similar applications within the same “V” zone on the Kam Tin North OZP
Appendices III-1 to III-6	Public Comments Received during Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Plan Submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**