

RNTPC Paper No. A/YL-NSW/269
For Consideration by
the Rural and New Town
Planning Committee
on 3.5.2019

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-NSW/269

- Applicant** : The Hong Kong Bird Watching Society (HKBWS)
- Site** : Government Land (GL) in D.D. 123, Nam Sang Wai, Yuen Long
- Site Area** : About 72 m²
- Land Status** : GL
- Plan** : Approved Nam Sang Wai Outline Zoning Plan (OZP) No. S/YL-NSW/8
- Zoning** : “Other Specified Uses” annotated “Comprehensive Development and Wetland Enhancement Area 1” (“OU(CDWEA1)”)
- Application** : Renewal of Planning Approval for “Temporary Education Kiosk for “Hong Kong Got Fishpond – Eco-fishpond Management Agreement Scheme”” for a Period of 22 Months

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval to continue to use the application site (the Site) for temporary education kiosk for “Hong Kong Got Fishpond – Eco-fishpond Management Agreement Scheme” for a period of 22 months (**Plan A-1a**). The Site falls within an area zoned “OU(CDWEA1)” on the approved Nam Sang Wai OZP No. S/YL-NSW/8. According to the Notes of OZP, temporary use not exceeding a period of three years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied use with valid planning permission under application No. A/YL-NSW/257. The planning permission is valid until 14.5.2019.
- 1.2 The Site is the subject of 3 approved previous applications (Nos. A/YL-NSW/232, 237 and 257) (**Plan A-1b**) submitted by the current applicant for the same use. The last application No. A/YL-NSW/257 was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 14.7.2017 with condition for a period of 22 months up to 14.5.2019.

- 1.3 According to the applicant, two removable marquees will be deposited at the kiosk for holding display boards/photos promoting public awareness on the conservation value of fish ponds and about local fish culture, and providing activities including special workshop, eco-tours/bird watching and interactive games. The Site is accessible via Nam Sang Wai Road. The location plan of the kiosk, and the design/dimension and reference photo of the marquees are at **Drawings A-1** and **A-2** respectively.
- 1.4 The development parameters of the current application are the same as the approved previous application (No. A/YL-NSW/257) and are summarised as follows:

| | Previous Application No. A/YL-NSW/257 | Current Application No. A/YL-NSW/269 | Differences |
|------------------------|---|---|--------------------|
| Site Area | About 72 m ² (12m x 6m) | same | - |
| Applied Use | Temporary Education Kiosk for a Period of 22 Months | Temporary Education Kiosk for “Hong Kong Got Fishpond – Eco-fishpond Management Agreement Scheme” for a Period of 22 Months | - |
| No. of Structures | 2 movable marquees | same | - |
| Total Floor Area | 18 m ² | same | |
| Dimensions of Marquees | 3m (length) x 3m (width) x 3m (height) | same | - |
| Operation Hours | 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays | same | - |

- 1.5 In support of the application, the applicant has submitted an application form received on 15.3.2019 (**Appendix I**).

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of Application Form at **Appendix I**. They can be summarized as follows:

- (a) The applicant seeks permission to continue to use the Site for holding a temporary education kiosk for “Hong Kong Got Fishpond – Eco-fishpond Management Agreement Scheme 2019-2021” (the MA Project) funded by the Environment and Conservation Fund (ECF) and supported by the Agriculture, Fisheries and Conservation Department (AFCD). The MA Project aims to enhance the

conservation value of commercial fish ponds in Deep Bay area outside the Ramsar Site, particularly of avifauna, through a partnership scheme between the HKBWS and local fish pond operators.

- (b) The objectives of the education kiosk are to raise public awareness on the conservation value of fish pond which supports the conservation of the ecological value of the Deep Bay Area. The temporary kiosk would not cause significant impacts to surrounding environment. There would be no net loss in wetland function and negative disturbance impact.
- (c) The two removable marquees would be erected during the operating hours of the kiosk and all set-up related to the kiosk would be removed and stored away after use each day. There would be no permanent structures and no loss of habitats on Site will be envisaged.
- (d) Based on the headcount from previous kiosk events carried out by HKBWS at Nam Sang Wai, around 1,200 visitors visited the kiosk on average each day. The operation of the kiosk would not significantly increase the number of people at Nam Sang Wai. Instead, visitors at the kiosk were dominated by people who had planned to go to Nam Sang Wai regardless of the kiosk. Therefore, no adverse traffic and drainage impacts arising from the kiosk are expected.
- (e) Eco-tour and bird watching would be led by experienced staff and volunteers who put the welfare of wildlife as their main priority. There are already bird watchers visiting Nam Sang Wai especially during dry season months and there have not been ecological impacts to birds as a result. As such, these activities would not cause significant ecological impacts.
- (f) The proposed kiosk fulfils the requirements stipulated in the TPB Guideline No. 12C and the planning intention of the “OU(CDWEA1)” under the OZP.

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

As the Site involves GL only, the “owner’s consent/notification” 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) is not applicable to the application.

4. Town Planning Board Guidelines

4.1 According to the Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C), the Site falls within the Wetland Conservation Area (WCA). The relevant assessment criteria are summarized as follows:

- (a) the planning intention of the WCA is to conserve the ecological value of the fish ponds which form an integral part of the wetland ecosystem in the Deep

Bay Area. It comprises the existing and contiguous, active or abandoned fish ponds in the Deep Bay Area, which should all be conserved;

- (b) new development within the WCA would not be allowed unless it is required to support the conservation of the ecological value of the area or the development is an essential infrastructural project with overriding public interest;
- (c) any development within the WCA which requires planning permission from the Board should be supported by an ecological impact assessment (EcoIA) to demonstrate that the development would not result in a net loss in wetland function and negative disturbance impact. Moreover, wetland compensation is required for development involving pond filling and mitigation measures against disturbance would be necessary; and
- (d) subject to submission of EcoIA, the type of activities which may be considered within the WCA must be related to conservation, environmental education or essential infrastructure projects needed for public purposes.

4.2 The Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are relevant to this application. The criteria for assessing applications for renewal of planning approval include:

- (a) whether there has been any material change in planning circumstance since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

4.3 Under normal circumstances, the approval period for renewal should not be longer than the original validity period of the temporary approval. In general, the Board is unlikely to grant an approval period exceeding three years unless there are strong justifications and the period is allowed for under the relevant statutory plans. Depending on the circumstances of each case, the Board could determine the appropriate approval period, which may be shorter than the time under request.

5. **Background**

The Site is not a subject of any active planning enforcement case.

6. **Previous Applications**

6.1 The Site is the subject of 7 previous applications (Nos. A/DPA/YL-NSW/12, A/YL-NSW/171, 218, 232, 237, 242 and 257). Except for application Nos. A/YL-NSW/232, 237 and 257 for the same temporary education kiosk use as the current application submitted by the same applicant and application No. A/YL-NSW/171 for public utilities installation covering a much smaller site (0.36 ha), the remaining applications were for residential developments with wetland enhancement proposals and covered much larger sites than the temporary kiosk.

Comprehensive Development Covering a Large Site Area

6.2 Application No. A/DPA/YL-NSW/12 of about 139.3 ha for golf course and residential development was rejected by the Committee and the Board on 9.10.1992 and 11.6.1993 respectively. The Appellants lodged an appeal against the decision of the Board. On 26.8.1994, the appeal was allowed by the Town Planning Appeal Board (TPAB), subject to approval conditions including submission and implementation of a detailed Master Layout Plan (MLP), a Landscape Master Plan (LMP), and environmental assessment (EA), a conservation plan, on-site and off-site environmental mitigation schemes, etc to the satisfaction of the concerned Government departments or of the Board. The permission had subsequently lapsed without fulfillment of the conditions.

6.3 Application No. A/YL-NSW/218 of 178.7 ha for proposed comprehensive development with wetland enhancement (including house, flat, wetland enhancement area, nature reserve, visitors centre, social welfare facility, shop and services) as well as filling of land/pond and excavation of land was rejected by the Committee and the Board on 19.7.2013 and 14.2.2014 respectively, mainly on the grounds that the development was not in line with the planning intention of the "OU(CDWEA)" zone and the then TPB PG-No. 12B; and insufficient information to demonstrate that the proposed development would have no adverse impacts on the surrounding areas. The applicant subsequently lodged an appeal to TPAB against the Board's decision and the appeal proceedings are in progress.

6.4 Application No. A/YL-NSW/242 of 177.35 ha for proposed comprehensive development with wetland enhancement (including house, flat, wetland enhancement area, nature reserve, visitors centre, social welfare facility, shop and services and filling of land/pond and excavation of land) was rejected by the Committee and the Board on 22.1.2016 and 24.2.2017 respectively, mainly on the grounds that the development was not in line with the planning intention of the "OU(CDWEA)" zone and the then TPB PG-No. 12C; the proposed development did not conform to "Private-Public Partnership Approach"; the applicant had not prepared an EIA report as required by the EIA Ordinance to address the ecological issues and yet the submitted technical assessments failed to demonstrate that the

proposed development would not generate adverse impacts on the surrounding areas; and the approval of the application would set an undesirable precedent for similar application within the “OU(CDWEA) zone”. The applicant subsequently lodged an appeal to TPAB against the Board’s decision and the appeal proceedings are in progress.

Small-scale Development and Temporary Use

- 6.5 Application No. A/YL-NSW/171 of about 0.36 ha for public utilities installation (underground power transmission cable) was approved by the Committee on 29.9.2006 mainly on the consideration that the development was in line with the then TPB PG-No. 12B in that it was an essential public utility project serving the whole Yuen Long Town and will not result in a net loss in wetland function and negative disturbance impact.
- 6.6 Application Nos. A/YL-NSW/232 and 237 for temporary education kiosks submitted by the current applicant were approved with condition by the Committee on 12.9.2014 and 5.6.2015 for 6 months and 2 years respectively. These applications covering a larger site area (i.e. 144 m² with two temporary education kiosk areas) were approved mainly on the consideration that the proposed education kiosks were in line with the planning intention of the “OU(CDWEA)” zone and the then TPB PG-No. 12C in that they helped to support the conservation of the ecological value of the fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area through public education; and adverse environmental, traffic, fire safety and drainage impacts were not envisaged.
- 6.7 Application No. A/YL-NSW/257 for temporary education kiosk on the same site by the current applicant was approved with condition by the Committee on 14.7.2017 for 22 months on similar consideration as for application Nos. A/YL-NSW/232 and 237 as detailed in paragraph 6.6 above.
- 6.8 Details of the applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1b**.

7. Similar Application

There is no similar application within “OU(CDWEA1)” zone on the Nam Sang Wai OZP.

8. The Site and Its Surrounding Areas (Plans A-1a to A-4)

8.1 The Site is:

- (a) a piece of GL along the Kam Tin River;

- (b) accessible from Nam Sang Wai Road which is a 3.5m two-way traffic maintenance access road for Kam Tin and Yuen Long Drainage Channels;
- (c) within the WCA of Deep Bay Area; and
- (d) currently used for the applied use with valid planning permission under approved application No. A/YL-NSW/257.

8.2 The surrounding areas have the following characteristics:

- (a) the surrounding area is predominantly rural in character;
- (b) to its south and west are contiguous fish ponds;
- (c) to its southeast are a refreshment kiosk, residential dwelling, storage yard and unused land; and
- (d) to its north and east cross Nam Sang Wai Road is Kam Tin River.

9. Planning Intention

The planning intention of the “OU(CDWEA1)” zone is for conservation and enhancement of ecological value and functions of the existing fish ponds or wetland through consideration of application for development or redevelopment under the “private-public partnership approach”. Low-density private residential or passive recreational development within this zone in exchange for committed long-term conservation and management of the remaining fish ponds or wetland within the development site may be permitted subject to the “no-net-loss in wetland” principle and planning permission from the Town Planning Board. Any new building should be located farthest away from Deep Bay.

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) Without recent inspection, his comments based on the applicant’s information are as follows:
 - (i) the Site situates on GL (about 72 m² subject to verification) and no permission is given for occupation of GL included in

the Site. The act of occupation of GL without Government's prior approval is not allowed;

- (ii) the Site is accessible from Nam Sang Wai Road through GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way;
- (iii) the Site does not fall within Shek Kong Airfield Height Restriction Area; and
- (iv) should planning approval be given to the application, the applicant has to apply for a formal approval prior to the actual occupation of GL. Given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. The applicant has to apply for a formal approval prior to the actual occupation of the GL. Application(s) for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

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

It is noted that there is no vehicular access to the Site. In view that the traffic flow to be generated from the Site should be minimal, he has no comment on the application from traffic engineering point of view.

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

- (a) HyD does not and will not maintain any access connecting the Site and Nam Sang Wai Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

The Site neither falls within any administrative route protection boundary, gazetted railway scheme boundary, nor railway protection boundary of heavy rail systems. As such, he has no comment on the application from railway development viewpoint.

Environment

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

- (a) The applicant is seeking planning permission to continue the provision of an education kiosk with two movable marquees. As such, he has no objection to the application.
- (b) No environmental complaint pertaining to the Site has been received over the past 3 years.

Nature Conservation

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

It is noted that the proposed kiosk would simply consist of movable marquees set up on a temporary basis. The site area is small (72 m²), while no tree felling or land excavation/pond filling would be involved. The potential ecological impact due to the kiosk would be considered negligible that an EcoIA is deemed unnecessary. As such, he has no objection to the application.

Fire Safety

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

He has no specific comment on the application should there be no other structure erected on the Site beside removable marquees.

Building Matters

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

It is noted that the proposed temporary education kiosk will be carried out on GL. Hence, he is not in a position to provide comment under the Buildings Ordinance.

Drainage

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

- (a) He has no objection in principle to the development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, requirements shall be observed requiring

the applicant not to obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

Landscaping

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

- (a) In view that the Site is small and the marquees would be erected during the operation hours of the kiosk, no significant landscape impact is envisaged.
- (b) In view that there is inadequate space for meaningful landscape within the Site, landscape condition is therefore not recommended, should the application be approved by the Board.

Others

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

- (a) No Food and Environmental Hygiene Department (FEHD)'s facility will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from such activity/operation, the applicant should arrange disposal properly at her own expenses.

District Officer's Comments

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

There is no village representative in the vicinity of the Site, no consultation will be conducted by his office. He has no comment on the application and the local comments should be submitted to the Board directly, if any.

10.2 The following Government departments have no comment on the application:

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Commissioner of Police (C of P);

- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) Director of Electrical and Mechanical Services (DEMS); and
- (f) Director of Leisure and Cultural Services (DLCS).

11. Public Comment Received During Statutory Publication Period

On 22.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 12.4.2019, one comment from a Yuen Long District Council Member was received expressing no comment on the application (**Appendix III**).

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning approval for temporary education kiosk for the MA Project within the “OU(CDWEA1)” zone. The planning intention of “OU(CDWEA1)” zone is for conservation and enhancement of ecological value and functions of the existing fish ponds or wetland through consideration of application for development or redevelopment under the “private-public partnership approach”. According to the applicant, the temporary education kiosk is under the MA Project funded by the ECF and supported by AFCD. The MA Project aims to enhance the conservation value of commercial fish ponds in Deep Bay area outside the Ramsar Site. Moreover, the objective of the kiosk is to raise public awareness on the conservation value of fish pond which supports the conservation of the ecological value of the Deep Bay Area. As such, the education kiosk is considered in line with the planning intention of the “OU(CDWEA1)” zone.
- 12.2 The Site falls within the WCA of the TPB PG-No. 12C for which the planning intention is to conserve the ecological value of the fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The education kiosk is in line with the TPB PG-No. 12C in that it helps to support the conservation of the ecological value of the fish ponds, through public education. DAFC has no objection to the application as the education kiosk would simply consist of movable marquees set up on a temporary basis. The site area is small and no tree felling or land excavation/pond filling would be involved. The potential ecological impact due to the kiosk would be considered negligible and submission of an EcoIA will not be required.
- 12.3 The temporary education kiosk comprising of movable marquees which would be removed and stored away after use each day, is considered not incompatible with the surrounding natural environment, which comprises predominantly fish ponds (**Plan A-2**), and will not have adverse landscape impacts on the existing landscape resources. CTP/UD&L of PlanD has no objection to the application from landscape planning perspective. DEP has no objection to the application to

continue the provision of an education kiosk at the Site. Other concerned departments including CE/MN of DSD, C for T, D of FS and C of P have no objection to or no adverse comments on the application. Adverse landscape, environmental, drainage, traffic and fire safety impacts are not envisaged.

- 12.4 The current application is for renewal of the permission under application No. A/YL-NSW/257 for the same use at the same site for a further period of 22 months. The application is in line with the TPB PG-No. 34C in that since the last approval, there has been no major change in planning circumstance and the 22-month approval period sought is the same as in the previous application.
- 12.5 The Site is the subject of 3 approved previous applications (Nos. A/YL-NSW/232, 237 and 257) for the same use (the former 2 cover larger areas) submitted by the same applicant, all of them were approved by the Committee (respectively for 6 months, 24 months and 22 months). Approval of the subject application is in line with the previous decisions of the Committee.
- 12.6 There is one comment received on the application during the statutory publication period expressing no comment on the application.

13. Planning Department's Views

- 13.1 Based on the assessments in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department considers that the temporary education kiosk could be tolerated for a period of 22 months.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 22 months, and be renewed from 15.5.2019 until 14.3.2021. The following condition of approval and advisory clauses are also suggested for Members' reference:

Approval Condition:

Upon the expiry of the planning permission, the reinstatement of the Site to the satisfaction of the Director of Planning or of the Town Planning Board.

[The approval condition is the same as that imposed under the approved previous application No. A/YL-NSW/257.]

Advisory Clauses

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

- 13.3 There is no strong reason to recommend rejection of the application.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant renewal of the planning permission.
- 14.2 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, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

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| Appendix I | Application Form received on 15.3.2019 |
| Appendix II | Previous Applications |
| Appendix III | Public Comment |
| Appendix IV | Recommended Advisory Clauses |
| Drawing A-1 | Location Plan |
| Drawing A-2 | Design/dimension and Reference Photo of the Marquees |
| Plan A-1a | Location Plan |
| Plan A-1b | Previous Application Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |