

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-NTM/391**

- Applicant** : Nice Trend Development Ltd.
- Site** : Lots 232 (Part), 233 (Part), 234 (Part), 235 (Part) and 236 RP (Part) in D.D. 104, and Adjoining Government Land (GL), Ngau Tam Mei, Yuen Long
- Site Area** : About 3,926 m<sup>2</sup> (including GL of about 823 m<sup>2</sup>)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12
- Zoning** : “Green Belt” (“GB”)
- Application** : Filling of Land and Filling of Pond for Permitted Agricultural Use

**1. The Proposal**

- 1.1 The applicant seeks planning permission for filling of land and filling of pond at the application site (the Site) for permitted agricultural use (fish farming). According to the Notes of the OZP for the “GB” zone, ‘Agriculture Use’ is a Column 1 use which is always permitted. However, any filling of land or pond, including that to effect a change of use to any of those specified in Columns 1 and 2 or uses or developments always permitted under the covering Notes, requires planning permission from the Town Planning Board (the Board). The Site has been filled without obtaining planning permission and currently used for fish farming. The Site is not the subject of any previous application.
- 1.2 There were two ponds at the Site (see aerial photo of 2015 in **Plan-3b**). According to the applicant, a land area of 1,864m<sup>2</sup> and pond area of 2,062m<sup>2</sup> have been filled with a layer of concrete of 0.1m deep to facilitate fish farming operation. The northern pond was partly filled with concrete and remains as a fish pond, while the southern pond had been completely filled with concrete on which plastic pools are placed for keeping different kinds of fish. The land filling is mainly for providing land for internal access and ancillary structures, including two meter rooms (14.6m<sup>2</sup> each), an equipment room (70.76m<sup>2</sup>), a toilet (21m<sup>2</sup>), and four semi-covered areas covering a total area of about

1,090m<sup>2</sup> as rain and sun shelters for agricultural use. The site layout and location of the land and pond filling area is shown on **Drawing A-1**.

- 1.3 The Site is accessible to Ngau Tam Mei Road via a footpath (**Plans A-1 to A-2**). The access to the Site is at the northwestern corner of the Site. The fish farming materials are transported to the Site by trolley through the footpath connecting with Ngau Tam Mei Road.
- 1.4 In support of the application, the applicant has submitted the following documents:
  - (a) Application Form received on 3.7.2019 (**Appendix I**)
  - (b) Further information (FI) received on 16.7.2019 (**Appendix Ia**) enclosing a revised layout plan  
*(exempted from publication and recounting requirements)*
  - (c) FI received on 23.8.2019 providing response to comments of Agriculture, Fisheries and Conservation Department (AFCD) and Lands Department (LandsD), and enclosing an access plan, revised layout plan with details on the land/pond filling areas and structures within the Site  
*(exempted from publication and recounting requirements)*
  - (d) FI received on 4.10.2019 providing background clarification and response to comments of AFCD and LandsD  
*(exempted from publication and recounting requirements)*
- 1.5 On 16.8.2019, the Rural and New Town Planning Committee (the Committee) decided to defer decision on the application for a period of 2 months as requested by the applicant pending submission of FIs to address departmental comments. On 23.8.2019 and 4.10.2019, the applicant submitted FIs, and the application is scheduled for consideration by the Committee at this meeting.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the application form and the FI at **Appendices Ia to Ic**. They can be summarized as follows:

- (a) The Site has been acquired by the applicant in March 2016, and the ponds within the Site were then abandoned. The applicant intended to enhance the Site through reconfiguring the ponds for modern fish farming and paving the land

for internal access and daily operation use by filling it with a layer of concrete (0.1m depth).

- (b) The ponds, after enhancement, still hold the same water storage capacity. This modern fish farming method can provide a better water quality control and increase fish produce. The applicant also gains support from the New Territories Fish Culture Association that the modern fish farming method adopted is sustainable and beneficial to the fish industries. The neighbouring residents have no objection to the fish farming activity at the Site.
- (c) The Site is only used for fish farming activity for wholesale purpose. It does not involve any other commercial activities.
- (d) It is hoped that the GL portion of the Site could be granted to the applicant under STT to allow the continued operation of the fish farm. Nevertheless, if not permitted by Government, the applicant is prepared to exclude the portion of GL (except the pond area) from the Site, i.e. the area for internal access, so as to avoid illegal occupation of GL. He will also fill water into the concreted pond (i.e. the southern pond) to replace the plastic pools for fish farming so that the pond area and its function could be maintained.

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

The applicant is one of the current land owners. In respect of the other land owner(s), the applicant 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 obtaining consent from the other current land owners. Detailed information would be deposited at the meeting for Members’ inspection. As regard the GL, the “owner’s consent/notification” requirements as set out in the TPB PG-No. 31A are not applicable.

### **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarised as below:

- (a) There is a general presumption against development (other than redevelopment) in “GB” zone.
- (b) An application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.

- (c) The design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.
- (d) The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area.
- (e) The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

## 5. **Background**

The Site is subject to planning enforcement action against unauthorized development involving filling of land. Reinstatement Notice was issued on 10.6.2019 requiring reinstatement of the Site, i.e. to remove the fill materials (including hard paving) and to grass the area. If the notice is not complied with, prosecution action may be taken.

## 6. **Previous Application**

The Site is not the subject of any previous application.

## 7. **Similar Application**

There is no similar application within the same “GB” zone.

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

8.1 The Site is:

- (a) filled and paved, and currently used for fish farming without planning permission granted for filling of land/pond; and
- (b) accessible via a footpath leading to Ngau Tam Mei Road (**Plan A-1**);

8.2 The surrounding areas have the following characteristics:

- (a) to its east are unused, agricultural land, fish farm, and ponds;
- (b) to its south are ponds, residential structures, unused land, and further south are fish farm and agricultural land;

- (c) to its west are vacant land, chicken farm, unused land and residential structures;
- (d) to its north are temporary structures intermixing with some residential dwellings, a temple, and unused land.

## 9. **Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

## 10. **Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views are summarized as follows:

### **Land Administration**

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

- (a) The Site comprises Old Schedule Agricultural Lots 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) No permission is given for occupation of GL of about 823 m<sup>2</sup> in area (subject to verification) included in the Site. The act of occupation of GL without Government’s prior approval is not allowed.
- (c) According to the aerial photo record, new occupation and erection of structures were found on both GL and private land after 28 March 2017. It is noted that the applicant proposed to partially exclude the GL as indicated in the FI (**Appendix Ic**). However, LandsD will not consider the regularization application of unlawful occupation of unleased land even though approval of the Board is given.
- (d) The Site is accessible from Ngau Tam Mei Road through both GL and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.
- (e) The does not fall within Shek Kong Airfield Height Restriction Area.

- (f) Should planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. The applicant has to exclude the GL from the Site. 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. Applications 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):

Provided that there would not be any vehicular access to the Site, he has no adverse 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) The access arrangement to the Site should be commented by TD.
- (b) HyD is not/shall not be responsible for the maintenance of the proposed access to the Site. Presumably, the relevant department will provide their comments to the applicant, if any.
- (c) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road drains.

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

As the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems, he has no comment on the application from railway development point of view.

### **Environment**

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

- (a) According to the applicant, the filling work is intended to restore two abandoned ponds for permitted agricultural use (fish pond culture) in “GB” zone on the approved Ngau Tam Mei OZP. He has no adverse comment on the application. It is noted from the application that no imported waste material would be involved in the pond filling.
- (b) No environmental complaint pertaining to the Site has been received over the past 3 years.

### **Nature Conservation and Fish Culture**

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

- (a) Has reservation on the application.
- (b) The Site is zoned “GB” on the Ngau Tam Mei OZP. According to the applicant, land filling was conducted at the periphery of the two ponds for provision of internal access, and filling of pond was conducted to reinforce the entire pond (including the bunds and bottom). Their site inspection in April 2019 revealed that one pond (the southern one) had been completely filled with concrete and turned into a fish farm in which temporary containers/plastic pools had been placed for keeping different kinds of food fish. The northern pond was reinforced with concrete. They believe that the concrete reinforcement has caused reduction in area and depth of the pond. The reinforced pond was being used for food fish culture at the time of inspection.
- (c) From fisheries perspective, both earthen or concrete ponds can be used for fish culture. However, any pond filling or pond maintenance works causing a reduction of pond surface area is not recommended.
- (d) From nature conservation perspective, compared with a concreted pond, an earthen pond provides a more complete ecosystem for the pond habitat, for instance by allowing different kinds of aquatic organisms to live therein. Earthen pond bund also serves as a habitat for water birds to rest and forage. Pond filling is not supported from nature conservation perspective as it results in wetland loss. As such, she has reservation on the application from nature conservation point of view.
- (e) The applicant should consult and apply to the relevant departments for approval before carrying out any filling work at the Site.

## **Fire Safety**

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

- (a) He has no objection in principle to the application subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to D of FS for approval. The applicant should also be advised on the following points:
  - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
  - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

## **Landscaping**

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

- (a) The Site, located to the east of Ngau Tam Mei and west of Ngau Tam Mei Water Treatment Works, falls within an area zoned “GB” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12. The Site is not covered by any previous planning application.
- (b) With reference to the aerial photo of 2018, the surrounding area of the Site is comprised of mainly ponds with scattered temporary structures and clustered tree groups. Similar land use can be found in close proximity of the Site. The proposed use is considered not incompatible with the existing landscape setting in proximity.
- (c) Based on their site visit conducted on 19.7.2019, the Site had been fenced off and the proposed development was in place. No existing vegetation was observed within the Site. As further adverse landscape impact arising from the proposed use is not anticipated, he has no objection to the application from landscape planning perspective.
- (d) In view that there is no prominent public frontage around the Site, should the application be approved by the Board,



landscape condition in the planning permission is not recommended as its effect on enhancing the quality of public realm is not apparent.

### **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 proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, conditions should be stipulated in the approval letter requiring the applicant (i) to submit a drainage proposal to advise if there is any change of the runoff pattern as a result of the development and demonstrate how the existing flow paths as well as the run-off falling onto and passing through the Site could be intercepted and disposed of via proper discharge points, and (ii) to implement the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

### **Building Matters**

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

- (a) There is no record of approval by the Building Authority (BA) for the existing structures at the Site and his department is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The following issues should be observed by the applicant:
  - (i) the excavation works should be carried out under the supervision of a competent person;
  - (ii) according to Building (Minor Works) Regulation, excavation with a depth between 0.3m to 3m falls within the items of Class I or Class II minor works and subject to the Minor Work Control System. The excavation works should be supervised by competent persons, who are Professional and/or Prescribed Registered Contractor. The applicant may visit their website (<http://www.bd.gov.hk/english/index.html>) for details;
  - (iii) adequate precautionary measures and suitable working procedures should be adopted in carrying out the above

works to safeguard the stability of any building, structure, land, street or services. Any precautionary measures, which involve new building works, are subject to paragraph (vii) below;

- (iv) when an natural, formed or man-made land has due to any cause been rendered so dangerous or liable to become so dangerous that it will collapse, or be likely to collapse, and thereby will cause, or will be likely to cause, a risk of injury to any person or damage to any property, enforcement action may be taken by the BD;
- (v) if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application;
- (vi) for UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing works or UBW on the Site under the BO;
- (vii) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (viii) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively; and
- (ix) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

### **Others**

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

For any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

### **District Officer's Comments**

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

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

## **11. Public Comments Received During Statutory Publication Period**

The application was published for public inspection on 12.7.2019. During the first three weeks of the statutory public inspection period which ended on 2.8.2019, 5 public comments were received from World Wide Fund for Nature Hong Kong, Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong, the Hong Kong Bird Watching Society and a member of the public. They all objected to the application or raised concerns that the proposed use was not in line with the planning intention of "GB" zone, approving the application would legitimize the unauthorized developments, and set an undesirable precedent (**Appendix II**).

## **12. Planning Considerations and Assessments**

12.1 The application is for filling of land and filling of pond for permitted agricultural use at the Site. The land/pond filling has been carried out at the Site without planning permission for fish farming use. The Site falls within an area zoned "GB" which is intended primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. According to TPB PG-No. 10, development in the "GB" zone should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape, adversely affect drainage or aggravate flooding and slope stability in the area. Whilst fish farming is always permitted within the "GB" zone, filling of land and filling of pond is subject to planning permission.

- 12.2 The proposal involves filling a land area of 1,864 m<sup>2</sup> and pond area of 2,062 m<sup>2</sup> with a layer of concrete of 0.1m deep to facilitate fish farming operation. In essence, the filling of land and pond has covered the whole Site. The Site originally comprised two ponds with more greenery. The southern pond had been completely filled with concrete and turned into a fish farm in which temporary containers/plastic pools had been placed for keeping different kinds of food fish. The northern pond was reinforced with concrete. As shown in the aerial photos taken in 2015 and 2018, the site condition has been substantially changed after the filling activities including clearance of natural vegetation and reduction in pond area. Noting that similar fish farming use is carried out at adjacent natural ponds, it is considered that the applicant has not provided strong justifications to support that the land/pond filling is necessary for fish farming use.
- 12.3 DAFC has reservation on the application from nature conservation point of view. As pointed out by DAFC, pond filling is not supported from nature conservation perspective as it results in wetland loss, and compared with a concreted pond, an earthen pond provides a more complete ecosystem for the pond habitat and earthen pond bund also serves as a habitat for water birds to rest and forage. The concrete reinforcement had resulted in reduction in pond area and depth. While noting that the ponds are used for fish culture purpose, any pond filling or pond maintenance works causing a reduction of pond surface area is not recommended from fisheries perspective, and that the applicant should consult and apply to the relevant departments for approval before carrying out any filling work at the Site. As such, it is considered that the land and pond filling works at the Site is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10.
- 12.4 There is no similar application in the subject “GB” zone on the OZP for land/pond filling for agricultural use, the approval of the application would set an undesirable precedent and the cumulative effect would result in general degradation of the environment of the area.
- 12.5 There are 5 public comments received during the statutory publication period raising objection to the brownfield and unauthorized use at the Site, incompatibility of the proposed use with planning intention of the zone and setting of undesirable precedence (**Appendix II**). In this regards, the planning assessments and departmental comments above are of relevance.

### 13. **Planning Department’s Views**

- 13.1 Based on the assessment made in paragraph 12 and having taking into account the public comments in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the application is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10 for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance in that the applied filling of land and filling of pond, which have been completed, involve

clearance of natural vegetation and reduction of pond area, thereby adversely affecting the natural landscape; and

- (b) the approval of the application will set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in general degradation of the environment of the area.

13.2 Alternatively, should the Committee decide to approve the application, no time clause for commencement of development is proposed as the land filling and pond filling works under application are already in existence. The following conditions of approval and advisory clauses are also suggested for Members’ reference

Approval conditions

- (a) the submission and implementation of the drainage proposal to the satisfaction of the Director of Drainage Services or of the Board;
- (b) the submission and implementation of fire service installations proposal to the satisfaction of the Director of Fire Services or of the Board; and
- (c) if any of the above planning conditions (a) or (b) is not complied with, 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 III**.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission.

**15. Attachments**

- Appendix I** Application Form received on 3.7.2019
- Appendix Ia** FI received on 16.7.2019

<b>Appendix Ib</b>	FI received on 23.8.2019
<b>Appendix Ic</b>	FI received on 4.10.2019
<b>Appendix II</b>	Public comments received during the statutory publication periods
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3a</b>	Aerial Photo taken in 2018
<b>Plan A-3b</b>	Aerial Photo taken in 2015
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
OCTOBER 2019**