

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/78

- Applicant** : Mr. WONG Yee Chuen and Ms. WAN Siu Wah represented by New Creation Consultant Engineering Company Limited
- Site** : Lot 6 S.B (Part) in D.D. 125, Lots 117 and 118 (Part) in D.D. 128, and Adjoining Government Land, Kai Pak Ling Road, Fung Kong Tsuen, Yuen Long
- Site Area** : 2,111 m² (about) (Including Government Land of about 666 m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/1
- Zonings** : “Green Belt” (“GB”)
- Application** : Proposed Excavation of Land and Filling of Land for Permitted Agricultural Use (Fish Farming)

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed excavation of land and filling of land for permitted agricultural use (fish farming) at the application site (the Site), which falls within “GB” zone on the draft Hung Shui Kiu and Ha Tsuen (HSK&HT) Outline Zoning Plan (OZP) No. S/HSK/1 (**Plans A-1 and A-2**). According to the Notes of the OZP, ‘Agricultural Use’ is always permitted within “GB” zone. However, as stipulated in the Remarks of the Notes for “GB” zone, any filling of land/pond or excavation of land, including that to effect a change of use to any of those specified in Columns 1 and 2 or the uses or developments always permitted under the Covering Notes (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works), requires planning permission from the Town Planning Board (the Board). The Site is currently vacant.
- 1.2 The Site is accessible from Kai Pak Ling Road via a local track and the proposed ingress/egress is at the south-eastern corner of the Site (**Plan A-2 and Drawing A-1**). As shown on the proposed layout plan at **Drawing A-2**, there will be 4 single-storey structures on the Site with a total floor area of 300m², including 2 structures for fish tanks (4.5m high with a floor area of 90m² each) and 2 structures for agricultural storerooms (4.5m high with a floor area of 60m² each). No parking

spaces are provided on the Site. The application also involves proposed excavation of land (with an area of about 2,111m² and a depth of 0.3m to 0.9m) and proposed filling of land (with an area of about 2,111m² with a height of about 0.9m) for erecting the structures mentioned above. The operation hours of the proposed development is 7:00 a.m. to 7:00 p.m. daily, including Sundays and public holidays. The Site would be in operation and connected with the ancillary site under planning application No. A/HSK/27 for proposed temporary fish farming (accredited fish farm) and orchard for a period of 3 years submitted by the same applicant. A proposed landscape plan and a proposed drainage plan are shown at **Drawings A-3 and A-4.**

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

- (a) Application form received on 23.5.2018 with site plan, **(Appendix I)** proposed layout plan, proposed landscape plan and proposed drainage plan
- (b) Letter from the applicant dated 14.6.2018 in response to **(Appendix Ia)** Transport Department's comments
- (c) Letter from the applicant dated 30.6.2018 for clarifications **(Appendix Ib)** on the proposed drainage arrangement and the reason of land filling
- (d) Letter from the applicant dated 3.7.2018 and 4.7.2018 for **(Appendix Ic)** clarifications on the operation and transport arrangement of the Site

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form and Further Information at **Appendices I** and **Appendices Ib**. They can be summarized as follows:

- (a) The applicant has granted approval from the Lands Department for erection of agricultural structures on 20.10.2017. However, the land formation work for excavation and filling of land requires planning permission from the Board.
- (b) As the fish tanks proposed are about 25 tonnes each, excavation and filling of land are intended for levelling the foundation to install the fish tanks.
- (c) The drainage channels will be connected with the adjacent site with valid planning permission No. A/HSK/27 submitted by the same applicant for the same use.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines No. 10 (TPB PG-No. 10) for 'Application for

Development within “Green Belt” Zone under section 16 of the Town Planning Ordinance’ are relevant to the application (**Appendix II**). The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development (other than redevelopment) in a “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, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (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 on-going enforcement action (No. E/YL-HSK/20) against an unauthorized development (UD) involving excavation of land and filling of land. An enforcement Notice (EN) was issued to the concerned parties on 17.4.2018 requiring the discontinuation of the UD. If the requirement of the EN is not complied with upon expiry of the compliance period of the notice, the concerned parties will be subject to further enforcement action.

6. Previous Application

The northwestern part of the Site is the subject of a planning application (No. A/YL-HT/88) for temporary open storage of construction materials for 12 months submitted by a different applicant, which was rejected by the Board on 29.10.1999 upon review mainly on the grounds that the applicant failed to demonstrate that the development is not in line with the planning intention of the "GB" zone; that the development is not compatible with the areas; that there is no information in the submission to demonstrate that the development would not cause adverse visual and drainage impacts on the surrounding areas; and that the approval of the application would set an undesirable precedent for other similar applications. Details of this application are summarized at **Appendix III** and its location is shown on **Plan A-1**.

7. Similar Application

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

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

8.1 The Site is:

- (a) at the fringe of the “GB” zone;
- (b) currently vacant; and
- (c) accessible via a local track leading to Kai Pak Ling Road.

8.2 The surrounding areas have the following characteristics:

- (a) predominately occupied by open storage/storage yards, vehicle repair workshops, parking of vehicles, residential dwellings, graves, vacant lands and unused lands;
- (b) there are open storage/storage yards, vehicle repair workshops and parking of vehicles, which are suspected unauthorized developments (UDs);
- (c) a site to its immediate east and north for proposed temporary fish farming (accredited fish farm) and orchard under planning application No. A/HSK/27, which is works in progress (**Plan A-2**); and
- (d) a hill with burial urns and graves located to west of the Site

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. For “GB” zone, as filling of land/pond or excavation of land may cause adverse drainage impacts on the areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application received are summarized as follows:

Land Administration

10.1.1 Comments of 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) The Private Land (PL) of Lot Nos. 6 S.B in D.D. 125, Lot Nos. 117 and 118 both in D.D. 128 are covered by a Letter of Approval (LOA) No. MY/LM 16029 for the erection of agricultural structures.
- (c) No permission is given for occupation of Government Land (GL) (about 666m² subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (d) The Site is accessible to Kai Pak Ling Road through GL. Her office provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) The Site does not fall within any Airfield Height Restriction Area.
- (f) Should the application be approved, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularize any irregularities on site. Besides, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application(s) will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) 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 the LandsD.

Traffic

10.1.2 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment to the application from traffic engineering point of view.
- (b) Sufficient manoeuvring spaces shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under TD's purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Fung Kong Tsuen Road.

Environment

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

- (a) There is no substantiated environmental complaint pertaining to the Site received over the past 3 years.
- (b) In view of the small scale of proposed excavation and filling works for permitted agricultural use (fish farming), he has no comment on the application.

Landscape

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

- (a) His office has reservations on the application from the landscape planning perspective.
- (b) With reference to the site photographs from DPO dated 1.6.2018, it is observed the site is at the moment mainly vacant with some wild grasses and banana trees. A wooded knoll is observed generally along the west and south of the site. The site is situated in an area of rural landscape character disturbed by open storage yards. The proposed excavation and extensive hard paving (with noticeable signs of earthworks recently carried out) is not compatible with the planned “GB” zone and its landscape character.
- (c) With reference to the aerial photos Aerial Photo No.: E019815N (dated 4.4.2017) and Aerial Photo No.: E026301N (dated 26.5.2017), it is observed that the site was originally almost entirely vegetated with well-established trees and shrubs in April 2017 but appears to be missing/removed in late May 2017 prior to obtaining planning permission. Hence landscape impact (i.e. blanket loss of natural/semi-natural vegetation and noticeable ground disturbance of natural landform) has taken place.
- (d) Approval of the application would set an undesirable precedent likely to encourage the proliferation of other incompatible uses. The cumulative impact of which would undermine the integrity of the “GB” zone and the general degradation of its rural

landscape character.

- (e) Other detailed comments and advisory comments of CTP/UD&L, PlanD are summarized in **Appendix V**.
- (f) Should the application be approved, he would recommend the approval condition to submit and implement a landscape proposal to the satisfaction of the Director of Planning or the TPB in the permission.

Drainage

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

- (a) He has no objection in principle to the proposed application from drainage point of view. He provides comments on the submitted drainage proposal at **Appendix V**.
- (b) Should the application be approved, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of this Division.

Nature Conservation

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

- (a) The applicant did apply for Letter of Approval for Agricultural Structures (LoA) on the Site (and adjacent site under planning application no. A/HSK/27) to DLO/YL via her department. Based on the available land area, the LoA application was recommended. Although the layout and agricultural structures proposed in the LoA application are different from those under the subject planning application, her office has no comment on the subject application from fisheries viewpoint as long as the application involves fish culture activities and no filling of pond would be involved.
- (b) Based on the current condition of the Site which has already been land-filled, her office has no strong view on the subject application from nature conservation point of view.
- (c) Should the application be approved, the applicant should ensure that the vegetation on Government Land both within and outside the Site would not be affected. The applicant should also be advised to implement necessary measures to avoid causing any disturbance or pollution to the wooded area to the west of the Site.

Geotechnical

10.1.8 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) His office has no in-principle geotechnical objection to the application;
- (b) Please remind the applicant that there is an un-registered man-made slope adjoining Lot No. 118 in D.D. 128 (i.e. north-western boundary of the Site). The applicant should ensure that the proposed site formation works would not affect this slope, and should submit the proposed site formation works to the satisfaction of the Buildings Department, if found necessary.

District Officer's Comments

10.1.9 Comment of District Officer/Yuen Long, Home Affairs Department (DO/YL, HAD):

His office has not received any comment from the locals on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Project Manager (New Territories West), Civil Engineering and Development Department (PM(NTW), CEDD);
- (d) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (e) Director of Fire Services (D of FS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD)

11. Public Comments Received During Statutory Publication Period

On 1.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.6.2018, 4 public comments were received, in which an individual of the public and the Hong Kong Bird Watching Society object the application (**Appendix IVa-b**), while the Kadoorie Farm & Botanic Garden Corporation and an individual of the public placed concerns on the application (**Appendix IVc-d**). Their concerns and reasons can be summarized as follows:

- (a) approval of the application would set an undesirable precedent;
- (b) 'Destroy first, build later' should not be encouraged; and
- (c) the proposed development is not in line with the planning intention of the "GB" zone.

12. Planning Considerations and Assessments

- 12.1 The Site falls within the “GB” zone which is intended to define 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. However, the proposed fish farming is regarded as an agricultural use, which is always permitted within “GB” zone and the proposed excavation and filling of land is required for the implementation of the permitted use. In this regard, DAFC has no comment on the excavation and filling of land as long as the application involves fish culture activities and no filling of pond would be involved. The proposed excavation and filling of land to effect an agricultural use, which is always permitted, is considered not incompatible with the planning intention of the “GB” zone.
- 12.2 The Site is located in an area which is predominantly occupied by open storage yards, warehouse yard and vehicle repair workshop, agriculture use, unused lands, fallow agricultural land and vacant land. The proposed agriculture use (fish farming) and the associate excavation and filling of land to effect an always permitted use is not incompatible with the surrounding land uses, in which the planning application No. A/HSK/27 for the same applied use approved by the Committee on 8.12.2017 is to its immediate east.
- 12.3 For “GB” zone, as filling of land or excavation of land may cause adverse drainage impacts on the areas and adverse impacts on the natural environment, permission from the Board is required for such activities. However, CE/MN, DSD and DAFC have no adverse comments to the application from drainage and nature conservation point of view. Also, other concerned government departments, including DEP, have no objection to or no adverse comments on the application. Thus, the proposed excavation and filling of land would unlikely have significant adverse traffic, environmental, ecological, drainage and sewerage impacts on the surrounding areas. Relevant approval conditions have been recommended in paragraph 13.2 to minimize the concerns on the possible environmental nuisances or the technical requirements of the other concerned Government departments. Any non-compliance with these approval conditions would result in revocation of the planning permission and UD on Site would subject to enforcement action by the Planning Authority.
- 12.4 While CTP/UD&L of PlanD has reservation on the application as there is inadequate information to ascertain the extent of landscape impact taken place and the loss of vegetation, CTP/UD&L of PlanD’s concerns can be addressed by incorporating an approval condition on the submission and implementation of landscape proposals should the current application be approved. The proposed excavation and filling of land are generally in line with the TPB-PG No. 10 in that it is to facilitate the fish farming uses, which is considered as a Column 1 use (‘Agricultural Use’) of the “GB” zone, that it is compatible with the surrounding areas, and that it would not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply.
- 12.5 There are 4 public comments received during the statutory publication period raising objections and concerns to the application for the reason of not being in line with the planning intention of “GB” zone and undesirable precedent grounds. For the concerns, the planning considerations and assessments in the above paragraphs

12.1 to 12.4 are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department has no objection to the application.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until **20.7.2022**, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no part of the application site should be excavated with a depth exceeding 0.9m and no part of the application site should be filled to a height exceeding 0.9m, as proposed by the applicant;
- (b) no contaminated soil and waste as defined under the Waste Disposal Ordinance Cap. 354, including construction and demolition materials, should be used for filling of land within the application site;
- (c) the submission of a revised drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) in relation to (c) above, the implementation of the drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times;
- (f) the submission of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (g) in relation to (f) above, the implementation of the landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (h) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) is not complied with during the planning approval period, 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 VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

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

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 approve the application, Members are invited to consider the approval conditions and advisory clauses, if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 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

Appendix I	Application form received on 23.5.2018 with site plan, proposed layout plan, proposed landscape plan and proposed drainage plan
Appendix Ia	Letter from the applicant dated 14.6.2018 in response to Transport Department’s comments
Appendix Ib	Letter from the applicant dated 30.6.2018 for clarifications on the proposed drainage arrangement and the reason of land filling
Appendix Ic	Letter from the applicant dated 3.7.2018 and 4.7.2018 for clarifications on the operation and transport arrangement of the Site
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Application for Development within the Green Belt zone (TPB PG-No. 10)
Appendix III	Previous s.16 Application covering the Application Site
Appendices IVa-d	Public Comments received during the Statutory Publication Period
Appendix V	Detailed Comments from concerned Government Departments
Appendix VI	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Tree Preservation and Landscape Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2018**