

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

**APPLICATION NO. A/YL-PS/596 and 597**

<b><u>Applicants</u></b>	: Leung Kin Sun Leung Tsz Kin	(Application No. A/YL-PS/596) (Application No. A/YL-PS/597)
	All represented by Despace (International) Limited	
<b><u>Sites</u></b>	: Lot 178 S.A ss.4 S.C Lot 178 S.A ss.4 RP	(Application No. A/YL-PS/596) (Application No. A/YL-PS/597)
	All in D.D. 123, Ping Shan, Yuen Long, New Territories	
<b><u>Site Areas</u></b>	: About 111.4 m <sup>2</sup> About 122.2 m <sup>2</sup>	(Application No. A/YL-PS/596) (Application No. A/YL-PS/597)
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)	
<b><u>Plan</u></b>	: Approved Ping Shan Outline Zoning Plan (OZP) No. S/YL-PS/18	
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [Restricted to a maximum building height of 3 storeys (8.23 m)]	
<b><u>Applications</u></b>	: Proposed Filling of Pond for Permitted Houses (New Territories Exempted Houses – Small Houses)	

**1. The Proposals**

- 1.1 The applicants seek planning permission for proposed filling of pond for one permitted New Territories Exempted House (NTEH) (Small House) (SH) at each of the application sites (the Sites) (**Plan A-1**). The Sites fall within an area zoned “V” on the OZP. According to the Notes for the “V” zone on the OZP, ‘House (NTEH only)’ is a Column 1 use which is always permitted. 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 uses/developments always permitted under the covering Notes, requires planning permission from the Town Planning Board (the Board).
- 1.2 The proposed maximum depths of filling are 2.2m (Application No. A/YL-PS/596) and 0.64m (Application No. A/YL-PS/597), which will raise the site levels from 2mPD (Application No. A/YL-PS/596) and 3.56mPD (Application No. A/YL-PS/597) both to 4.2 mPD (**Drawings 2a and 2b**). The Sites are currently accessible via a footpath leading to Fuk Shun Street and

vehicular access will not be provided to the proposed NTEHs (**Plan A-2**). The locations of the Sites are shown on **Plans A-1** and **A-2**. The Sites are currently a pond covered in weeds (**Plans A-3, A-4a and 4b**). The layout plans of the NTEHs and section plans of the pond filling extent submitted by the applicants are at **Drawings A-1a to A-2b**.

- 1.3 In support of the applications, the applicants have submitted the following documents:
- (a) Application forms and attachments received on 20.9.2019 (**Appendices Ia and Ib**)
  - (b) Supplementary Planning Statements (**Appendices Ic and Id**)
  - (c) Further Informations (FIs) received on 25.10.2019 clarifying no vehicular access between Fuk Shun Street and the Sites (*accepted and exempted from publication and recounting requirements*) (**Appendices Ie and If**)
  - (d) FIs received on 29.10.2019 clarifying no vehicular access to be provided during construction period (*accepted and exempted from publication and recounting requirements*) (**Appendices Ig and Ih**)

## 2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed in section 4 of **Appendices Ic and Id**. They can be summarized as follows:

- (a) the proposed pond filling is to avoid flooding and consolidate the ground condition to facilitate the building of NTEHs;
- (b) there are six similar applications for proposed pond/land filling for the construction of NTEHs in proximity to the Sites approved by the Board;
- (c) the Sites are surrounded by similar permitted house developments. The proposed NTEH developments at the Sites are visually compatible with the surroundings;
- (d) the extent of pond filling is compatible and insignificant. The proposed final site formation levels are both at 4.2mPD which are similar to the site formation levels of about 4-4.3mPD of the adjacent developments;
- (e) there is no vehicular access to the Sites from Fuk Shun Street; and
- (f) the applications will not generate significant environmental and noise disturbance to the surrounding environment and residents.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

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

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C) are relevant. The Sites fall within the Wetland Buffer Area (WBA) of TPB PG-No. 12C. The relevant assessment criteria are summarised as follows:

- (a) The intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds.
- (b) Within the WBA, for development or redevelopment which requires planning permission from the Board, an ecological impact assessment (EcoIA) would also need to be submitted. Some local and minor uses (including NTEHs) are however exempted from the requirement of EcoIA.

#### **5. Background**

The Sites are subject to an enforcement action against unauthorised development (UD) involving land filling and pond filling. Reinstatement Notice (RN) was served on 12.2.2019 and expired on 12.5.2019. Recent inspection on 28.8.2019 revealed that the RN was not complied with. Prosecution actions under the Town Planning Ordinance may be followed if the requirements specified in the RN were not complied with or without planning permission.

#### **6. Previous Application**

There is no previous application at the Sites.

#### **7. Similar Applications**

- 7.1 There are 6 similar applications within the same “V” zone on the OZP.
- 7.2 Applications No. A/YL-PS/464, 474, 476, 480 and 481 are for proposed filling of land for permitted NTEHs (SHs). The proposed height of filling ranges from 1.3m to 1.48m, which will raise the site level to 4.3 mPD to facilitate the construction of 7 SHs for Application No. A/YL-PS/464, 4 SHs each for Applications No. A/YL-PS/474, 476 and 480, and 6 SHs for Application No. A/YL-PS/481. They were approved with conditions by the Committee on 12.12.2014, 13.3.2015, 17.4.2015, 3.7.2015 and 17.7.2015 respectively. Application No. A/YL-PS/574 is for proposed filling of pond for 4 permitted NTEHs (SHs). The proposed depth of filling is 1.3 m, which will raise the site level from 3.0 mPD to 4.3 mPD. It was approved with conditions by the Committee on 22.3.2019. The major considerations were in line with the planning intention of the “V” zone; not contravening TPB PG-No. 12C; no objection from relevant Government departments; and in line with the previous decisions of the Committee.
- 7.3 Details of the similar applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

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

8.1 The Sites are:

- (a) currently a pond covered in weeds; and
- (b) accessible via a footpath leading to a local access road (**Plan A-2**);

8.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) to the east is vacant land. To the further east is a site with permission for proposed land filling for NTEHs (SHs) (Application No. A/YL-PS/464);
- (b) to the south is vacant land;
- (c) to the west is vacant land. To the further west are 5 sites with permissions for proposed land/pond filling for NTEHs (SHs) (Applications No. A/YL-PS/474, 476, 480, 481 and 574); and
- (d) to the immediate north across the footpath is a pond.

## **9. Planning Intention**

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 SHs 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.

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

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

### **Land Administration**

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

- (a) The 2 lots are Old Schedule Agricultural Lots held under Block Government Lease. The subject SH applications on Lot Nos. 178 S.A ss.4 S.C and 178 S.A ss.4 RP in D.D. 123 are still under processing.
- (b) Should planning approval be given, the registered lot owner(s) should inform DLO/YL, LandsD. DLO/YL will consider the SH application(s) acting in the capacity of a landlord at its sole discretion in accordance with the NT Small House Policy. There is

no guarantee that such application(s) would be approved. Besides, in general, application for NTEH development other than under NT Small House Policy will not be entertained. Any applications, if approved, would be subject to such terms and conditions including, among others, the payment of premium and/or administrative fee as may be imposed by the LandsD.

### **Building Matters**

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

- (a) Noting that the building to be erected on the Sites will be NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121), DLO/YL should be in a better position to comment on the applications.
- (b) In case DLO/YL decides not to issue the certificates of exemption for the site formation works and / or drainage works associated for the NTEH development, such works will require prior approval and consent under the Buildings Ordinance. In this circumstance, an Authorized Person (AP) should be appointed as the coordinator for the proposed works. The applicants may approach DLO/YL or seek AP's advice for details.

### **Environment**

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

- (a) In view of the small scale of the works, he has no adverse comment on the proposed pond filling for the permitted NTEH development.
- (b) The applicant is advised to adopt appropriate water pollution preventive measures / practices set out in the following guidance notes to prevent polluting adjacent waterbodies during the proposed filling of pond:
  - Practice Note for Professional Person (ProPECC) PN 1/94 "Construction Site Drainage" :  
[http://www.epd.gov.hk/epd/sites/default/files/epd/english/resources\\_publications/files/pn94\\_1.pdf](http://www.epd.gov.hk/epd/sites/default/files/epd/english/resources_publications/files/pn94_1.pdf)
  - Recommended Pollution Control Clauses for Construction Contracts:  
[http://www.epd.gov.hk/epd/english/environmentinhk/eia\\_planning/guide\\_ref/rpc.html](http://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc.html)
- (c) Nevertheless, as the Sites fall within WBA, it would be prudent to seek AFCD's comments on the ecological aspects.

### **Conservation**

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

- (a) The Sites fall within the WBA and is in close proximity to the WCA intended to conserve the ecological value of the fish ponds forming part of the wetland ecosystem in the Deep Bay area (TPB PG-No. 12C refers).
- (b) His site inspection in October 2019 revealed that the Sites are currently a grassy marsh while the surrounding area comprises paved areas and wetland habitats likely to be developed from abandoned agricultural land. The proposed pond filling would inevitably result in loss of or decline in wetland area and function in the Deep Bay area. Approving the subject applications might cause undesirable precedent effect on encouraging other similar development within the WBA and further degrade the ecological value of the fishpond/wetland in Deep Bay area. In this regard, he does not support the applications from nature conservation point of view.
- (c) Notwithstanding the above, it is noted that the Sites are zoned “V” and under private ownership. The relevant authorities should consider striking a balance between wetland conservation and local demand for SH development in the area.

### **Traffic**

#### 10.1.5 Comments of the Commissioner for Transport (C for T):

- (a) The Sites are connected to the public road network via a section of a local access which is not managed by Transport Department (TD). The land status of the local access road should be clarified with the LandsD by the applicants. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) Understanding that vehicular access will not be provided to the Sites during construction and in long term, and considering that the traffic flow for the Sites would be negligible, he has no comment from traffic engineering point of view.
- (c) Should the applications be approved, the condition of no vehicle is allowed to enter the Sites at any time during the planning period should be incorporated.

#### 10.1.6 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 accesses to prevent surface water flowing from the Sites to nearby public roads/drains.

### **Drainage**

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

- (a) He has no objection in principle to the applications from a drainage point of view.
- (b) Should the Board consider that the applications are acceptable from the planning point of view, he would suggest a condition should be stipulated in the approval letter requiring the applicants to submit a drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his department.

**Water Supplies**

10.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no comment on the applications.
- (b) For provision of water supply to the development, the applicants may need to extend their inside services to the nearest government water mains for connection. The applicants shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the installation, operation and maintenance of any sub-main within the private lots to the WSD's standards.

**Fire Safety**

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

- (a) He has no specific comment on the applications.
- (b) The applicants are advised to follow "New Territories Exempted Houses – A Guide to Fire Safety Requirements" issued by the LandsD. Detailed fire safety requirements will be formulated upon receipt of formal application referred by LandsD.

**Landscape**

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

- (a) The Sites are located to the west of Tai Tseng Wai and lies in an area of "V" zone. The current applications seek planning permission for the proposed filling of pond for NTEH (SHs).
- (b) With reference to the site photos taken in Oct 2019, it is observed that the Sites are covered by wild grass and shrubs. In view of the approved application no. A/YL-PS/574 for the same use to the west of the Sites, significant change to the landscape character arising from the applications is not anticipated. Hence, he has no objection to the applications from the landscape planning perspective.

- (c) In view of the limited site areas, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

### **Geotechnical**

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

- (a) The GEO has no adverse geotechnical comment on the applications.
- (b) It is noted that the proposed filling of pond aims at construction of NTEHs. The applicants should be reminded to submit building/site formation works to the Buildings Department/LandsD for approval as required under the provisions of the Buildings Ordinance.

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

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

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

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Antiquities and Monuments Office (AMO);
- (e) Director of Leisure and Cultural Services (DLCS); and
- (f) Commissioner of Police (C of P).

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

11.1 On 27.9.2019, the applications were published for public inspection. During the first 3 weeks of the statutory public inspection period, which ended on 18.10.2019, a total of 2 public comments, one for each application, were received from the same individual (**Appendices III-1 to III-2**).

11.2 The individual objects to the proposed developments. The major grounds are that the developments are located outside the village cluster and in a marshy area prone to flooding. There is no shortage of land in the village cluster and the septic tank to be provided on the Sites would pollute the surrounding areas.

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

12.1 The applications are for proposed filling of pond for one permitted NTEH (Small House) at each of the Sites. The proposed filling of pond involves area of about

111.4 m<sup>2</sup> for Application No. A/YL-PS/596 and about 122.2 m<sup>2</sup> for Application No. A/YL-PS/597 for a total area of about 233.6 m<sup>2</sup>. The proposed maximum depth of fillings are 2.2m (Application No. A/YL-PS/596) and 0.64m (Application No. A/YL-PS/597), which will raise the site levels from 2mPD (Application No. A/YL-PS/596) and 3.56mPD (Application No. A/YL-PS/597) both to 4.2 mPD to facilitate the construction of two Small Houses, which are under processing by LandsD subject to conditions including obtaining planning permission if pond filling is required.

- 12.2 The Sites fall within “V” zone on the OZP where ‘House (NTEH)’ only is a Column 1 use which is always permitted. However, the Notes of the OZP also stipulates that filling of land/pond or excavation of land requires planning permission from the Board. The proposed pond fillings to facilitate Small House developments, which are always permitted within “V” zone, are considered in line with the planning intention of the “V” zone.
- 12.3 The requirement for planning permission for filling of pond within “V” zone is to address the possible drainage impact. The applicants state that the pond fillings are to avoid flooding and for consolidation of the Sites. CE/MN, DSD advises that he has no objection in principle to the applications and is of the view that drainage related approval conditions be imposed to address his requirements on the drainage aspect. Therefore, it is recommended that approval conditions on the submission and implementation of drainage proposal be imposed. The maintenance of drainage facilities would be addressed under the Small House grants.
- 12.4 The Sites also fall within WBA under the TPB PG-No. 12C. The intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds. According to the TPB PG-No. 12C, SH development is exempted from EcoIA submission requirement. Although DAFC does not support the application from nature conservation point of view in that the proposed pond filling would inevitably result in loss of or decline in wetland area and function in Deep Bay Area, he notes that the Sites are zoned “V” and under private ownership of villagers and the proposed SH applications are under processing by DLO/YL. In view of the above and having regard to the planning intention for the Sites, the applications are considered not in contravention with the TPB PG-No. 12C.
- 12.5 Other relevant Government departments, including DEP, C for T, CHE/NTW, HyD, D of FS and CTP/UD&L, PlanD, have no objection to or no adverse comment on the applications. DEP comments that the design and operation of the septic tank and soakaway system should follow the requirements in ProPECC PN 5/93. Provisions should be made for connections to public foul sewers when such is available in the vicinity. CTP/UD&L, PlanD considers that significant change to the landscape character arising from the applications is not anticipated, and has no objection to the applications from landscape planning perspective.
- 12.6 There are 6 similar approved applications (No. A/YL-PS/464, 474, 476, 480, 481 and 574) for land or pond filling for NTEHs in its vicinity within the same “V” zone. The pond or land filling formation levels of these applications are about 4.3mPD which are similar to the proposed site formation level of about 4.2mPD

under the subject applications. Approval of the applications is in line with the previous decisions of the Committee.

- 12.7 There are 2 public comments received during the statutory publication period. Their grounds are summarized in paragraph 11 above. The planning considerations and assessments as stated in paragraphs 12.1 to 12.6 above 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 above, the Planning Department has no objection to the applications.
- 13.2 Should the Committee decide to approve the applications, it is suggested that the permissions shall be valid until 15.11.2023, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

#### Approval conditions

- (a) no vehicle is allowed to enter the Site at any time during the planning approval period;
- (b) the submission of drainage proposal including drainage mitigation measures before the issue of any certificate of exemption by the Lands Department to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the implementation of drainage proposal including drainage mitigation measures identified therein upon completion of the pond filling works to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (d) if any of the above planning conditions (a), (b) or (c) 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 at **Appendix IV**.

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

the applicants fail to demonstrate that the proposed developments would not cause adverse ecological impact on the surrounding areas.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant permissions.
- 14.2 Should the Committee decide to approve the applications, Members are invited to consider the approval condition(s) and advisory clause(s), 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 applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

**15. Attachments**

<b>Appendices Ia and Ib</b>	Application Form with attachments received on 20.9.2019
<b>Appendices Ic and Id</b>	Supplementary Planning Statements
<b>Appendices Ie and If</b>	FI received on 25.10.2019 clarifying no vehicular access
<b>Appendices Ig and Ih</b>	FI received on 29.10.2019 clarifying no vehicular access during construction period
<b>Appendix II</b>	Similar Applications
<b>Appendices III-1 to III-2</b>	Public Comments
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1a</b>	Layout Plan of Lot 178 S.A ss.4 S.C in D.D. 123
<b>Drawing A-1b</b>	Layout Plan of 178 S.A ss.4 RP in D.D. 123
<b>Drawing A-2a to 2b</b>	Section Plans of Pond Filling
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**