

REVIEW OF APPLICATION NO. A/YL-ST/564
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Filling of Pond for Permitted Agricultural Use in “Village Type Development” Zone at
Lot 221 RP (Part) in D.D. 105, San Tin, Yuen Long**

1. Background

- 1.1 On 27.11.2019, the applicant, Mr. Pang Teck Wai, sought planning permission for filling of pond for permitted agricultural use (**Plan R-1**) under s.16 of the Town Planning Ordinance (the Ordinance). The proposal involves filling a pond area of about 66 m² and not exceeding 1.5 m in depth up to the existing ground level of 4.5 mPD to facilitate permitted agricultural use. The Site falls within an area zoned “Village Type Development” (“V”) on the approved San Tin OZP No. S/YL-ST/8.
- 1.2 On 17.1.2020, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the application is not in line with the Town Planning Board Guidelines for Application for Development within Deep Bay Area in that the applied filling of pond, which has been completed, has caused net loss in wetland area; and
 - (b) the approval of the application would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-ST/564 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 17.1.2020 (Annex B)
 - (c) Secretary of the Board’s letter dated 7.2.2020 (Annex C)
- 1.4 The Site is part of a larger area subject to planning enforcement action against unauthorized development (UD) involving filling of pond with Enforcement Notice issued on 13.8.2019. Reinstatement Notice was issued on 27.8.2019 requiring the removal of fill materials from the pond (**Plan R-2**). If the notice is not complied with, prosecution action may be taken.

2. Application for Review

On 26.2.2020, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. The Section 16 Application

The Site and Its Surrounding Areas (**Plans R-1 to R-2**, aerial photo on **Plan R-3** and site photos on **Plans R-4**)

- 3.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by the RNTPC is described in paragraph 8 of **Annex A**. There has not been any major change in planning circumstances of the area since then.
- 3.2 The Site is:
- (a) previously part of an existing pond and currently covered by fill materials;
 - (b) accessible via San Tin Tsuen Road and a local track off Castle Peak Road – San Tin; and
 - (c) located within the Wetland Buffer Area (WBA) of Deep Bay Area.
- 3.3 The surrounding areas are predominantly ponds, Small Houses in Tsing Lung Tsuen, storage yards, unused land, vacant land, and vehicle parks. Some vehicle parks and storage yards are suspected UDs subject to enforcement action by the Planning Authority:
- (a) to its immediate north and east are ponds and vacant land. To its further east and northeast are Small Houses in Tsing Lung Tsuen (some under construction);
 - (b) to its immediate south and southeast are unused land and vacant land. To its further southeast are Small Houses in Tsing Lung Tsuen, vehicle parks and a proposed temporary public vehicle park for private car approved under Application No. A/YL-ST/557;
 - (c) to its southwest are vacant land and ponds;
 - (d) to its immediate west are storage yards with some being vacant. To its further west and northwest are cultivated agricultural land, vehicle parks, unused land, storage yard and residential dwellings; and
 - (e) the Wetland Conservation Area (WCA) is to its further west and northwest (**Plan R-1**).

Planning Intention

- 3.4 There has been no change in the planning intention of the “V” zone, i.e. it is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

Town Planning Board Guidelines

- 3.5 Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C) is relevant to the application. According to the TPB PG-No. 12C, the Site falls within the WBA.
- 3.6 In considering development proposals in the Deep Bay Area, the Board adopts the recommended principle of “no-net-loss in wetland” which provides for the conservation of continuous and adjoining fishponds. The “no-net-loss” can refer to both loss in “area” and “function”. No decline in wetland or ecological functions served by the existing fish ponds should occur. As the fish ponds form an integral part of the Deep Bay Area wetland ecosystem, alternative uses could be considered suitable only if it could be demonstrated that they would not result in the loss of ecological function of the original ponds and if they complement the ecological functions of the wetlands and fishponds in and/or around the Deep Bay Area. 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 WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
 - (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.

Previous and Similar Applications

- 3.7 There were neither previous applications covering the Site nor similar applications within the same “V” zone at the time of consideration of s.16 application by the RNTPC. This remains unchanged.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.
- 4.2 For the review application, the following Government departments have been further consulted and they maintain their previous comments which are recapitulated below:

Land Administration

- 4.2.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
- (a) The Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
 - (b) The Site is accessible from San Tin Tsuen Road through both Government land (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.
 - (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
 - (d) 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 irregularity on site, if any. Besides, 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.
 - (e) The Site falls outside the Village Environs of San Tin Heung (**Plan R-1**). There is no Small House application being processed at the Site.

Traffic

- 4.2.2 Comments of the Commissioner for Transport (C for T):

He has no comment from traffic engineering point of view. There would be no vehicular access proposed to the Site and the traffic flow for the Site would be negligible under the application.

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

He has no comment from highways maintenance point of view. It is noted that no vehicular access is proposed or to be granted under the application. If the application is approved, the applicant is reminded that there is and will be no vehicular access to and from the Site.

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

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

Environment

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

- (a) The filling of pond is for permitted agricultural use in the “V” zone on the OZP. It is noted that the area of filling is about 66 m². In view of the scale, he has no adverse comment on the application.
- (b) The applicant is reminded that it is his responsibility to comply with all relevant environmental legislations when carrying out the works. The applicant is also advised to follow the Recommended Pollution Control Clauses for Construction Contracts (http://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc.html) to minimize the environmental impacts during the construction stage.

Nature Conservation and Fish Culture

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

- (a) No information regarding the agricultural use is provided by the applicant to justify the pond filling. The subject pond falls within the WBA and is part of the continuous and contiguous fish ponds in the Deep Bay area. The pond filling would cause net loss in wetland area and is not in line with the TPB PG-No. 12C. Furthermore, from fisheries point of view, he does not support the pond filling.
- (b) He notes that the Site is involved in a case of UD where Reinstatement Notice has been issued.

Landscape

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

- (a) He has reservation on the application from the landscape planning perspective.
- (b) The Site, located to the northeast of San Tin Tsuen Road, falls within an area zoned “V” zone on the OZP and falls within WBA in accordance with TPB PG-No. 12C. The Site is not the subject of any previous application.
- (c) With reference to aerial photo taken in 2018, the Site is situated in an area of rural landscape character. The surrounding area of the Site is comprised of ponds, vacant land, temporary structures, village houses and scattered tree groups. It is considered that the development is not incompatible with the landscape setting in proximity.
- (d) According to his site visit conducted on 17.12.2019, there were some self-seeded vegetation at the edge of the existing pond. Based on the aerial photos and site photos, it is observed that the existing pond together with other ponds located to further north of the Site formed a tranquil rural landscape, which act as significant landscape resources and dominant landscape character among the areas. Although the area of filling is 66m², there is no information regarding the agricultural use. There is concern that approval of the application would set an undesirable precedent for other similar pond filling in the immediate neighbourhood and further decrease the pond area and degrade the landscape quality of WBA.

Building Matters

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

- (a) 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 Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the Building Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an

acceptance of any existing building works or UBW on the Site under the BO.

- (c) 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) Regulation respectively.
- (d) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Drainage

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

- (a) He has no objection in principle to the application from drainage operation and maintenance point of view.
- (b) The applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to his site. The drainage submission should include a drainage plan showing the details of the existing drains and the proposed drains together with full/detailed supporting design calculations. Approval of the drainage proposal must be sought prior to the implementation of drainage works on site.
- (c) After completion of the drainage works, the applicant shall provide DSD a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan.
- (d) His detailed comments are at **Annex F**.

District Officer's Comments

4.2.10 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.

4.3 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the application as stated in paragraph 10.2 of **Annex A**:

- (a) Director of Fire Services (D of FS);
- (b) Commissioner of Police (C of P);

- (c) Director of Food and Environmental Hygiene (DFEH);
- (d) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (e) Project Manager (West) (PM(W)), CEDD;
- (f) Director of Electrical and Mechanical Services (DEMS);
- (g) Director of Leisure and Cultural Services (DLCS); and
- (h) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

5. Public Comments Received During Statutory Publication Periods

- 5.1 On 6.3.2020, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, 2 public comments were received from Designing Hong Kong and Hong Kong Bird Watching Society (**Annex E**) objecting to the application on the grounds that the pond filling was not in line with the planning intention of “V” zone and TPB PG-No. 12C, and approval of the application would legitimize the UD and set undesirable precedent.
- 5.2 At the s.16 application stage, 5 objecting comments were received. Details of the comments are in paragraph 11 of **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The application is for a review of the RNTPC’s decision on 17.1.2020 to reject the application for filling of pond for permitted agricultural use at the Site which is zoned “V”. The rejection reasons were that the application was not in line with the TPB PG-No.12C and the completed pond filling had caused net loss in wetland, and the approval of the application would set an undesirable precedent. As the applicant has not submitted any written representation in support of the review application and there is no change in the planning circumstances of the Site and its surrounding areas, the previous planning considerations and assessments in paragraph 12 of **Annex A** are still valid and are appended below.
- 6.2 The Site falls within the “V” zone which is intended to designate both existing recognized villages and areas of land considered suitable for village expansion. While agricultural use is always permitted within the “V” zone, filling of pond to effect a change of use to any of those specified in Columns 1 and 2, requires permission from the Board. The applicant did not provide any information regarding the intended agricultural use to justify the pond filling.
- 6.3 According to TPB PG-No. 12C, the Site falls within the WBA which is intended 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. The “no-net-loss in wetland” principle is adopted by the Board for any change in use and alternative uses could be considered suitable only if it could be demonstrated that they would not result in the loss of ecological function of the original ponds and if they complement the ecological functions of the wetlands and fish ponds in and/or around the Deep

Bay Area. DAFC maintains his view that the Site located within WBA forms part of the continuous and contiguous fish ponds in the Deep Bay area, and the applied pond filling would cause net loss in wetland area and is considered not in line with the TPB PG-No. 12C. Furthermore, no information regarding the proposed permitted agricultural use has been provided by the applicant to justify the pond filling. From fisheries point of view, AFCD does not support the pond filling. CTP/UD&L, PlanD maintains his reservation on the application from a landscape planning perspective, and considers that the existing pond together with other ponds located to further north of the Site formed a tranquil rural landscape, which act as significant landscape resources and dominant landscape character among the areas. There is no information regarding the agricultural use, and there is concern that approval of the application would set an undesirable precedent for other similar pond filling in the immediate neighbourhood and further decrease the pond area and degrade the landscape quality of WBA.

- 6.4 There is no similar application for filling of pond within the same “V” zone on the OZP. Approval of the application would set an undesirable precedent and encourage other applications for similar developments in the area. The cumulative effect of approving the similar applications would result in general degradation of the environment of the area.
- 6.5 At s.17 stage, there are two objecting public comments received as detailed in paragraph 5. The planning assessments and departmental comments above are of relevance.

7. Planning Department’s Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comments mentioned in paragraph 5 and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC on 17.1.2020, the Planning Department maintains its previous view of not supporting the review application for the following reason:
- (a) the application is not in line with the Town Planning Board Guidelines for “Application for Development within Deep Bay Area” (TPB PG-No.12C) in that the applied filling of pond, which has been completed, has caused net loss in wetland area; and
 - (b) the approval of the application would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 7.2 Alternatively, should the Board decide to approve the application, no time clause for commencement of development is proposed as the pond has already been filled. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the submission and implementation of drainage proposal within **9** months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22.2.2021; and
- (b) if the above planning condition (a) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 8.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission.

9. Attachments

Annex A	RNTPC Paper No. A/YL-ST/564
Annex B	Extract of minutes of the RNTPC meeting held on 17.1.2020
Annex C	Secretary of the Town Planning Board's letter dated 7.2.2020
Annex D	Letter received on 26.2.2020 from the applicant applying for a review
Annex E	Public Comments on the Review Application
Annex F	Recommended Advisory Clauses
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo taken in 2018
Plan R-4	Site Photos