

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/766

<u>Applicant</u>	: Mr. WONG Kwok Tai represented by Toco Planning Consultants Limited
<u>Site</u>	: Lots 232B (Part), 234 (Part), 247 S.B (Part), 251 S.A & S.B (Part) and 252 (Part) in D.D. 29, Ting Kok, Tai Po, New Territories
<u>Site Area</u>	: About 4,605.3m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural and house purpose)
<u>Plan</u>	: Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zonings</u>	: “Coastal Protection Area” (“CPA”) (about 73% or 3,362m ²) and “Agriculture” (“AGR”) (about 27% or 1,243m ²)
<u>Application</u>	: Filling and Excavation of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission to regularize filling and excavation of land for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within an area partly zoned “CPA” (about 73% or 3,362m²) and partly zoned “AGR” (about 27% or 1,243m²) on the approved Ting Kok OZP No. S/NE-TK/19. According to the Notes of the OZP, ‘Agricultural Use’ is a Column 1 use within the “CPA” and “AGR” zones which is always permitted. However, filling and excavation of land within the “CPA” zone and filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is currently used for farming activities with some irrigation ponds and largely covered by removable rainproof and shading sheds (**Plan A-3b**). Part of the Site is paved and erected with temporary structures without valid planning permission (**Plans A-4a to A-4d**).
- 1.2 According to the applicant, the current application is to regularize filling and excavation of land for permitted agricultural use and facilitate the operation of an existing organic farm on the Site. The works involve (i) filling of land of about 823.9m² (about 18% of the Site) and not more than 0.2m in height with bricks, stone tiles and concrete for provision of footpath and farm works area for packaging of products and erection of temporary structures in support of the permitted agricultural use (**Drawing A-1**); and (ii) excavation of an area of about 727.5m² (about 16% of the Site) and about 1.5m to 2m in depth for provision of

irrigation ponds and drainage channels (**Drawing A-1**). The organic farm comprises 14 existing temporary structures and a proposed green house with height ranging from 2m to 3m, which provide a total floor area of about 310m² for agriculture, workshop for handling products, storage, tea room and meeting room, reception, office, pantry, rest area and toilet uses (**Drawings A-2 to A-3**).

1.3 A drainage proposal is submitted in support of the application. According to the drainage proposal, surface runoff will be collected by the proposed drainage channels along the northern and southwestern boundaries of the Site and temporarily stored in the existing ponds within the Site before discharging to the surrounding farmland (**Drawing A-1**). On ecological aspect, the applicant proposed to install a barrier¹ and a chain-link fence² along the western boundary of the Site so as to avoid encroachment onto the Ting Kok Site of Special Scientific Interest (SSSI). The Site is accessible via a footpath and a local vehicular track leading to Ting Kok Road (**Plan A-2**). Land filling and excavation plan, layout plans and drainage proposal submitted by the applicant are shown in **Drawings A-1 to A-3**.

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

- (a) Application Form and supplementary information (**Appendix I**) received on 24.11.2022 and 28.11.2022
- (b) Further Information (FI) with Consolidated Report (**Appendix Ia**) received on 20.7.2023 and 21.7.2023

[supplementary planning statement received on 24.11.2022 and FI received on 13.3.2023, 15.3.2023, 25.5.2023 and 31.5.2023 have been superseded and not attached]

1.5 On 13.1.2023 and 5.5.2023, the Committee agreed to the applicant's requests to defer making a decision on the application for a period of 2 months each to allow more time for the applicant to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the FI and consolidated report at **Appendix Ia**, as summarized below:

- (a) the Site has been used by the applicant as an organic farm for cultivation of premium organic produce (mainly grapes, with some other fruits and vegetables) since 2013. The current application seeks to regularize the unauthorized land filling and excavation works at the Site to support the existing farming operations. No additional land filling and excavation, hard-paving, tree felling

¹ According to the applicant, the barrier is made of acrylic boards clamped together on a metal pipe to be secured to the pond bottom. The barrier is about 0.1m wide and 2.2m high. It will provide a physical separation between the irrigation pond at the northwestern part of the Site and the adjoining ponds located outside the Site, thus providing a setback of about 3m to 5m from the Ting Kok SSSI.

² According to the applicant, the chain-link fence will be erected on the ground.

and vegetation clearance will be involved under the current application. All existing structures will be retained and only a new green house will be built. Should the application be approved, the applicant will submit an application for Short Term Waiver (STW) to the Lands Department;

- (b) the filling and excavation of land under application, being minor in nature, is solely for supporting the permitted agricultural use on the Site. The filled area is used for provision of footpaths for access and manoeuvring of farming equipment and trolleys; farm works area for packaging of products; and erection of temporary structures for agricultural and ancillary uses. The excavated areas are used to provide irrigation ponds and drainage channels³ to collect, distribute and store water for agricultural use. There are no commercial, indoor recreational or lodging facilities provided on the Site;
- (c) the application is to facilitate the permitted agricultural use on the Site which is compatible with the surrounding land uses in terms of scale and nature. It is in line with the planning intentions of the “CPA” and “AGR” zones;
- (d) the filling and excavation of land under application is small in scale and will not result in any significant adverse traffic, environmental, sewerage, ecological and landscape impacts on the locality. A drainage proposal is submitted by the applicant to demonstrate that there will be no adverse drainage impact. Stormwater will be collected by the proposed drainage channels and ponds and discharged without affecting the nearby mangrove habitat in the Ting Kok SSSI. In order to avoid encroachment onto the Ting Kok SSSI and causing adverse impacts on the mangrove habitat, the applicant will also implement necessary precautionary measures by providing a barrier and a chain-link fence along the western boundary of the Site (**Drawing A-2**); and
- (e) a similar application (No. A/NE-TK/380) for the same use in the vicinity of the Site was approved by the Board in 2012. Approval of the current application will not set an undesirable precedent for similar applications within the same “CPA” and “AGR” zones.

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

The applicant is one of the “current land owners”. In respect of the other “current 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 posting notice on the Site and publishing newspaper notice. Detailed information would be deposited at the meeting for Members’ inspection.

³ According to the applicant, the excavated area for provision of underground pipes will be backfilled to the existing site level after installation.

4. Background

- 4.1 The Site was partly covered with vegetation and partly covered by fallow agricultural land with a few temporary structures at its eastern portion when the Ting Kok Interim Development Permission Area (IDPA) Plan No. IDPA/NE-TK/1 was gazetted on 7.9.1990 (**Plan A-3a**). The Site has been partly zoned “CPA” and partly zoned “AGR” since the gazette of the draft Ting Kok OZP No. S/NE-TK/1 on 8.7.1994 (**Plan A-3a**). Past aerial photos revealed that vegetation within the Site was subsequently cleared and the northwestern part of the Site was excavated to form a pond in 2013 (**Plan A-3b**).
- 4.2 Recent site inspection also revealed suspected filling of land with hard paving for provision of footpath and farm works area for packaging of products as well as erection of temporary structures on the Site. Should there be sufficient evidence to form an opinion of unauthorized development under the Town Planning Ordinance, planning enforcement action would be instigated as appropriate.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are two similar applications (No. A/NE-TK/380 and 542) within the same “CPA” and “AGR” zones in the vicinity of the Site (**Plan A-1**).
- 6.2 Application No. A/NE-TK/380 involving filling and excavation of land by ploughing soil within an area partly zoned “CPA” and partly zoned “AGR” to facilitate site levelling for agricultural activities was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 10.2.2012 mainly on consideration that it was genuinely for agricultural purpose; and there were no adverse comments from the concerned government departments.
- 6.3 Application No. A/NE-TK/542 for filling of land up to 1.6m for agricultural use within an area partly zoned “AGR” and partly shown as ‘Road’ was rejected by the Committee on 27.3.2015 mainly for reasons of failing to provide strong planning justifications for the application; falling partly within an area shown as ‘Road’ and would affect future road works; failing to demonstrate no adverse drainage, landscape and geotechnical impacts; and setting of undesirable precedent for similar applications. The application site had been filled with soil, large rocks and construction waste and subject to planning enforcement action for unauthorized filling of land at the time of consideration of the application by the Committee.
- 6.4 Details of the applications are at **Appendix II** and their locations are shown on **Plan A-1**.

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

7.1 The Site is :

- (a) largely within the “CPA” zone along the coast of Plover Cove and adjoining Ting Kok SSSI (**Plan A-2**);
- (b) currently used for farming activities with some irrigation ponds and largely covered by rainproof and shading sheds (**Plan A-3b**);
- (c) partly paved with bricks, stone tiles and concrete and occupied with temporary structures without valid planning permission; and
- (d) accessible via a footpath and a local vehicular track leading to Ting Kok Road (**Plan A-2**).

7.2 The surrounding areas are predominantly rural in character comprising mainly active and fallow agricultural land, scattered tree groups, village houses and vacant land. To the immediate west is Ting Kok SSSI with mangrove habitat of special landscape and ecological value. About 50m to the east are a cluster of barbecue sites, most of which are covered by valid temporary planning approvals (**Plan A-2**).

8. Planning Intentions

- 8.1 The planning intention of the “CPA” zone is to conserve, protect and retain the natural coastlines and sensitive coastal natural environment, including area of high landscape, scenic or ecological value, with minimum built development. It may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.
- 8.2 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 8.3 According to the Explanatory Statement (ES) of the OZP, the mangrove habitat in the “SSSI” fringing the coastline outside Po Sam Pai and Ting Kok Villages is of special landscape and ecological value which requires a high degree of protection to retain their inherent value. The land surrounding this “SSSI” is designated “CPA” so as to protect the special landscape of these natural coastline areas. As filling and excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is also required for filling and excavation of land within the “CPA” zone and filling of land within the “AGR” zone.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) the Site consists of 6 private lots in D.D. 29. Lots 232 S.B, 234, 247 S.B and 251 S.A & S.B are Old Schedule Agricultural Lots held under the Block Government Lease. Lot 252 is Old Schedule House Lot held under the Block Government Lease demised for house purpose. No structure shall be erected on the lots without prior approval from the Government;
- (b) no Letter of Approval (L of A) for agricultural structures has been issued in respect of the lots concerned; and
- (c) advisory comments are provided at **Appendix IV**.

Agriculture and Nature Conservation

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

- (a) the Site is partly zoned “CPA” and partly zoned “AGR”, and is currently used for farming with structures erected. It is noted that the current application serves to regularize the existing land filling and excavation at the Site, and that no additional land filling/excavation will be involved. Having reviewed the precautionary measure proposed by the applicant (i.e. provision of a barrier and a chain-link fence along the western boundary of the Site (**Drawing A-2**) as stated in paragraph 2(d) above), he has no strong view on the application; and
- (b) no application for L of A for agricultural structures with respect to the Site has been received.

Landscape

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

- (a) the Site is situated in an area of rural landscape character comprising farmland, scattered tree groups and village houses (**Plan A-3b**). Mangroves along the coastal area in the Ting Kok SSSI are found to the immediate west of the Site. The filling and excavation of land under application is considered not incompatible with the landscape setting in proximity;

- (b) the Site is occupied by an organic farm consisting of cultivated farmland, irrigation ponds and partly hard-paved area with temporary structures for farm-related uses. Existing tree groups of common species and fruit trees in fair condition are observed within the Site. No detailed information on landscape resources within/adjacent to the Site and proposed landscape treatment is provided. According to the applicant, the organic farm on the Site has been in operation since 2013 and the current application is to regularize land filling and excavation works within the Site to support the subject farm. Only one small new temporary structure is proposed and all existing structures would be retained. No additional land filling/excavation/hard paving/tree felling/vegetation clearance would be involved. Significant adverse impact on landscape resources and character arising from the application is not anticipated. Hence, she has no objection to the application from landscape planning perspective; and
- (c) advisory comments are provided at **Appendix IV**.

Environment

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

- (a) no objection to the application;
- (b) no environmental complaint has been received on the Site in the past three years; and
- (c) advisory comments are provided at **Appendix IV**.

Drainage

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

- (a) having reviewed the FI submitted by the applicant, he has no adverse comment on the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on implementation of drainage facilities as identified in the drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact on the adjacent areas; and
- (c) advisory comments are provided at **Appendix IV**.

Traffic

9.1.6 Comment of the Commissioner for Transport (C for T):

- no in-principle objection to the application from traffic

engineering viewpoint.

Fire Safety

9.1.7 Comment of the Director of Fire Services (D of FS) :

- no specific comment on the application.

9.2 The following government departments have no objection to/no comment on the application:

- (a) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (e) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD); and
- (f) District Officer (Tai Po), Home Affairs Department (DO(TP), HAD).

10. **Public Comments Received During Statutory Publication Period (Appendix III)**

On 2.12.2022, the application was published for public inspection. During the statutory public inspection period, a total of 34 public comments were received. 33 in standard letter format were received from individuals supporting the application mainly on the grounds of the applicant being a genuine farmer who has been practising organic farming for years and contributing to the development of local agriculture and food and beverage industry; the Site being suitable for farming; not causing adverse impacts considering the nature and extent of filling and excavation works involved; being compatible with the surrounding land uses; and not setting undesirable precedent for similar applications (sample at **Appendix III-1**). The remaining comment was received from an individual objecting to the application mainly for concerns on adverse ecological impact; undermining the integrity of natural coastline areas; and setting undesirable precedent for similar applications (**Appendix III-2**). A full set of the public comments is deposited at the meeting for Members' inspection.

11. **Planning Considerations and Assessment**

- 11.1 This application is to regularize filling and excavation of land for permitted agricultural use at the Site partly zoned "CPA" and partly "AGR" on the OZP (**Plan A-1**). The planning intention of the "CPA" zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including area of high landscape, scenic or ecological value, with a minimum of built development; while that of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is a general presumption

against development in the “CPA” zone, which is designated to protect the special landscape of the natural coastline areas in the Ting Kok SSSI. While ‘Agricultural Use’ is always permitted within the “CPA” and “AGR” zones, filling and excavation of land within the “CPA” zone and filling of land within the “AGR” zone require planning permission as such works may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment.

- 11.2 The application involves filling of land of about 823.9m² (about 18% of the Site) and excavation of an area of about 727.5m² (about 16% of the Site). According to the applicant, the works under application are necessary to facilitate the permitted agricultural use on the Site. The filled areas are used to provide footpaths for access and manoeuvring of farming equipment and trolleys; farm works area for packaging of products; and temporary structures for agricultural and ancillary uses. Meanwhile, the excavated areas are used to provide irrigation ponds and drainage channels for stormwater collection and storage. The extent of works has been minimized. Having regard that the current application serves to regularize the existing land filling and excavation for permitted agricultural use with no additional land filling/excavation involved, and that the applicant has proposed to provide a barrier and a chain-link fence along the western boundary of the Site as precautionary measures to avoid encroachment onto the adjoining Ting Kok SSSI and causing adverse impact on the mangrove habitat, DAFC has no strong view on the application. CE/MN of DSD has no adverse comment on the application from public drainage viewpoint. DEP also has no objection from environmental perspective.
- 11.3 The Site is situated in an area predominantly rural in character comprising mainly active and fallow agricultural land, scattered tree groups, village houses and vacant land. To its immediate west is the Ting Kok SSSI with mangrove habitat of special landscape and ecological value. CTP/UD&L of PlanD has no objection to the application from landscape planning perspective as it is considered not incompatible with the landscape setting in proximity. Other relevant government departments, including C for T and D of FS, have no objection to or no adverse comment on the application.
- 11.4 The Site was previously covered with vegetation and fallow agricultural land back in the 1990s and 2000s (**Plan A-3a**). Vegetation clearance and land filling and excavation works were observed in 2013 (**Plan A-3b**). The Site is currently used for farming activities with some irrigation ponds, with part of it paved with bricks, stone tiles and concrete without valid planning permission. Taking into account that the land filling and excavation works under application are solely for permitted agricultural use on the Site, and that approving the current application would facilitate regularization of the filling and excavation of land under application and put it under proper control and monitoring through imposition of planning conditions to ensure that no adverse impact would be caused in the locality, approving the current application will unlikely set an undesirable precedent for similar applications in the area. There are special circumstances that warrant sympathetic consideration to the application.
- 11.5 There are two similar applications (No. A/NE-TK/380 and 542) within the same “CPA” and “AGR” zones in the vicinity of the Site. Application No. A/NE-

TK/380 involving filling and excavation of land to support permitted agricultural use was approved by the Committee in 2012 mainly on consideration that the applicant had demonstrated genuine need for the applied filling and excavation works, and the relevant government departments had no adverse comment on the application. Application No. A/NE-TK/542 involving land filling up to 1.6m was rejected by the Committee in 2015 mainly for reasons of failing to provide strong planning justifications for the application; failing to demonstrate no adverse impacts; and setting of undesirable precedent for similar applications. The current application is different from the rejected application in that the applicant has demonstrated genuine need for the land filling and excavation works under application and no adverse impacts will be caused to the surrounding areas. Approving the current application is not in conflict with the previous decisions of the Committee.

- 11.6 Regarding the public comments as detailed in paragraph 10 above, government departments' comments and the planning assessment above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments in paragraph 10 above, Planning Department has no objection the application.
- 12.2 Should the Committee decide to approve the application, no time clause on commencement of development is proposed as the land filling and excavation works under application have already been completed. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the implementation of the precautionary measures on the application site as identified by the applicant within **6** months from the date of approval to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board by 28.1.2023;
- (b) the implementation of drainage facilities as identified in the submitted drainage proposal within **6** months from the date of approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 28.1.2023; and
- (c) if any of the above planning condition (a) or (b) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

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

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission.
- 13.3 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.

14. Attachments

Appendix I	Application Form and supplementary information received on 24.11.2022 and 28.11.2022
Appendix Ia	FI with Consolidated Report received on 20.7.2023 and 21.7.2023
Appendix II	Similar Applications
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Land Filling and Excavation Plan
Drawings A-2 to A-3	Layout Plans
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3a to A-3b	Aerial Photos
Plan A-4a to A-4d	Site Photos

**PLANNING DEPARTMENT
JULY 2023**