

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1132

- Applicant** : Mr. LAM Tak-shing (林德勝) represented by Mr. TSE Fuk-yiu Daffy (謝福耀)
- Site** : Lot 219 S.A ss.1 RP (Part) in D.D.128, Ha Tsuen, Yuen Long, New Territories
- Site Area** : About 849.1 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Coastal Protection Area” (“CPA”)
- Application** : Proposed Filling of Pond for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of pond for permitted agricultural use at the application site (the Site) (**Plan A-1a**). According to the Notes of the OZP for the “CPA” zone, ‘Agricultural Use (other than Plant Nursery)’ is a Column 1 use which is always permitted. However, any filling of pond requires planning permission from the Town Planning Board (the Board). The Site is currently a pond (**Plans A-4a and A-4b**).
- 1.2 The Site is accessible via a local track to Deep Bay Road (**Plans A-2 and A-3**). As shown on the proposed layout plan at **Drawing A-1**, the applicant proposes to fill the entire pond with depth of 1.2m with soil for agricultural use.
- 1.3 The Site is the subject of four previous applications (No. A/YL-HT/37, 290, 310 and 317) (details at paragraph 5 below).
- 1.4 In support of the application, the applicant submitted the following documents:
- (a) Application Form with attachments received on 14.3.2022 (**Appendix I**)
 - (b) Further Information (FI) received on 4.4.2022 (**Appendix Ia**)

(c) FI received on 20.4.2022

(Appendix Ib)

[(b) and (c) *exempted from publication requirements*]

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I**. The applicant claims that the Government had resumed land in the surroundings to construct drainage channel, resulting in change in the ecology of the fish pond and creating mosquito breeding and water pollution problems. It is difficult to continue fish farming at the Site. It is proposed to fill the pond to facilitate agricultural rehabilitation and to improve the environment of the surrounding areas.

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. **Background**

The Site is not subject to any planning enforcement action.

5. **Previous Applications**

5.1 The Site was involved in four previous applications (No. A/YL-HT/37, 290, 310 and 317) for filling of pond for agricultural use. Application No. A/YL-HT/37 was approved by the Committee whilst the other applications were rejected. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1b**.

Approved Application

5.2 Application No. A/YL-HT/37 (covering the Site and the strip of ponds at its immediate south and east in a larger site extent (about 7,435m²)) for agriculture use and pond filling was approved by the Committee in 1997 mainly on the considerations that no building development was involved and the proposed agricultural activities were not incompatible with the planning intention of the “CPA” zone; the fish ponds on the concerned site were isolated ponds and should not have significant ecological value; there were no adverse comments from concerned government departments including Director of Agriculture, Fisheries and Conservation (DAFC) and Director of Environmental Protection (DEP) on the ecological and environmental aspects. The proposed development had not been implemented and the planning permission had already expired.

Rejected Applications

- 5.3 Applications No. A/YL-HT/290, 310 and 317 (covering the Site, the strip of land/ponds at its immediate east, south and west in a larger site extent (about 1.4 ha)) for pond filling for agriculture uses were rejected by the Committee in 2003. The rejection reasons were that the proposal involved permanent filling of fish ponds which would result in significant loss of flood storage and no technical assessment had been submitted to demonstrate no adverse drainage impact; part of the concerned site fell within the proposed resumption limit of the Hang Hau Tsuen Channel and Associated Works Phase I project and approval of the applications would pose constraint to the implementation of the project; the proposed development was not in line with the planning intention of the “CPA” zone; there was insufficient information to demonstrate no adverse landscape impact; and the proposed development would set an undesirable precedent for other similar applications.
- 5.4 Compared with the last application No. A/YL-HT/317, the proposed development (i.e. pond filling for agricultural use) is the same, albeit to a smaller extent (about 849.1m²).

6. Similar Application

There is one similar application (No. A/YL-HTF/1082) within the “CPA” zone in the vicinity of the Site in the past 5 years. Application No. A/YL-HTF/1082 for filling of pond for permitted agricultural use (fish farming) was rejected by the Committee in 2017. The rejection reasons included the applicant failed to demonstrate that the proposed development would not have adverse ecological and landscape impacts on the surrounding areas and approval of the application would set an undesirable precedent for applications for similar developments within the “CPA” zone, the cumulative effect of which would result in a general degradation of the environment. Details of the application are summarized at **Appendix III** while the location is shown on **Plan A-1a**.

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

- 7.1 The Site is:
- (a) currently a pond; and
 - (b) accessible via a local track to Deep Bay Road (**Plans A-2 and A-3**).
- 7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):
- (a) to the east is the eastern part of the same pond of the Site which was filled with soil resulting in a suspected unauthorized development (UD);
 - (b) to the south is a pond, residential dwellings, a hobby farm with valid planning permission, two open storage yards which are suspected UD;

- (c) to the west is a pond and residential dwellings; and
- (d) to the immediate north is a nullah and across the nullah are residential dwellings.

8. Planning Intention

- 8.1 The “CPA” zone is intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. It may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion.
- 8.2 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.
- 8.3 Filling of pond may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. In view of the conservation value of the area within this zone, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices IV and V** respectively.
- 9.2 The following government departments have reservation / adverse comment on the application.

Agriculture and Nature Conservation

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

DAFC has not received any application for Letter of Approval for erecting agricultural structures at the Site. The applicant has not provided sufficient information on the details of the agricultural activities (e.g. type of crops to be grown, open field or greenhouse production, methods of irrigation, marketing channels for the crop produce, etc.) to be conducted at the Site and justifications for the need for filling of pond for agricultural use without affecting the sensitive coastal natural environment in the “CPA” zone.

Drainage

- 9.2.2 Comment of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

He has reservation on the proposed development as the filling area is not small and the applicant has not provided any mitigation measure to demonstrate that the proposed filling works would not cause overland flow to the adjacent areas.

Landscape

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

- (a) According to the aerial photo of 2021, the Site is situated in area of rural coastal plains landscape character predominated by agricultural land, ponds, temporary structures, village houses and scattered tree groups. Existing self-seeded vegetation at the northern boundary are observed within the Site. A large pond is found in the Site.
- (b) There is no information provided in the planning statement on the proposed mitigation measures on existing landscape resources (i.e. pond). As the “CPA” zone is primarily intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment within this zone and some existing ponds are either in close proximity or even right next to the Site, the proposed development (i.e. filling of pond) is considered incompatible with the surrounding landscape setting from landscape planning perspective. Significant adverse landscape impact arising from the proposed development is anticipated.
- (c) CTP/UD&L, PlanD’s other advisory comments are provided in the Recommended Advisory Clauses in **Appendix V**.

10. Public Comments Received During the Statutory Publication Period

- 10.1 On 22.3.2022, the application was published for public inspection. During the statutory public inspection period, three public comments were received from Kadoorie Farm and Botanic Garden Corporation (KFBG), Hong Kong Hydroponics Plantation Association (HKHPA) and an individual (**Appendices VI-1 to VI-3**).

- 10.2 HKHPA supports the application on the following grounds:

- (a) the Site is situated below ground level next to a local track and drainage channel. The Site is suitable for hydroponics agricultural use;

- (b) the proposed agricultural use would not have adverse ecological impacts to the surrounding areas; and
- (c) the proposed development could provide agricultural products and create job opportunities to benefit local residents.

10.3 KFBG and an individual object to the application on the following grounds:

- (a) the Site is situated in an area zoned “CPA” which would be resumed for a Coastal Protection Park according to the Northern Metropolis Development Strategy. The application would jeopardise the proposal;
- (b) the Board has rejected similar applications for filling of pond for agricultural use at the Site; and
- (c) the approval of the application would set an undesirable precedent.

11. **Planning Considerations and Assessments**

11.1 The application is for proposed filling of pond for permitted agricultural use at the Site zoned “CPA” on the OZP, which is intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. Whilst agricultural use (other than plant nursery) is always permitted within the “CPA” zone, filling of pond within the “CPA” zone is subject to planning permission as it may cause adverse drainage impact on the adjacent areas and adverse impact on the natural environment. The Site is currently a pond. The applicant proposes to fill the pond with soil to a depth of 1.2m for agricultural use. However, DAFC considers that the applicant did not provide sufficient information on the details of agricultural activities to be carried out at the Site and justifications for the need for filling of pond for agricultural use without affecting the sensitive coastal natural environment in the “CPA” zone. As such, the filling of pond is considered not in line with the planning intention of the “CPA” zone. There is no strong planning justification in the submission for a departure from such planning intention.

11.2 The Site is situated in area of rural coastal plains landscape character predominated by agricultural land, ponds, temporary structures, village houses and scattered tree groups (**Plan A-2**). In this regard, CTP/UD&L of PlanD considers that the proposed filling of pond is not compatible with the surrounding landscape setting, and the applicant has not provided any information on the proposed mitigation measures on potential landscape impacts on the surrounding areas. Significant adverse landscape arising from the proposed development is anticipated. In this regard, the applicant fails to demonstrate that the proposed filling of pond would not have adverse landscape impact to the surrounding areas.

11.3 Besides, CE/MN of DSD has reservation on the proposed development from the

drainage perspective. The applicant has not provided any mitigation measure to demonstrate that the proposed filling works would not cause overland flow to the adjacent areas.

- 11.4 Other relevant government departments, including C for T and DEP, have no objection to or no adverse comment on the application.
- 11.5 The Site is the subject of four previous applications (No. A/YL-HT/37, 290, 310 and 317) for filling of pond for agricultural use. Although the Committee has approved a previous application (No. A/YL-HT/37) for pond filling for agricultural use in 1997, the proposed development had not been implemented and the planning permission had already expired. Besides, the Committee has rejected all subsequent applications for pond filling since then on the grounds of, inter alia, no technical assessment had been submitted to demonstrate no adverse drainage impact; part of the concerned site fell within the proposed resumption limit of the Hang Hau Tsuen Channel and Associated Works Phase I project and approval of the applications would pose constraint to the implementation of the project; the proposed development was not in line with the planning intention of the “CPA” zone; there was insufficient information to demonstrate no adverse landscape impact; and setting an undesirable precedent. The Committee rejected a similar application (No. A/YL-HTF/1082) for filling of pond for agricultural use in the same “CPA” zone in 2017 on the grounds that the applicant failed to demonstrate that the proposed development would not have adverse ecological and landscape impacts on the surrounding areas and setting an undesirable precedent. Rejecting this application is in line with the Committee’s previous decisions.
- 11.6 There are three public comments of which one supports and two object to the application on the grounds summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
 - (a) the proposed filling of pond is not in line with the planning intention of the “Coastal Protection Area” (“CPA”) which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. There is no strong planning justification in the submission for a departure from the planning intention; and
 - (b) the applicant fails to demonstrate that the proposed filling of land would not have adverse landscape and drainage impacts to the surrounding areas.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **6.5.2026**, 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) the submission of a drainage proposal before commencement of the filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) in relation to (a) above, the implementation of the drainage proposal upon completion of the filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) if any of the above planning condition (a) or (b) is not complied with before commencement or upon completion of the filling works respectively, 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 V**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application Form with attachments received on 14.3.2022
Appendix Ia	FI received on 4.4.2022
Appendix Ib	FI received on 20.4.2022
Appendix II	Previous Applications
Appendix III	Similar Application within the "CPA" zone
Appendix IV	Government departments' general comments

Appendix V
Appendices VI-1 to VI-3

Recommended Advisory Clauses
Public Comments

Drawing A-1
Plan A-1a
Plan A-1b
Plan A-2
Plan A-3
Plans A-4a and A-4b

Layout Plan
Location Plan with Similar Application
Previous Applications Plan
Site Plan
Aerial Photo
Site Photos

PLANNING DEPARTMENT
MAY 2022