

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/447

- Applicant** : Mr. Tang Kin Ting represented by FiBi International Project Consultancy Co. Limited
- Site** : Lot 1169 in D.D.129, Mong Tseng Wai, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 2,355m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/11
- Zoning** : “Village Type Development” (“V”)
- 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-1**). The Site falls within an area zoned “V” on the approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/11. According to the Notes for the “V” zone of the OZP, ‘Agricultural Use’ is always permitted, but filling of pond requires planning permission from the Town Planning Board (the Board). Moreover, the Site falls within the Wetland Buffer Area (WBA) according to the Town Planning Board Guidelines No. 12C for ‘Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 12C). The Site is currently a pond overgrown with vegetation (**Plans A-2 to A-4b**).
- 1.2 As shown on the pond filling plan at **Drawing A-1** and indicated in the submission, the entire pond (about 2,355m²) would be filled with soil of about 1m in depth to level with the adjoining land. As shown on the agriculture layout plan at **Drawing A-2**, about 1,435m² (or 61%) of the Site would be used for agricultural use. No information on the agricultural use to be carried out at the Site, as well as the use of the remaining area of the Site (about 920m² or 39%) has been provided in the submission.
- 1.3 The Site is accessible from Deep Bay Road via a local track (**Drawing A-3**). As indicated in the submission, drainage facilities, viz. 1m and 0.375m-wide surface U-channels along the northeastern and southwestern peripheries respectively would be provided to mitigate the potential drainage impact (**Drawing A-4**).

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

- (a) Application Form received on 24.10.2022 (Appendix I)
- (b) Supplementary Information (SI) received on 31.10.2022 (Appendix Ia)
- (c) Further Information (FI) received on 7.12.2022 enclosing a revised drainage impact assessment (DIA)^ (Appendix Ib)
- (d) FI received on 10.1.2023* (Appendix Ic)

[SI received on 2.11.2022 enclosing a replacement page of the Application Form, as well as FI received on 23.11.2022^ enclosing a DIA are superseded and not attached]

* *accepted and exempted from publication requirements*

^ *accepted but not 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 SI at **Appendix Ic**. They can be summarised as follows:

- (a) the Site is of poor hygiene condition. It has long been accumulated with stagnant water and becomes a breeding place for mosquitoes;
- (b) drainage facilities (i.e. U-channels) would be provided at the Site. There are drainage facilities available in the vicinity as well. The proposal would not cause adverse drainage impact on the surrounding areas; and
- (c) upon filling of the pond, the Site would be used for agricultural use. The proposal would not jeopardise the long-term planning intention of the “V” zone.

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

The applicant is one of the “current land owners” of the Site. In respect of the other “current land owners”, 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 Ordinance (TPB PG-No. 31A) by publishing notices in local newspapers and posting site notice. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Town Planning Board Guidelines**

According to TPB PG-No. 12C, the Site falls within WBA. The relevant assessment criteria are detailed at **Appendix II** and summarised as follows:

- (a) 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;

- (b) 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; and
- (c) 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. Development/redevelopment which may have negative impacts on the ecological value of the WCA would not be supported by the Board, unless the EcoIA can demonstrate that the negative impacts could be mitigated through positive measures. The assessment study should also demonstrate that the development will not cause net increase in pollution load to Deep Bay. Some local and minor uses are however exempted from the requirement of EcoIA.

5. Background

The Site is currently not subject to any active planning enforcement action.

6. Previous Application

The Site is not involved in any previous planning application.

7. Similar Applications

- 7.1 Within the same “V” zone, there were three similar applications for proposed pond filling for permitted New Territories Exempted House (NTEH) development. All of them were approved by the Committee/the Board on review. Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-LFS/58 and 72 (covering part of the site of the former) were approved with conditions by the Committee in 2000 and 2001 respectively mainly on consideration that the technical concerns on drainage aspect could be addressed by approval conditions.
- 7.3 Application No. A/YL-LFS/216 was approved with conditions by the Board on review in 2013 mainly on considerations that the proposed development was of small scale; the ecological appraisal submitted demonstrated that no significant ecological impact on the WCA was anticipated with the implementation of precautionary/mitigation measures, concerned government departments generally had no adverse comment on the application, and technical concerns could be addressed by approval conditions.

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

8.1 The Site is:

- (a) currently a pond overgrown with vegetation; and
- (b) accessible from Deep Bay Road to its west via a local track.

8.2 The surrounding areas of the Site have the following characteristics:

- (a) to the immediate north across a local track are Mong Tseng Wai Basketball Court, the Entrance Gate at Mong Tseng Wai which is a Grade 3 historic building, and the village office of Mong Tseng Wai. To the north and east are mainly village houses intermixed fallow agricultural land and unused land. To the further north is shrubland;
- (b) to the south are fallow agricultural land, parking of vehicles/vehicle park and village houses (both existing and under construction). To the further south are the fishponds within the “Conservation Area” (“CA”) and the WCA; and
- (c) to the west are village houses (both existing and under construction) and parking of vehicles.

9. Planning Intention

- 9.1 The planning intention of the “V” zone is to designate both existing recognised 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.
- 9.2 As filling of land/pond and excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

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

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
 - (a) He has no objection to the proposed filling of pond from lease perspective.

- (b) 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. It is noted that no structure is proposed at the Site, and the proposed filling of pond is for permitted agricultural use.
- (c) There is no Small House application approved/under processing at the Site.

Nature Conservation, Agriculture and Fisheries

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

Nature Conservation

- (a) He has reservation on the application from the nature conservation point of view.
- (b) The Site falls within WBA and mainly comprises an abandoned fishpond overgrown with wetland plants, forming a marsh habitat. The pond is also ecologically connected to an agricultural land to the south and further to the ponds within WCA. The proposed pond filling would result in a loss in wetland and may cause ecological impacts to the wetland habitats in the vicinity of the Site.

Agriculture and Fisheries

- (c) He does not support the application from the fishery viewpoint.
- (d) Although the pond is currently of unknown status, pond filling is generally not recommended as the pond has the potential to be used for fish culture operations in the future.

Landscaping

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

- (a) The Site is situated in area of rural landscape character predominated by temporary structures, village houses, graveyard, farmland, marshland, ponds and woodland. The Site is covered with existing vegetation.
- (b) the entire pond (i.e. 100% of the Site) is proposed to be filled with soil and the proposed farming area is about 1,435m² (or 61%). Significant impact on the landscape resources (i.e. a pond with existing vegetation) arising from the proposed pond filling is anticipated. Also, no information is provided in the submission regarding the agricultural use, whilst existing ponds are observed in the "CA" zone to the south of the Site. She has grave concern that the proposed pond filling would further degrade the landscape quality

of WBA.

Environment

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

- (a) She has no objection to the application.
- (b) The applicant should be reminded of the detailed comments at **Appendix V**.

Drainage

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

- (a) There are a number of village drains discharging to the pond which is proposed to be filled. In the FI received on 7.12.2022, although the applicant proposed to provide a 1.0m (width) × 0.5m (depth) concrete channel to intercept the overland flow, the diversion to the existing connected channel/drains currently discharging to the pond is unclear. The applicant is required to demonstrate the existing drains, which are now discharging to the pond, are properly diverted to maintain their function after the proposed pond filling.
- (b) Since the pond acts as a retention facility, the discharge characteristic of the pond would be different after the proposed pond filling. The applicant is also required to demonstrate that the downstream capacity of the existing drainage system will have sufficient capacity to cater for the additional flow.

Environmental Hygiene

10.1.6 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) According to the site visit conducted by her department on 10 and 11.11.2022, the Site is a pond with dense vegetation. No obvious mosquito infestation was noted during the visit. Also, no stagnant water nor mosquito breeding point was detected at the Site.
- (b) There were a total of six complaint cases regarding mosquito infestation in the vicinity of Mong Tseng Wai in the past five years. Yet they are not related to the Site.
- (c) Pest control measures including applying larvicide have been conducted by her department at the public place in the vicinity twice a week. Regular vegetation trimming, release of small mosquito fishes as a biological control agent, as well as seeking technical health advice on mosquito control from private pest control expert/her department may also help prevent mosquitoes breeding without filling the pond altogether.

- (d) Cultivated land with dense vegetation may also provide favourable daytime resting places for adult mosquitoes and lengthen their life span. On the other hand, if regular mosquito control measures were being carried out for the pond water, there is no scientifically-proven difference on the favourability for mosquito breeding between pond water and cultivated land with dense vegetation.

Cultural Heritage

10.1.7 Comments of the Antiquities and Monuments Office, Development Bureau (AMO, DEVB):

- (a) Entrance Gate at Mong Tseng Wai (the Graded Structure), which was accorded with Grade 3 status by the Antiquities Advisory Board in August 2010, is approximately 26m away from the Site (**Plan A-2**).
- (b) Given the Graded Structure is located in the vicinity of the Site, should the application be approved by the Board, the applicant is advised to assess the possible impacts arising from the proposed development, and to formulate appropriate mitigations, protective and/or monitoring measures to ensure that no adverse impacts, both visually and physically, will be made to the Graded Structure.

District Officer's Comments

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

His office has not received any feedback from locals.

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

- (a) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (d) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (e) Project Manager (West), CEDD (PM(W), CEDD);
- (f) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (g) Commissioner for Transport (C for T);
- (h) Commissioner of Police (C of P); and
- (i) Director of Fire Services (D of FS).

11. Public Comments Received During Statutory Publication Periods

On 4.11.2022, 2.12.2022 and 16.12.2022, the application and the FI were published for public inspection. During the statutory public inspection periods, 13 public comments from the Conservancy Association, Hong Kong Bird Watching Society, 關注連線 and

three individuals (Samples at **Appendices IV-1 to IV-6**) were received objecting to the application mainly on the following grounds:

- (a) the proposed pond filling is not in line with the planning intention of the WBA, which is to protect the ecological integrity of the fish ponds and wetland within the WCA, and restore lost wetland within the WBA;
- (b) there are existing ponds or wetland at or near the Site, all of which form part of the Deep Bay wetland ecosystem. There is concern that approval of the application would set an undesirable precedent for similar applications in the WBA;
- (c) no detail on the proposed agricultural use, such as crop variety, farming methods, farm operation and management and water source is provided in the submission. Also, no detail is provided as to how the area to the west of the proposed agricultural area as shown on the agriculture layout plan (**Drawing A-2**) would be used. There is doubt on whether the Site would be genuinely used for agricultural use upon pond filling;
- (d) no information is provided to demonstrate that the overland flow would not be disrupted by the proposed pond filling. There is concern that the change in hydrology may affect the village houses in the vicinity, as well as the fish ponds within the WCA to the south of the Site. In particular, with the drainage outlet proposed at the south of the Site, there is concern that the effluent so accumulated would be discharged to the fishponds within the WCA to the south;
- (e) while drainage pipes are proposed, the applicant has not applied for excavation of land at the Site;
- (f) the proposed agricultural use arising from the proposed pond filling works would exacerbate the odour and pest problems as well as pedestrian-vehicular conflict in the area; and
- (g) the proposed pond filling works would destroy the feng shui pond of the village.

12. Planning Considerations and Assessments

12.1 The application is for proposed filling of pond (i.e. soil of about 1m in depth covering the entire Site) for permitted agricultural use at the Site within the “V” zone (**Plan A-1**). Whilst ‘Agricultural Use’ is always permitted within the “V” zone, filling of pond within the “V” zone is subject to planning permission as it may cause adverse drainage impacts on the adjacent area and adverse impacts on the environment. In these regards, whilst DEP has no objection to the application from environmental planning perspective, CE/MN of DSD considers that the submitted DIA is deficient in that there is no information as to how the existing channel/drain connecting and discharging to the pond at the Site would be diverted to the proposed drainage facilities and whether the capacity of the existing drainage system downstream would have sufficient capacity to cater for the additional flow arising from the loss of retention function of the pond at the Site. Hence, the applicant fails to demonstrate that the proposed pond filling would not have adverse drainage impact on the surrounding area.

- 12.2 According to TPB PG-No. 12C, the Site falls within the WBA, wherein the Board adopts the recommended principle of “no-net-loss in wetland” which provides for the conservation of continuous and adjoining fishponds. No decline in wetland or ecological functions served by the existing fish ponds should occur. Also, development/redevelopment which may have negative impacts on the ecological value of the WCA would not be supported by the Board unless an EcoIA can demonstrate that the negative impacts could be mitigated through positive measures. In this regard, DAFC considers that the pond at the Site is ecologically connected to an agricultural land to its immediate south and the ponds to the further south within the WCA. He has reservation on the application from nature conservation point of view as the proposed pond filling would result in a loss in wetland and may cause ecological impacts to the wetland habitats in the vicinity of the Site. However, no EcoIA or other information is provided in the applicant’s submission to address DAFC’s concerns. Hence, the proposed pond filling is considered not in line with TPB PG-No. 12C.
- 12.3 According to the applicant, the proposed pond filling is for permitted agricultural use. Nevertheless, other than the proposed area of cultivation, no information on the proposed agricultural use is provided in the submission to justify the proposed pond filling. Moreover, the proposed cultivation area takes up only about 1,435m² (or 61%) of the pond filling area (i.e. about 2,355m²). The applicant has not provided any information on the use of the remaining area which takes up about 920m² (or 39%) of the pond filling area. The applicant fails to demonstrate that the proposed pond filling is required for agricultural use. DAFC does not support the application from the fishery viewpoint as the pond has the potential to be used for fish culture in the future.
- 12.4 CTP/UD&L of PlanD considers that significant impact on the landscape resources (i.e. a pond with existing vegetation) arising from the proposed pond filling is anticipated. Moreover, considering there are existing ponds within the “CA” zone to the south of the Site, she has grave concern that the proposed pond filling would further degrade the landscape quality of the WBA. However, no information is provided in the submission to address CTP/UD&L’s concern. Hence, the applicant fails to demonstrate that the proposed pond filling would not have significant adverse landscape impact on the surrounding area.
- 12.5 The applicant also claims that the Site has become a breeding place for mosquitoes. However, DFEH advises that no obvious mosquito infestation was noted nor mosquito breeding point detected at the Site. Moreover, cultivated land with dense vegetation may also be prone to mosquito infestation, making it not necessarily a better environment than the existing pond in terms of mosquito control. Also, there are alternative ways for mosquito control without the need for pond filling, such as application of larvicide, regular vegetation trimming and rearing of small mosquito fishes.
- 12.6 In a nutshell, the applicant fails to demonstrate that the proposed pond filling would not have adverse ecological, drainage and landscape impacts on the surrounding areas, and to justify the necessity of the proposed pond filling at the Site.
- 12.7 Other concerned departments including C for T and AMO of DEVB have no objection to or no adverse comment on the application from traffic and cultural heritage perspectives.

12.8 Although the Committee/Board has approved three similar applications (No. A/YL-LFS/58, 72 and 216) involving two sites for filling of pond for permitted NTEH development between 2000 and 2013, it should be noted that CE/MN of DSD and DEP had no objection to the applications or their technical concerns could be addressed by approval conditions. As for application No. A/YL-LFS/216, an ecological appraisal was submitted to demonstrate that no significant ecological impact on the WCA was anticipated, to which DAFC has no adverse comment from nature conservation perspective. For the current application, however, no EcoIA or other information is submitted to address DAFC's concerns on nature conservation aspect, whilst CE/MN of DSD and CTP/UD&L of PlanD have adverse comments on the application. As such, rejecting the current application is not in conflict with the previous decisions of the Committee.

12.9 Regarding the 13 public comments received objecting to the application as summarised in paragraph 11 above, the planning considerations and assessments in paragraphs 12.1 to 12.8 above are relevant.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12 above and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed pond filling, which falls within the Wetland Buffer Area, is not in line with the Town Planning Board Guidelines for 'Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance' (TPB PG-No. 12C) in that the "no-net-loss in wetland" principles are not complied with, and the applicant fails to demonstrate that the proposed pond filling would not have negative off-site disturbance impact on the ecological value of the fish ponds and wetland within the Wetland Conservation Area; and
 - (b) the applicant fails to demonstrate that the proposed pond filling would not have adverse drainage and landscape impacts on the surrounding areas.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **3.2.2027**, 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 an ecological impact assessment for the proposed pond filling, and implementation of the ecological mitigation measures identified therein before commencement of the pond filling works to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board;

- (b) the submission of a revised drainage impact assessment before commencement of the pond filling works to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) in relation to (b) above, the implementation of the drainage proposal identified in the revised drainage impact assessment 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 condition (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 attached at **Appendix V**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant planning permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form received on 24.10.2022
Appendix Ia	SI received on 31.10.2022
Appendix Ib	FI received on 7.12.2022
Appendix Ic	FI received on 10.1.2023
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Deep Bay Area (TPB PG-No. 12C)
Appendix III	Similar Applications within the same “V” zone
Appendices IV-1 to IV-6	Samples of Public Comments Received During Statutory Publication Periods
Appendix V	Recommended Advisory Clauses
Appendix VI	Fresh Water Main Record Plan
Drawing A-1	Pond Filling Plan
Drawing A-2	Agriculture Layout Plan
Drawing A-3	Vehicular Access Plan
Drawing A-4	Drainage Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo

Plans A-4a and A-4b Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2023**