

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/433

Applicant : Chung Wai Man

Site : Lot 212 (Part), D.D. 104, Ngau Tam Mei, Yuen Long

Site Area : About 180 m²

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12

Zoning : “Green Belt” (“GB”)

Application : Proposed Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land at the application site (the Site) to avoid mosquito breeding (**Plan A-1**). According to the Notes of the OZP for the “GB” zone, any filling of land requires planning permission from the Town Planning Board (the Board). Majority of the Site is filled and paved with concrete, and the remaining portion of the Site is vegetated with trees.
- 1.2 The Site is accessible to Ngau Tam Mei Road via a local track (**Plans A-1 to A-2**). According to the applicant, the entire area of Site will be filled to prevent mosquito breeding and the depth of filling is about 0.1m. However, no land use was proposed for the filled land. The lot index plan showing the Site for proposed land filling is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 29.11.2021 **(Appendix I)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form. In summary, the Site is proposed to be filled for easier management and preventing mosquito breeding that causes nuisances to the neighbourhood.

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. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ is relevant to this application. The relevant assessment criteria are summarised as below:

- (a) There is a general presumption against development (other than redevelopment) in “GB” zone.
- (b) An application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.
- (c) The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.
- (d) It should not adversely affect drainage or aggravate flooding in the area.
- (e) The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

5. Background

The filling of land on the Site might be subject to planning enforcement action. Warning poster was posted on site before.

6. Previous Application

The Site is not the subject of any previous application.

7. Similar Application

There is one similar application for filling of land and filling of pond for permitted agricultural use within the same “GB” zone (**Plan A-1**) which was approved by the Board on review on 13.3.2020 on considerations that the application could be favourably considered as the fish pond at the Site could contribute to local food production and the environmental impact of land/pond filling at the Site for a fish farm was relatively insignificant compared to other uses with land/pond filling commonly found in rural areas (**Appendix II**).

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

8.1 The Site is:

- (a) the Site is currently vacant and bisected by a fence. Majority of the Site is filled and paved (about 70% of the Site), and the remaining part of the Site beyond the fence is vegetated (about 30% of the Site); and
- (b) accessible via a local track leading to Ngau Tam Mei Road (**Plan A-1**);

8.2 The surrounding areas are rural in character comprising ponds, vacant land, grassland, fish farms, agricultural use, scattered residential dwellings, and some vehicle parks, workshop and storage uses which are suspected unauthorised developments:

- (a) to the north are ponds, fish farms, residential dwellings and agricultural land;
- (b) to its east are open storages of vehicles, a vehicle park, a fish farm and scattered residential dwellings;
- (c) to its south are a vehicle park, grassland, a nullah, a fish farm, a mushroom farm, grassland and vacant land; and
- (d) to its west are a workshop, residential dwelling/storage, vacant land, ponds and fish farms.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views are summarized as follows:

Land Administration

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

The Site is an Old Schedule Agricultural Lots held under the Block Government Lease which filling of land does not constitute a breach of lease conditions.

Traffic

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

He has no comment on the application from traffic engineering point of view.

- 10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);

- (a) The access arrangement to the Site should be commented by TD.
- (b) HyD is not/shall not be responsible for the maintenance of the proposed access to the Site. Presumably, the relevant department will provide their comments to the applicant, if any.
- (c) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road drains.

Environment

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

- (a) EPD has no objection to the application. The applicant is reminded that the land should not be filled with construction waste and it is the applicant's responsibility to comply with all relevant environmental legislation during construction and operation of the project.
- (b) No environmental complaint pertaining to the Site has been received over the past 3 years.

Landscaping

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

- (a) She has reservation on the application from landscape planning perspective.
- (b) Based on the aerial photo of 2021, the Site is situated in an area of rural inland landscape character comprising village houses, temporary structures, fish ponds, open storage, vacant land and scattered tree groups. Comparing with the aerial photos taken from 2007 to 2021, majority of the Site is not covered with vegetation and there is no significant change of landscape character/resource within the Site. The proposed land filling is considered not entirely incompatible with the landscape setting in proximity.
- (c) According to the site visit in December 2021, the Site is partly hard paved with concrete and partly covered with soil. Existing fruit trees in fair condition are observed within the Site in the north of the periphery behind the fence wall. No significant landscape resources within the Site is indicated. However, there is no detail information on tree protection proposal and proposed landscape treatment provided by the applicant. Potential adverse impact on existing landscape resource within the Site due to filling of land cannot be reasonably ascertained. No strong justification is provided in support of the application and there is concern that approval of the application would encourage more similar land filling. The cumulative impact of such approval would further degrade the landscape quality of the area within the “GB” zone.
- (d) The applicant should avoid excavation/change of soil level within the Tree Protection Zone (TPZ) of the existing trees. Proper tree preservation measures should be carried out to avoid damage to existing trees during construction. It is advised to refer to the guidelines promulgated by the DEVB on Tree Preservation during Construction.
- (e) It is advised that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant shall seek approval for any proposed tree works from relevant departments prior to commencement of the works.

Nature Conservation

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

The Site is left vacant and there are ponds located in vicinity. The applicant did not provide information on whether the proposed filling of

land would affect the ponds nearby and did not propose any measures to avoid disturbing these ponds.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, conditions should be stipulated in the approval letter requiring the applicant (i) to submit a drainage proposal to advise if there is any change of the runoff pattern as a result of the development and demonstrate how the existing flow paths as well as the run-off falling onto and passing through the site could be intercepted and disposed of via proper discharge points, and (ii) to implement and maintain the drainage proposal for the development to the satisfaction the Director of Drainage Services or of the Town Planning Board.

Others

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

- (a) No FEHD's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surroundings.
- (b) For any waste generated from the activity/operation, the applicant should arrange disposal properly at their own expenses.
- (c) It shall be the due diligence of the applicant to make every effort to take precautionary measures within the private lots and on related activities to prevent mosquito breeding and rodent infestation. Authority conferred by relevant legislation would be executed by his Department where situation warrants.
- (d) The mosquito prevention and control work at public place would be conducted by FEHD regularly. These included but not limited to conducting fogging operations, spraying larvicide and distributing anti-mosquito promotional leaflets to villagers.

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

- (a) Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD);
- (b) Director of Fire Services (D of FS);
- (c) Commissioner of Police;
- (d) Chief Engineer/Construction, Water Supplies Department;

- (e) Chief Building Surveyor/New Territories West, Building Department;
- (f) Director of Leisure and Cultural Services;
- (g) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department;
- (h) Project Manager (West), Civil Engineering and Development Department; and
- (i) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD).

11. Public Comments Received During Statutory Publication Period

The application was published for public inspection on 10.12.2021. During the first three weeks of the statutory public inspection period which ended on 31.12.2021, two public comments were received from Kadoorie Farm & Botanic Garden Corporation and an individual raising concerns on whether the proposed land filling within “GB” zone is justified and the intended use of the proposed filling has not been stated by the applicant (**Appendix III**).

12. Planning Considerations and Assessments

- 12.1 The applicant claims that the proposed filling of land of 0.1m in depth at the Site to allow better site management and avoid mosquito breeding without specifying any intended use. The proposed land filling, which falls within an area zoned “GB”, is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. The applicant did not provide adequate justifications to demonstrate the genuine need of the proposed land filling and whether there are other alternatives to combat the mosquito breeding issue. As such, there is no strong planning justification in the submission for a departure from the planning intention.
- 12.2 The Site is amid a large “GB” zone with surrounding areas predominantly rural in character, comprising mainly fish farms, ponds, grass land, vacant land, scattered residential dwellings, some open storages and vehicle parks (**Plans A-2 and A-3**). Land filling and concrete paving (about 70% of the Site) have been carried out at majority of the Site. Land filling of the remaining portion (about 30% of the Site), which is vegetated with fruit trees in fair condition, will affect the existing vegetation. According to the TPB PG-No. 10, development in the “GB” zone should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape, and the proposed development should not be susceptible to adverse environmental effects and be the source of pollution. CTP/UD&L of PlanD has reservation on the application as there is no detailed information on tree protection proposal and landscape treatment, and potential adverse impact on existing landscape resource within the Site due to filling of land cannot be reasonably ascertained. She also considers that approval of the application would encourage more similar land filling and the cumulative impact of such approval would further degrade the landscape quality of the area within

the “GB” zone. On nature conservation aspect, the applicant did not provide any information on whether the proposed filling of land would affect the ponds nearby and did not propose any avoidance measures as required by DAFC. As such, it is considered that the proposed land filling at the Site is not in line with the TPB PG-No. 10.

12.3 There is a similar application in the subject “GB” zone for filling of land and filling of pond for permitted agricultural use which was approved by the Board on review mainly on the reasons that favourable consideration was given as the fish pond at the site could contribute to local food production and the environmental impact of land/pond filling at the site for a fish farm was relatively insignificant. The circumstances of the approved application are different from the current application. Therefore, rejection of the subject application will not run against the Board’s previous decision.

12.4 Regarding the two public comments raising concerns on the application as detailed in paragraph 11, the departmental comments and planning assessments above are of relevance.

13. Planning Department’s Views

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

- (a) the proposed development is not in line with the planning intention of the “GB” zone, which is to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
- (b) the development is not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ in that the proposed filling of land would involve clearance of natural vegetation and adversely affect the natural landscape and environment; and
- (c) approval of the application would set an undesirable precedent for similar applications for filling of land within the “GB” zone without sufficient justification, and the cumulative effect of approving such applications would result in general degradation of the environment of the “GB” zone.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 28.1.2026, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or permission is renewed. The

following conditions of approval and advisory clauses are also suggested for Members' reference

Approval conditions

- (a) no part of the Site shall be filled with a depth exceeding 0.1m, as proposed by the applicant; and
- (b) the submission and implementation of the drainage proposal to the satisfaction of the Director of Drainage Services or of the Board.

Advisory Clauses

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reasons 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 conditions and advisory clauses, if any, to be attached to the permission.

15. Attachments

Appendix I	Application Form received on 29.11.2021
Appendix II	Similar application
Appendix III	Public comments received
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Lot Index Plan with Site Location
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos