

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1295

Applicant : Mr. XU Sen Lin

Site : Lot 914 in D.D. 119, Yuen Long

Site Area : 416 m² (about)

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/14

Zoning : “Green Belt” (“GB”)

Application : Filling and Excavation of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for filling and excavation of land for permitted agricultural use at the application site (the Site) zoned “GB” on the OZP (**Plan A-1**). According to the Notes of the OZP for the “GB” zone, ‘Agricultural Use’ is a Column 1 use which is always permitted. However, any filling of land or excavation of land, including that to effect a change of use to any of those specified in Column 1 and 2, requires planning permission from the Town Planning Board (the Board). The Site is currently fenced off, mainly occupied by agricultural use, a concrete fishpond and a covered area with some temporary structures. The Site is also partly paved with concrete without valid planning permission (**Plans A-2 to A-4**).
- 1.2 The Site with the ingress/egress at the northeastern part is accessible from Kung Um Road via a local track (**Drawing A-1, Plans A-2 and A-3**). According to the applicant, the application involves the regularisation of (i) excavation of land of about 167m² (about 40.1% of the Site) for about 0.5m to 1.2m in depth for a fishpond; and (ii) filling of land of about 332m² (about 79.8% of the Site) with sand and concrete of about 0.2m in depth for filling of the bottom and inner surface of a fishpond, and provision of footpath and solid ground for erection of two single-storey structures (about 2.5m in height) with a total floor area of 18.78m² for ancillary storeroom and toilet uses (**Drawings A-2 and A-3**). The remaining area of the Site would be mainly for cultivation use. All agricultural products from the Site will be reserved for self-consumption. No vehicle will be allowed to enter/park

at the Site. Plans showing the access leading to the Site, site layout and extent of land filling and excavation submitted by the applicant are at **Drawings A-1 to A-3** respectively.

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

- (a) Application Form with attachments received on 3.12.2024 (**Appendix I**)
- (b) Further Information (FI) received on 9.1.2025 (**Appendix Ia**)
[accepted and exempted from publication and recounting requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI (**Appendices I and Ia**). They can be summarised as follows:

- (a) the current application is for the provision of fishpond and cultivation areas for the applicant's own farming activities and consumption. No commercial activities would be involved;
- (b) septic tank will be provided underneath the toilet in accordance with the requirements set out in the Practice Note for Professional Persons (ProPECC) PN 1/23 of the Environmental Protection Department; and
- (c) no building structure other than the fishpond will be constructed at the western portion of the Site.

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 for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are detailed at **Appendix II**.

5. Background

The Site is subject to planning enforcement action against unauthorised filling of land and excavation of land (case No. E/YL-TYST/919) (**Plan A-2**). Reinstatement Notice was issued on 6.9.2024 requiring reinstatement of the concerned land. As the Site has not been reinstated upon expiry of the notice, prosecution action is being considered.

6. Previous Application

There is no previous planning application concerning the Site.

7. Similar Application

There is no similar planning application for filling and excavation of land for permitted agricultural use within the subject “GB” zone.

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

8.1 The Site is:

- (a) accessible from Kung Um Road via a local track (**Drawing A-1, Plans A-2 and A-3**); and
- (b) currently fenced off, mainly occupied by agricultural use, a concrete fishpond and a covered area with some temporary structures. The Site is also partly paved with concrete without valid planning permission (**Plans A-2 to A-4**).

8.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4**):

- (a) situated in area of rural fringe landscape predominated by temporary structures, village houses and existing woodland intermixed with scattered open storage/storage yards, warehouses, unused land and vacant land/structures, which are mainly located to the east of the Site in the adjoining “Undetermined” (“U”) zone; and
- (b) some of the open storage/storage yards and warehouses in the vicinity are suspected unauthorized developments (UDs) subject to planning enforcement action.

9. Planning Intention

9.1 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.

9.2 According to the Explanatory Statement of the OZP, as filling of land 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 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) no adverse comment on the application; and
- (b) the applicant should note his advisory comments at **Appendix III**.

Agriculture and Nature Conservation

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

- (a) no adverse comment on the filling and excavation of land for permitted agricultural use from agricultural development and nature conservation points of view; and
- (b) the applicant should note his advisory comments at **Appendix III**.

Traffic

10.1.3 Comments of the Commissioner for Transport (C for T):

- (a) no adverse comment on the application from traffic engineering perspective; and
- (b) the local track and footpath leading to the Site is not under her purview.

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

No adverse comment on the application.

Environment

10.1.5 Comments of the Director of Environment Protection (DEP):

- (a) no objection to the application;
- (b) no substantiated environmental complaint concerning the Site received in the past three years; and
- (c) the applicant should note his advisory comments at **Appendix III**.

Landscape

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

- (a) according to the aerial photo of 2023 (**Plan A-3**), the Site is situated in area of rural fringe landscape predominated by temporary structures, village houses and existing woodland. From the site photos taken on 10.12.2024 (**Plan A-4**), a large portion of the Site was paved

and occupied by temporary structures, while a small portion was used for cultivated farmland and pond; and

- (b) as compared with the site photos taken on 10.12.2024 and the aerial photos of 2023, tree/vegetation removal and site formation works were already undertaken at the Site. Significant adverse impact on landscape resources had taken place. Moreover, noting the existing vegetation cover in the vicinity, further degradation of the landscape resources and quality of the “GB” zone by the development is envisaged. As such, the development is considered incompatible with landscape character and resources of the surrounding areas.

Drainage

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

- (a) no in-principle objection to the development from the public drainage point of view; and
- (b) should the application be approved by the Board, approval conditions requiring the submission, implementation and maintenance of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Geotechnical

10.1.8 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

No adverse comment on the application as the applicant has clarified that no building will be constructed in the western portion of the Site, which will only be used as fishpond.

Fire safety

10.1.9 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) the applicant should note his advisory comments at **Appendix III**.

Building Matters

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

- (a) no objection to the application;

- (b) it is noted that two structures are proposed in the application. Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works under the Buildings Ordinance (BO). An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO; and
- (c) if agricultural structure(s) to be erected on the Site fall within the ambit of the Part 2 of the Schedule of Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121), DLO/YL, LandsD should be in a better position to comment on the application. Otherwise, such structure(s) will require prior approval and consent under the BO.

District Officer's Comments

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

His office did not receive any comment from the village representatives in the vicinity regarding the application.

10.2 The following Government bureau/departments have no objection to/no adverse comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Engineer/Railway Department 1-1, HyD (CE/RD 1-1, HyD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Project Manager (West) (PM(W)), CEDD; and
- (e) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 10.12.2024, the application was published for public inspection. During the statutory public inspection period, three public comments were received, including two from The Kadoorie Farm & Botanic Garden Corporation and The Conservancy Association raising concerns that the Site is the subject of suspected unauthorized activities and the Board should take into consideration the ongoing enforcement case covering the Site; and there is insufficient information regarding the landscape impact and transportation of excavated materials arising from the development (**Appendix IV-1**). The remaining public comment was received from an individual objecting to the application on the grounds that approval of the application would encourage further destruction of the natural habitat within the subject "GB" zone (**Appendix IV-2**).

12. Planning Considerations and Assessments

- 12.1 The application is for regularisation of filling of land (with sand and concrete of about 0.2m in depth covering about 79.8% of the Site) and excavation of land (for about 0.5m to 1.2m in depth covering about 40.1% of the Site) for permitted agricultural use at the Site zoned “GB” on the OZP (**Plan A-1**). 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 the “GB” zone. Whilst ‘Agricultural Use’ is always permitted within the “GB” zone, filling and excavation of land within the “GB” zone is subject to planning permission as it may cause adverse drainage impact on the adjacent areas and adverse impacts on the natural environment. In this regard, CE/MN of DSD, DEP and DAFC have no objection to/no adverse comment on the application from drainage, environmental and nature conservation aspects respectively.
- 12.2 With regard to the filling of land and excavation of land, the applicant claims that the filling of land is for filling the bottom and inner surface of a fishpond with sand and concrete, and for provision of footpath and solid ground with concrete for erection of structures, while the excavation of land is for the fishpond. However, the applicant has not provided justifications to substantiate why such a large extent of the Site is required to be paved with sand and concrete of about 0.2m (about 79.8% of the Site) and excavated for about 0.5m to 1.2m (about 40.1% of the Site) to facilitate the permitted agricultural use. No justification is also provided as to the need for a concrete fishpond of such a scale (i.e. 167m²). Although DAFC has no adverse comment on the application from agricultural development point of view, there is insufficient information in the submission to justify that the filling and excavation of land is necessary for the permitted agricultural use.
- 12.3 The Site is situated in area of rural fringe landscape predominated by temporary structures, village houses and existing woodland (**Plans A-2 and A-3**). While there are open storage/storage yard and warehouse located to the east of the Site, they are situated in another zoning (i.e. “U” zone) and are suspected UD’s subject to planning enforcement action. Moreover, noting the existing vegetation cover in the vicinity of the Site, CTP/UD&L, PlanD considers that the applied filling and excavation of land for agricultural use is incompatible with the landscape character and resources of the surrounding areas.
- 12.4 According to the TPB PG-No. 10, any application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. Moreover, any development should be compatible with the surrounding areas and should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment. In this regard, aerial photo in 2023 and site photos in 2024 show that tree/vegetation removal were undertaken and the Site has been filled and excavated without planning permission. CTP/UD&L, PlanD considers that significant adverse landscape impact had taken place and envisages that the filling and excavation of land under application would lead to further degradation of the existing landscape resources and quality of the “GB” zone. Hence, the current application is considered not in line with the TPB PG-No. 10.

- 12.5 Other concerned government departments, including the C for T, D of FS and H(GEO), CEDD have no objection to/no adverse comment on the application from traffic, fire safety and geotechnical aspects respectively.
- 12.6 The Site is not the subject of previous application and no similar application for filling and excavation of land for permitted agricultural use has been granted by the Committee within the subject “GB” zone in the past five years.
- 12.7 There are three public comments received during the statutory publication period including two of them raising concerns and one objection to the application as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.6 above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 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 applicant fails to justify the need for filling and excavation of land; and
 - (b) the filling and excavation of land under application 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’ (TPB PG-No. 10) in that the applicant fails to demonstrate that the filling and excavation of land under application would not have significant adverse landscape impact on the surrounding areas.
- 13.2 Alternatively, should the Committee decide to approve the application, no time clause for commencement of development is proposed as the land filling and excavation works under application have already been completed. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval conditions

- (a) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 24.7.2025;
- (b) in relation to (a) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 24.10.2025; 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 at **Appendix III**.

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 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.

15. Attachments

Appendix I	Application Form with attachments received on 3.12.2024
Appendix Ia	FI received on 9.1.2025
Appendix II	Extracts of TPB PG-No. 10
Appendix III	Recommended Advisory Clauses
Appendices IV-1 to IV-2	Public Comments
Drawing A-1	Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Plan showing Extent of Filling and Excavation of Land
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JANUARY 2025**