

REVIEW OF APPLICATION NO. A/YL-LFS/386
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Filling of Land and Pond in “Coastal Protection Area” Zone,
Lots 1945 S.B RP and 1945 S.C in D.D. 129, Lau Fau Shan, Yuen Long, New Territories**

1. Background

- 1.1 On 23.11.2020, the applicant, Mr. Lam Kuen, sought planning permission for proposed filling of land and pond under s.16 of the Town Planning Ordinance (the Ordinance) at the application site (the Site). The Site falls within an area zoned “Coastal Protection Area” (“CPA”) on the Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/9¹ (**Plan R-1**).
- 1.2 On 22.1.2021, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
 - (a) the proposed filling of land and pond was not in line with the planning intention of the “CPA” zone which was to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There was a general presumption against development in this zone. There was no strong planning justification in the submission for a departure from the planning intention; and
 - (b) approval of the application would set an undesirable precedent for similar applications for filling of land/pond within the “CPA” zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape of the area.
- 1.3 The Site is about 2,800 m² in area comprising two separate portions (i.e. the northern and southern portions). For the northern portion, it is mainly occupied by a pond with overgrown weed and some temporary structures are observed at its northern and western boundary. For the southern portion, it is a filled vacant land covered with loose soil and grass (**Plans R-3a and R-4a to R-4d**). The applicant proposes to fill the northern portion (about 1,500 m²) with soil of about 1m depth to avoid mosquito breeding and no additional filling will be carried out at the southern portion (about 1,300 m²) (**Drawing R-1**).
- 1.4 Part of the Site is subject to an active enforcement case (No. E/YL-LFS/513) (**Plan R-2**) and the alleged unauthorised development (UD) is filling of pond. The Enforcement Notice was posted on 9.10.2020 and the UD discontinued. The Reinstatement Notice

¹ The draft Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/10 will be gazetted on 7.5.2021. There is no change on the zoning of the subject site.

(RN) was posted on 21.10.2020 requiring the concerned parties to remove the fill materials from the pond by 21.1.2021. Upon expiry of the RN, the site inspection on 25.1.2021 revealed that the fill materials had not yet been removed, and hence, the RN was not yet complied with. The Site will be kept under close monitoring and prosecution would be taken.

1.5 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/YL-LFS/386 (Annex A)
- (b) Extract of minutes of the RNTPC Meeting held on 22.1.2021 (Annex B)
- (c) Secretary of the Board's letter dated 5.2.2021 (Annex C)

2. **Application for Review**

On 16.2.2021, the applicant, under section 17(1) of the Ordinance submitted a letter for a review of the RNTPC's decision to reject the application (**Annex D**).

3. **Justifications from the Applicant**

The justifications/responses put forth by the applicant in support of the review application are detailed in the submission at **Annex D**. They can be summarised as follows:

- (a) The villagers of Fu Cho Tsuen have been complaining the severe mosquito breeding problem at the Site, which is not a pond per se but a long-time accumulation of stagnant water.
- (b) The applicant questions whether natural conservation is more important than the villagers' health.
- (c) There are two large-scale pigsties near the Site. The outbreak of dengue fever began in Lau Fau Shan. Yuen Long District Office of Home Affairs Department requested the villagers to be well-prepared in preventing dengue fever. It is his responsibility to apply for filling the Site to protect the villagers' health.

4. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-3a, R-4a to R-4d)

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no major change in the situation since then.
- 4.2 The Site is:
 - (a) comprised of two separate portions, i.e. the northern and southern portions. For the northern portion, it is mainly occupied by a pond with overgrown weed and some temporary structures are observed at its northern and western boundaries. For the southern portion, it is a filled vacant land covered with loose soil and

grass; and

- (b) accessible via a local track leading from Deep Bay Road.

4.3 The surrounding areas have the following characteristics:

- (a) to its east across Deep Bay Road is the “Recreation” (“REC”) zone with presence of parking of vehicles and open storage of construction materials which are suspected UD, residential dwelling and vacant land;
- (b) to its south is the “REC” zone with the presence of open storage yards of construction and recycling materials which are suspected UD, vacant land and unused land;
- (c) to its west is a pigsty; and
- (d) to its north are unused land, vacant land, a pond, some residential dwellings and a fish farm.

Planning Intention

- 4.4 There has been no change in planning intention of the concerned “CPA” zone as mentioned in paragraph 8 of **Annex A**.
- 4.5 The planning intention of “CPA” zone is 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. 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.
- 4.6 As filling of land/pond 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.

Previous Application

- 4.7 There is no previous application at the Site.

Similar Applications

- 4.8 When the s.16 application was considered by the RNTPC on 22.1.2021, there is no similar application for filling of land within the same “CPA” zone. However, there is one similar application for proposed pond filling and agricultural use (planting of fruit tree) within the same “CPA” zone (**Plan R-1**). There is no additional similar application since then. Details of the application are summarised at Appendix II of **Annex A** and its location is shown on **Plan R-1**.

5. Comments from Relevant Government Departments

- 5.1 The following government departments maintain their previous comments on the s.16 application as stated in paragraph 9.1 of **Annex A**, which are recapitulated below:

Nature Conservation

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

- (a) The Site comprising two segments falls within an area zoned “CPA” on the OZP. According to the aerial photos from LandsD, the Site was partly filled in 2019 – 2020. Her site inspection dated 22.12.2020 revealed that the northern segment was currently a wet grassland while the entire southern segment had been filled. The southern segment was noted to be adjacent to a watercourse leading to a nearby coastal mudflat habitat to the northwest of the Site. In view that part of the Site remains a wetland and the application did not indicate measures to avoid causing disturbance to the nearby watercourse, she has concern on the proposed filling of land and pond from nature conservation perspective.
- (b) As the subject ponds are seen with potential for fish culture, she does not support the application for pond filling from fish culture perspective.

Visual & Landscape

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

- (a) According to the aerial photo of 2020 and the site photos taken on 1.12.2020, the northern portion of the Site is a marshland/pond and the southern portion is a filled vacant land. To the northwest of the Site are temporary structures and to the south is a local road. No existing tree is observed within the Site. The Site is located in an area of rural coastal plain landscape character predominated by ponds, vacant lands and woodlands with temporary structures and warehouses in the proximity. The proposed filling of land/pond is considered not entirely incompatible to the landscape character of the surrounding area.
- (b) According to the aerial photos of 2019 and 2020, vegetation clearance including tree removal and filling of land has been observed at southern portion of the Site. While the proposed development would not cause significant adverse landscape impact, approval of the planning application would encourage similar site alteration and tree removal prior to obtaining planning approval within the area. The cumulative impact of which would result in further degradation of the landscape quality of the surrounding environment in the “CPA” zone. Hence, she has reservation on the application from landscape planning perspective.

- (c) As the proposed filling mainly intends to avoid the breeding of mosquito and involves a depth of filling of about 1m with the same level of existing roads, it is unlikely to generate any adverse visual impact on the surrounding areas.
- (d) In view that no significant visual impact arising from the proposed filling of land/pond is anticipated, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

Drainage

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

- (a) He has no objection in principle to the application from drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest that conditions should be stipulated in the approval letter requiring the applicant to submit a drainage proposal including flood mitigation measures, to implement and maintain the proposed flood mitigation measures/drainage facilities to the satisfaction of his department. The flood mitigation measures shall be completed upon the completion of filling works. The applicant is required to demonstrate in the drainage proposal that the proposed filling works will not obstruct the overland flow nor cause any adverse drainage impact to the adjacent areas.

Environmental Hygiene

5.1.4 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 including the vicinities of the mentioned pig farms. These included but not limited to conducting fogging operations, spraying larvicide and distributing anti-mosquito promotional leaflets to villagers.

- (e) The applicant should be reminded of his detailed comments at **Annex F**.

5.2 The following government departments maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A**:

- (a) District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD);
- (b) Commissioner for Transport (C for T);
- (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (d) Director of Environmental Protection (DEP);
- (e) Chief Building Surveyor/New Territories West, BD (CBS/NTW, BD); and
- (f) District Officer (Yuen Long), Home Affairs Department (DO(YL),HAD).

5.3 The following government departments maintain their previous views of having no comment on the review application:

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (c) Project Manager (West), CEDD (PM(W), CEDD);
- (d) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (e) Director of Fire Services (D of FS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

6. Public Comments on the Review Application Received During Statutory Publication Periods

6.1 On 26.2.2021, the review application was published for public inspection. During the statutory public inspection period, 6 public comments were received from Kadoorie Farm and Botanic Garden, World Wide Fund for Nature Hong Kong, Hong Kong Bird Watching Society, Designing Hong Kong Limited, a District Council member and an individual (**Annexes E-1 to E-6**). They all objected to the review application on similar grounds as per the s.16 application stage that the proposed development is not in line with the planning intention of the “CPA” zone; the proposed use will lead to degradation of the natural environment and landscape quality of the surrounding areas; the Board should not encourage “destroy first, build later” attitude; the applicant should remove all unnecessary water collection and eliminate the sources of mosquito breeding; approval of the application would set an undesirable precedent for similar applications; and there is no strong justification for the proposed development.

6.2 5 public comments, all objecting to the application, were received at the s.16 application stage and are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

7.1 The application is for a review of the RNTPC’s decision on 22.1.2021 to reject the subject application for filling of land and pond at the Site zoned “CPA” on the OZP (**Plan R-1**). The application was rejected for the reasons that the proposed filling of

land and pond was not in line with the planning intention of the “CPA” zone; and approval of the application would set an undesirable precedent for similar applications and the cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape of the area.

- 7.2 The applicant submitted justifications in support of the review application mainly on grounds that the Site is not a pond per se but a long-time accumulation of stagnant water and filling of the Site can prevent dengue fever and protect the villagers’ health. Since the consideration of the subject application by the RNTPC on 22.1.2021, there is no change in planning circumstances.

Planning Intention of “CPA” Zone

- 7.3 The Site falls within an area zoned “CPA” on the OZP, which intends 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. 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. The Site comprises the northern and southern portions. The northern portion is currently a pond with overgrown weed while the southern portion has been filled and covered with loose soil and grass. (**Plans R-4a to 4d**). DAFC pointed out that the northern portion was currently a wet grassland while the entire southern portion had been filled. The southern portion was adjacent to a watercourse leading to a nearby coastal mudflat habitat to the northwest of the Site (**Plan R-2**). In view that part of the Site remains a wetland and the application did not indicate measures to avoid causing disturbance to the nearby watercourse, she has concern on the proposed filling of land and pond from nature conservation perspective. Besides, the subject ponds are seen with potential for fish culture, she does not support the application for pond filling from fish culture perspective. In this regard, the proposed filling of land and pond is not in line with the planning intention of the “CPA” zone. Nevertheless, the applicant did not provide any justifications for the genuine need of filling of land and pond and whether there are other alternatives for the applicant to combat the mosquito breeding issue. As such, there is no strong planning justification in the submission for a departure from the planning intention of the “CPA” zone.

Landscape Impact on the Surrounding Areas

- 7.4 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. It is noted that from the aerial photos taken in 2019 and 2020 (**Plans R-3a to 3c**), vegetation clearance including tree removal and filling of land have been observed at southern portion of the Site. While the proposed filling of land and pond would not cause significant adverse landscape impact, approval of the planning application would encourage similar site alteration and tree removal prior to obtaining planning approval within the area. The cumulative impact of which would result in further degradation of the landscape quality of the surrounding environment in the “CPA” zone.

Other Departmental Comments

- 7.5 Other relevant Government departments, including DEP, C for T, CE/MN of DSD and D of FS have no objection to or no adverse comment on the application. The

proposed use will unlikely create significant environmental, traffic, drainage and fire safety impacts to the surrounding areas.

Setting of Undesirable Precedent

- 7.6 No previous approval has been granted for the Site but there is 1 similar application (No. A/YL-LFS/30) for pond filling and agricultural use (planting of fruit tree) within the same “CPA” zone, which was rejected by the RNTPC in 1998 on the grounds of not complying with the then TPB-PG No. 12A; insufficient information to demonstrate that the proposed development would not have significant adverse ecological and drainage impacts on the surrounding areas; and undesirable precedent for similar applications. The rejection of the current application is considered in line with the RNTPC’s previous decision.

Public Comments

- 7.7 There are 6 public comments objecting to the review application mainly on the grounds as detailed in paragraph 6 above. The planning considerations and assessments in paragraphs 7.1 to 7.6 above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC on 22.1.2021, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed filling of land and pond is not in line with the planning intention of the “CPA” zone 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) approval of the application would set an undesirable precedent for similar applications for filling of land/pond within the “CPA” zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape of the area.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid until 7.5.2025, 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) no part of the Site shall be filled other than soil to a depth exceeding 1 m, as proposed by the applicant;

- (b) no vehicles are allowed to queue back or reverse onto/from public roads;
- (c) 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;
- (d) in relation to (c) 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; and
- (e) if any of the above planning conditions (c) or (d) 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 **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

10. Attachments

Drawing R-1	Proposed Land Filling Plan
Plan R-1	Location Plan with Similar Application
Plan R-2	Site Plan
Plans R-3a to 3c	Aerial Photos
Plans R-4a to 4d	Site Photos
Annex A	RNTPC Paper No. A/YL-LFS/386
Annex B	Extract of minutes of the RNTPC Meeting held on 22.1.2021
Annex C	Secretary of the Board's letter dated 5.2.2021
Annex D	Letter of 16.2.2021 from the applicant applying for review
Annexes E1 to E6	Public comments received during statutory publication periods of the review application
Annex F	Recommended advisory clauses

TPB Paper No. 10739

**For Consideration by
the Town Planning Board on 7.5.2021**

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