

REVIEW OF APPLICATION NO. A/YL-ST/626
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Temporary Field Education Centre
with Ancillary Shop and Services for a Period of 3 Years
in “Conservation Area” (“CA”) Zone,
Lot 1808 in D.D. 96, Lok Ma Chau, San Tin, Yuen Long**

1. Background

- 1.1 On 18.7.2022, the applicant, Mr. KO Shun Pang, submitted the subject application under the Section 16 of the Town Planning Ordinance (the Ordinance) to seek permission for proposed temporary field education centre with ancillary shop and services for a period of 3 years at the application site (the Site), with an area of about 165m², which falls within an area zoned “Conservation Area” (“CA”) on the approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8 (**Plan R-1**).
- 1.2 On 17.2.2023, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the proposed development was not in line with the planning intention of the “CA” zone, which was primarily to conserve the ecological value of wetland and fish ponds which formed an integral part of the wetland ecosystem in the Deep Bay Area and discourage new development unless it was required to support the conservation of the ecological integrity of the wetland ecosystem or the development was an essential infrastructure project with overriding public interest. No strong planning justification had been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
 - (b) the proposed development was not in line with 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 applicant failed to demonstrate how the proposed temporary use could facilitate the environmental education.

The Proposed Development

- 1.3 There is no change in the development proposal as compared with the one submitted at the S.16 application stage. The Site is accessible from a local access connecting to Ha Wan Tsuen East Road (**Plan R-1**). The proposed use includes four 1-storey structures (with height of about 3m-3.66m) comprising a temporary exhibition centre with display boards promoting environmental protection

education and solar energy, a souvenir shop selling pamphlets on birds and green solar energy and gifts, a store room and a mobile toilet with a total gross floor area (GFA) of about 106.52 m². The proposed temporary field education centre will be operated on a semi self-service basis and only one half-day staff member will be working in the Site. The operation hours are from 10:00 a.m. to 6:00 p.m., Tuesday to Sunday, including public holidays. Visitors and site staff will access the Site by public transport or walking via the existing transportation network. No car parking and loading and unloading space will be provided within the Site. The loading/unloading activity will be carried out off-site in the open area to the northeast of the Site adjoining the existing local access.

Construction stage

- 1.4 During construction stage, only light and temporary materials will be used and the construction materials will be transported to the off-site loading and unloading area by light goods vehicle in the morning session once per day and then hand-carried or transported to the Site by hand-trolleys.

Operation stage

- 1.5 During operation of the proposed development, supplies materials will be delivered to the Site by light goods vehicle two to three times per week. Construction work at the Site will be carried out between March and June from 11:00 a.m. to 4:45 p.m. daily except for public holidays. Two nos. of *Bauhinia blakeana* (洋紫荊), each with a height of not less than 2.75 m and a soil depth of not less than 1.2 m, will be provided at the respective eastern and western part of the Site. No tree felling will be involved and no existing vegetation on-site will be affected. The plans showing the site layout, loading and unloading and landscape proposal are at **Drawings A-1 to A-3 of Annex A**.
- 1.6 For Members' reference, the following documents are attached:

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| (a) RNTPC Paper No. A/YL-ST/626B | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 17.2.2023 | (Annex B) |
| (c) Secretary of the Board's letter dated 3.3.2023 | (Annex C) |

2. Application for Review

On 20.3.2023, the applicant applied, under Section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D1**). On 14.4.2023, the applicant submitted written representation in support of the review application (**Annex D2**).

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annex D2** as summarised below:

- (a) At the s.16 application stage, the applicant claims that the Site is vacant and can be put to efficient use for the proposed development which is for field study and education purpose and promotion of environmental protection. No filling of land/pond or excavation of land will be involved. The proposed use will be operated in a semi self-service manner and will not result in adverse traffic, ecological and environmental impacts.
- (b) The written representation mainly provides the responses to the reasons for rejection with further elaboration of previous use/activities on site and the operational arrangement of the proposed field education centre as detailed below.
- (c) In response to rejection reason (a) on not being in line with the planning intention of the “CA” zone, the applicant claims that the proposed development is supportive to the conservation and ecological value of the area. The Site is an agricultural land which is situated on a sloping ground and previously used for planting of bananas. The Site was then left vacant due to soil loss on site. There was previous filling activity on site which was prosecuted by government. Reinstatement works had completed by the previous owner of the Site before the Site was acquired by the applicant. According to Attachment 6 of **Annex D2**, the existing structures on site were subject of the previous prosecution by Environmental Protection Department (EPD) under the Environmental Impact Assessment Ordinance (EIAO) for undertaking such structures without an Environmental Permit. The applicant was prosecuted with penalty. The applicant will improve the site condition and improve/refine the materials on site which will be beneficial to the surrounding fish ponds and wetland.
- (d) In response to rejection reason (b) on not being in line with TPB PG-No.12C, the applicant claims that the proposed development will be beneficial in terms of improvement of the site conditions, provision of greenery, protection of fish ponds and wetland and education of the wetland system in the area overall. As such, the proposed development is compatible with TPB PG-No. 12C in that there is no net loss of wetland and will not lead to fragmentation of wetland.
- (e) Concerning the operation of the proposed field education centre, the applicant claims that there is no privately-run field education centre as currently proposed in the area. The proposed development will provide an appropriate, non-profit making venue for bird watching and to promote environmental education, greening and wetland importance. The proposed souvenir shop will sell gifts and pamphlets on the birds and green solar energy. The proposed development will be operated by professional staff which will avoid illegal activity such as land filling within the Site. The applicant will cooperate with relevant interest groups such as cycling clubs and hikers for operation of the proposed field education centre and organisation of events and activities to promote eco-tourism, farming activity and interest classes in collaboration with different groups at the Site.

4. **The Section 16 Application**

The Site and Its Surrounding Areas (Plans R-1 to R-4)

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the Section 16 application by the RNTPC are described in para. 8 of **Annex A**. There has not been any major change in the planning circumstances of the area since the consideration of the application by the RNTPC.
- 4.2 The Site is:
- (a) elongated in shape and located on the bund area at the verge of an existing fish pond with metal frame of one to two storeys in height and grass cover;
 - (b) accessible by an existing footpath via a local road which eventually connects to Ha Wan Tsuen Road; and
 - (c) partly falling within the Wetland Buffer Area (WBA) (about 123.75 m² / about 75% of the Site) with a portion in its northwest falling within the Wetland Conservation Area (WCA) (about 41.25 m² / about 25% of the Site) (**Plan R-2**).
- 4.3 The surrounding areas are rural in character comprising fish ponds and woodland:
- (a) the open area to its north, west, south and southwest are fish ponds, grass land, local track/footpath and some residential dwellings;
 - (b) along its eastern boundary are the pond bund and an existing culvert; to its further east is an existing access road which is about 923 m away from Ha Wan Tsuen East Road to its further southwest (**Plan R-1**); and
 - (c) across the access road to its further south is a woodland with graveyards.
- 4.4 At present, the Site is not subject to active planning enforcement action. Notwithstanding, the Site and the area to its west and northeast covering a larger land area of about 5,350 m² (**Plan R-2a**) were subject to a previous enforcement action against unauthorised filling of land and filling of pond in 2017 (i.e. E-case no. E/YL-ST/387). Enforcement Notice (EN) and Reinstatement Notice (RN) were issued to the owners of the respective private lots on 19.7.2017 and 10.10.2017 respectively by the Planning Authority. For the Site per se, the landowner was required to remove the leftovers, debris and fill materials in the southeastern part of the Site (about 98 m² as per the pink stippled black area in **Plan R-2b**) and to grass such affected area, and to remove the leftovers, debris and all fill materials deposited in the pond in the northwestern part of the Site (about 67 m² as per the pink hatched black area in **Plan R-2b**). Other concerned owners of the private lots subject to the aforesaid enforcement were required to undertake the same removal action and to grass the area as required by the EN/RN. After prosecution and conviction, Compliance Notice (CN) was issued to the subject Lot 1808 to its former landowner on 10.5.2019 since the subject Lot had been reinstated. According to record, the subject Lot 1808 came under the

ownership of the applicant of the current application in April 2019.

Planning Intention

- 4.5 The planning intention of the “CA” zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The “no-net-loss in wetland” principle is adopted for any change in use within this zone. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest. Filling of land/pond and excavation of land 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.

Town Planning Board Guidelines

- 4.6 The Town Planning Board Guidelines for ‘Application for Development within Deep Bay Area under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 12C) is relevant to the application. Relevant assessment criteria of the Guidelines is attached at Appendix II of **Annex A**.

Previous Application

- 4.7 The Site is not the subject of any previous application.

Similar Application

- 4.8 There was no similar application for field education centre with ancillary shop and services use within the same “CA” zone.

5. Comments from Relevant Government Departments

- 5.1 Comments on the Section 16 application made by the relevant Government departments are stated in paragraph 10 and Appendix III of **Annex A**. Their advisory comments, if any, are in Appendix IV of **Annex A** and recapped in **Annex F**, which is updated, where appropriate, in view of paragraph 5.2 below.
- 5.2 For the review application, the relevant Government departments have been further consulted. All the departments maintain their previous views on the Section 16 application and most of them have no further comments on the review application. Comments from the following departments are recapitulated as follows and are updated in view of the review application as appropriate:

Land Administration

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

- (a) Previous comments are still valid. For the review application, DLO/YL advises that the subject application site involves one private lot (Lot 1808 in D.D. 96) and the said private lot is not covered by any Short Term Waiver.
- (b) Regarding the enforcement action, according to LandsD's records, there is no warning letter issued or registered in Land Registry for the concerned private lot. If any breach of lease condition is observed, LandsD will proceed with lease enforcement action accordingly.

Environment

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

- (a) Previous comments are still valid. With reference to the revised "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" (the COP), which is applicable in handling the subject application, the applicant is advised to follow the relevant mitigation measures and requirements in the COP to minimise potential environmental impacts on the surrounding areas if the application is approved.
- (b) As the Site falls within "CA" zone, if the proposed use will involve any earthworks or building works within the Site (a conservation area), it will constitute a designated project under Item Q.1, Part 1 of Schedule 2 of the EIAO and an environmental permit under the EIAO is required before its construction.

Nature Conservation

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

- (a) Previous comments are still valid.
- (b) The Site is adjacent to fish ponds in WCA. It is noted that the operation hours for the proposed education centre are from 10:00 a.m. to 6:00 p.m. Based on the information about the construction works required and measures to avoid indirect disturbance impacts (e.g. light, noise, human activities) on the nearby fish ponds during the construction phase and operation phase as provided in the s.16 planning application, he has no further comment on the review application.

Landscaping

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

- (a) As no additional information on the landscape aspect of the Site is provided, her previous comments are still valid for the review application.
- (b) Based on the aerial photo of 2021, the Site is situated in an area of rural fringe landscape character comprising rivers, fish ponds, hillsides, farmlands, village houses, temporary structures and tree groups. With reference to the site photos in July 2022 and the site visit on 4.8.2022, the Site is vacant. Some trees of undesirable species (i.e. *Leucaena leucocephala* 銀合歡) and dead trees were found along the southeast periphery outside the Site. Therefore, significant adverse landscape impact on the surrounding landscape resources and character arising from the development is not anticipated.
- (c) Having reviewed the Landscape Proposal at Drawing A-3 of **Annex A** and the applicant's responses as per Appendix Ic of **Annex A**, she has no further comment from landscape planning perspective.
- (d) Since there is no prominent public frontage surrounding the Site and no significant landscape impact within the Site arising from the proposed use, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

Local Views

5.2.5 Comments of the District Officer (Yuen Long) (DO/YL):

- (a) He has no comment on the review application and advises that other local comments should be submitted to the Board directly.
- (b) By the end of the consultation by DO/YL, one comment is received from the Village Representative of Lok Ma Chau Tsuen raising concerns on the illegal use on site, traffic congestion and environmental pollution which are similar to the public comments as detailed in paragraph 6 below.

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 31.3.2023 and 28.4.2023, the review application was published for public comments. During the statutory publication periods, a total of fourteen public comments (**Annex E**) were received from green groups, including The

Conservancy Association, Kadoorie Farm and Botanic Garden Corporation and The Hong Kong Bird Watching Society, Village Representative of Lok Ma Chau Tsuen and individuals raising objection and concerns on the application which are similar to the public comments received at the s.16 application stage. They are summarised as follows:

- (a) the proposed development is not in line with the planning intention of the “CA” zone and TPB PG-No. 12C; there are insufficient details to justify the development that it can support the conservation of the ecological integrity of the wetland ecosystem or as an essential infrastructure project with overriding public interest;
- (b) all the potential impacts during construction and operation phase have not been fully evaluated; there are no assessments to identify the source of environmental impacts and mitigation measures; the Site is close to slope area and has no electricity supply; the development has no parking space provision and will bring in additional traffic and visitors which will adversely affect nearby fish ponds and the roosting ground for the birds, disturb the living environment of nearby residents and cause pollution to the surrounding natural environment which is a conservation area;
- (c) there are insufficient information on site management and operation (including but not limiting to the estimated visitors and activities to be held on site), land recovery plan upon completion of the proposed temporary use; and
- (d) there was previous pond filling at the Site; the development will set an undesirable precedent for similar application in the area; and TPB should uphold the decision to reject the application.

6.2 At the s.16 application stage, nine public comments were received from green groups and individuals raising objection and concerns on the application. The summary of the comments are in paragraph 11 of **Annex A**.

7. Planning Considerations and Assessments

7.1 The application is for a review of RNTPC’s decision on 17.2.2023 to reject the application for proposed temporary field education centre with ancillary shop and services at the Site which is zoned “CA”. The application was rejected for the reasons that it was not in line with the planning intention of “CA” zone and TPB PG-No. 12C. To support the review application, the applicant has submitted written representation responding to the reasons for rejection and providing further elaboration on the operational arrangement of the proposed field education centre. To recap, the applicant claims that (i) the proposed development is in line with the planning intention of the “CA” zone as it is supportive to the conservation and ecological value of the area and will improve the site condition which is beneficial to the surrounding fish ponds and wetland; (ii) the proposed development is in line with TPB PG-No. 12C in that there is no net loss of wetland; and (iii) the proposed development will be operated by professional staff and the applicant will cooperate with relevant interest group such as cycling clubs and

hikers for operation of the proposed field education centre and organisation of events and activities to promote eco-tourism, farming activity and interest classes.

- 7.2 There has been no change in the development proposal and planning circumstances of the Site since the consideration of the Section 16 application by the RNTPC. The previous planning considerations and assessments in paragraph 12 of **Annex A** remain valid for the current review application. In response to the applicant's justifications for the review application as detailed in paragraph 3, the planning considerations and assessments are provided below.

Planning Intention of the "CA" Zone

- 7.3 The planning intention of the "CA" zone is to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest.
- 7.4 The applicant has provided further information on the operational arrangement and activities to be organised on site in the review application as summarised in paragraph 3(e). However, the applicant has not provided sufficient information on how the proposed development can serve the purpose of environmental education and is an essential project with overriding public interest within the "CA" zone, and how such proposed activities as eco-tourism, farming, hiking and interest classes are in line with the planning intention of the "CA" zone. In particular, the impacts of the proposed activities and its impacts on the surrounding fish ponds and wetland within the "CA" zone are not evaluated. As such, the applicant fails to provide strong justification which warrants a departure from the planning intention of "CA" zone, even on a temporary basis.
- 7.5 The applicant claims that the Site has previously been used for farming purpose and the proposed development will help improve the site conditions by refining the existing structures for the proposed field education centre and proposed landscape treatment on site. As noted in the previous planning enforcement involving the Site and the pond to its northwest and west, there is no evidence that the Site has been used as farmland for agricultural purpose. The existing structures on site are also subject of unauthorised development which has been prosecuted under EIAO. LandsD also advises that lease enforcement action will be undertaken if any breach of lease condition is observed on site. The applicant fails to demonstrate how the refinement of the existing structures for the proposed field education centre can improve the overall site conditions or that it is beneficial for protection of fish ponds and wetland and assist in the education of the wetland system in the area.

TPB PG-No. 12C

- 7.6 According to TPB PG-No. 12C, the Site partly falls within the WBA (about 123.75m² / 75% of the Site) and partly falls within the WCA (about 41.25m² / 25% of the Site). The applicant claims that the proposed use will not involve

filling of land/pond or excavation of land and that the existing structures will be improved/refined for the proposed temporary education centre. However, the proposed activities and operation of the proposed temporary field education centre are more akin to active recreation and commercial activities. The applicant fails to demonstrate how the proposed temporary use could facilitate the environmental education arousing the public understanding of the ecology and nature conservation of the area as specified in TPB PG-No. 12C. As such, it is considered that the proposed temporary use is not in line with TPB PG-No. 12C.

Operation of the Proposed Temporary Field Education Centre

- 7.7 The applicant claims that the proposed field education centre is to be operated in a semi self-service manner and further supplemented in the review application that he will cooperate with relevant interest groups such as cycling clubs and hikers for operation of the proposed field education centre and organization of events and activities to promote eco-tourism, farming activity and interest classes in collaboration with different groups at the Site. Notwithstanding, the applicant fails to provide full details on the construction and operation of the proposed temporary field education centre and the programmes and activities to be provided thereat including information on the details of the programme/events/activities be held on site in terms of the theme, site management, operation and capacity/estimated visitors.
- 7.8 Regarding the public comments objecting and raising concerns on the application as detailed in paragraph 6, the departmental comments and planning assessments above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taking into account the public comments mentioned in paragraph 6 above, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 17.2.2023, the Planning Department maintains its previous view of not supporting the review application for following reasons:
- (a) the proposed development is not in line with the planning intention of the "CA" zone, which is primarily to conserve the ecological value of wetland and fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area and discourage new development unless it is required to support the conservation of the ecological integrity of the wetland ecosystem or the development is an essential infrastructure project with overriding public interest. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
 - (b) the proposed development is not in line with TPB PG-No. 12C in that the applicant fails to demonstrate how the proposed temporary use could facilitate the environmental education.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 7.7.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 6:00 p.m. to 10:00 a.m. as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Monday, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the submission of 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 7.1.2024;
- (e) in relation to (d) above, the implementation of 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 7.4.2024;
- (f) the implemented drainage facilities within the Site shall be maintained at all times during the planning approval period;
- (g) the submission of a fire service installations and water supply for firefighting proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.1.2024;
- (h) in relation to (g) above, the provision of fire service installations and water supply for firefighting proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.4.2024;
- (i) if any of the above planning condition (a), (b), (c) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning condition (d), (e), (g) or (h) 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; and
- (k) upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

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 period of which the permission should be valid on a temporary basis.

10. Attachments

Annex A	RNTPC Paper No. A/YL-ST/626B
Annex B	Extract of minutes of the RNTPC Meeting held on 17.2.2023
Annex C	Secretary of the Board's letter dated 3.3.2023
Annex D1	Applicant's letter dated 20.3.2023 applying for review
Annex D2	Applicant's Written Representation received on 14.4.2023
Annex E	Public comments
Annex F	Recommended advisory clauses
Plan R-1	Location Plan
Plan R-2a	Site Plan
Plan R-2b	Previous planning enforcement at the Site
Plan R-3	Aerial Photo
Plan R-4	Site Photos

**PLANNING DEPARTMENT
JULY 2023**