

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/14

- Applicant** : Mr. LI Kin Hoi represented by Metro Planning and Development Company Limited
- Site** : Lots 777 (Part) and 969 (Part) in D.D. 78, Ta Kwu Ling North, New Territories
- Site Area** : 2,640 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Filling of Ponds for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for filling of ponds (about 2m in thickness to the level of the adjoining land) for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2. According to the Notes of the OZP, ‘agricultural use’ is a Column 1 use which is always permitted. However, any filling of pond necessary to effect a change of use to those always permitted under Column 1 within “AGR” zone requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site comprises three ponds. According to the applicant, the proposed filling of three ponds (i.e. Ponds 1 to 3 as shown on **Plans A-2, A-3a and A-3b**) by about 2m is to facilitate the always permitted agricultural use (i.e. growing vegetables) and the ponds would be filled with soil suitable for agricultural purpose. Nevertheless, PlanD’s site inspections in March and April 2019 revealed that portions of Ponds 2 and 3 and adjoining land have been filled up without valid planning permission and some construction materials have been found at those two ponds (**Plans A-2 and A-3b**). The latest site inspection in September 2019 revealed that the ponds have been largely reinstated (**Plan A-2 and Plans A-4a to A-4c**).
- 1.3 The Site is accessible to Lin Ma Hang Road via a local road (**Plans A-1**). According to the applicant, it is estimated that the proposed pond filling works would be completed within 25 working days.

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

- (a) Application Form with attachments received on 29.10.2018 (Appendix I)
- (b) Supplementary Information received on 1.11.2018 (Appendix Ia)
- (c) Further Information (FI) received on 22.11.2018 (Appendix Ib)
- (d) Letter dated 4.12.2018 requesting for deferment of consideration of the application (Appendix Ic)
- (e) FI received on 19.2.2019 (Appendix Id)
- (f) FI received on 21.2.2019 (Appendix Ie)
- (g) Letter dated 8.4.2019 requesting for deferment of consideration of the application (Appendix If)
- (h) FI received on 27.5.2019 (Appendix Ig)
- (i) Letter received on 27.6.2019 requesting for deferment of consideration of the application (Appendix Ih)

1.5 On 21.12.2018, 14.4.2019 and 19.7.2019, the Rural and New Town Planning Committee (the Committee) agreed, at the request of the applicant (**Appendices Ic, If and Ih**), to defer making decision on the application for two months each pending the preparation of further information to address the departmental comments. Since the third deferment on 19.7.2019, the applicant has not submitted any FI within the 2-month deferment period and the application is therefore scheduled for consideration by the Committee on 4.10.2019.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form and its attachments, supplementary information and FI at **Appendices I, Ia, Ib, Id, Ie and Ig**. They can be summarized as follows:

- (a) the proposed filling of ponds is about 2m in depth;
- (b) the Site would be filled with soil suitable for agricultural purpose and no construction waste would be used;
- (c) no pesticides would be used in future agricultural activities and no toilet would be provided at site to avoid polluting the stream course nearby;
- (d) the proposed pond filling works for permitted agricultural use is compatible with the surrounding environment and no adverse drainage impact is anticipated; and
- (e) no Government land would be affected. The Government land portion of Pond 3 would be separated by sheet piling during the filling operation and safety measures such as temporary site hoarding will be provided to avoid strangers entering the Site during backfilling and compaction works of the ponds.

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

The applicant is not a “current land owner” but 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 Town Planning Ordinance (TPB PG-No. 31A) by taking reasonable steps to give notification to other current land owners including posting site

notice and advertising on three local newspapers. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is part of the subject of an enforcement case (No. E/NE-TKLN/32) against filling of ponds and filling of land. An Enforcement Notice (EN) was issued to the concerned landowners on 28.3.2019 requiring discontinuance of the unauthorized development by 4.4.2019. Reinstatement Notice (RN) was issued on 9.4.2019 requiring the notice recipients to remove the fill materials and to grass the concerned area by 9.7.2019 (**Plan A-2**). According to the latest site inspection in September 2019, the Site is largely reinstated. The case will be monitored according to established procedures.

5. Previous Application

There is no previous application for the Site.

6. Similar Application

There is no similar application for pond filling within the "AGR" zone in the vicinity of the Site in the Ta Kwu Ling North area.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo and UAV photo on A-3a and A-3b, and site photos on A-4a to A-4c)

7.1 The Site is:

- (a) Pond 1 is densely overgrown with vegetation and Ponds 2 and 3 were once partially filled with soil and some construction materials without valid planning permission. The Site is largely reinstated as at September 2019 (**Plans A-3b, A-4a to A-4c**); and
- (b) accessible from Lin Ma Hang Road via a local road.

7.2 The surrounding areas have the following characteristics:

- (a) to the northeast and southeast are vacant pigsties and to the east are some temporary domestic structures;
- (b) to the south across the local road are fallow agricultural land, a pond and some abandoned temporary structures;
- (c) to the west and south is a stream course; and
- (d) some converted containers, active/fallow agricultural land and some abandoned temporary structures are found to its further southwest.

8. **Planning Intention**

The planning intention of the “AGR” zone in the Ta Kwu Ling North area is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. **Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots which are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement; and
- (b) it is noted that some Government land adjoining Lot 969 which forms part of the pond may be affected (i.e. Pond 3 on **Plan A-2**). Having reviewed the FI submitted by the applicant (**Appendices Ie and Ig**), she has no in-principle objection to the application based on the following:
 - (i) no contravention of the lease conditions of the lots would be caused by the proposed filling of ponds;
 - (ii) prior to the commencement of any drainage works outside the Site or outside the jurisdiction of the applicant, the applicant should seek the consents of her office and the relevant private land owner(s); and
 - (iii) no Government land would be affected and all protective and safety measures are in force.

Agricultural and Nature Conservation

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

- (a) he does not support the application from the fisheries point of view;
- (b) from fisheries point of view, any filling of pond for other usages is not supported or recommended. Fish ponds, regardless of their status, should be reserved for fish culture activities;
- (c) his site inspection in March 2019 revealed that the Site was filled with a mixture of sand and rock not suitable for cultivation purpose. According to his record, he has not received any application for Letter of Approval for erecting agricultural structures at the Site. It appears that this is a case of

“destroy first, build later” activity which is undesirable and should not be encouraged although it is noted that the Site has been largely reinstated in September 2019; and

- (d) since the ponds are densely overgrown and Ponds 1 and 3 are largely dried up, they are not considered to be of much ecological value. Some young and semi-mature trees of mainly native species are noted at the periphery of the ponds. A stream course was found along the southwestern side of the Site (**Plan A-2**). Should the application be approved, the applicant should be reminded to perform good site practice, as well as not to damage the trees and pollute the stream course nearby.

Drainage

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

- (a) unless the applicant could satisfactorily address his concerns, he has reservation on the application from the public drainage viewpoint;
- (b) the ponds are used as flood storage to store a portion of the surface runoff coming from the upstream and also within the lots and allow a limited flow to the downstream of the catchment. The drainage capacity of the downstream drainage system would be reduced as all the flow originally stored in the ponds would be discharged to the downstream drainage system. The applicant is required to assess the impacts and demonstrate in the submission with the implementation of necessary mitigation measures, the additional drainage from the lots would not overload the existing downstream drainage system and the proposed works will not cause an unacceptable increase in the risk of flooding in areas of upstream of, adjacent to or downstream of the development;
- (c) it is noted that only peripheral channels are provided for the fish pond areas. The applicant should advise why peripheral channels and covers are not provided fully along the boundary of the Lots 777 and 969 to prevent the escape of storm water run-off onto adjoining land;
- (d) his detailed comments on the submitted revised drainage proposal are at **Appendix II**;
- (e) the Site is in an area where no public sewerage connection is available; and
- (f) should the application be approved, an approval condition for the submission and implementation of a drainage proposal for the Site is recommended to ensure that the proposed filling of ponds will not cause adverse drainage impact to the adjacent area.

Environment

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

- (a) he has no objection to the application from environmental planning point of view;

- (b) there were six substantiated environmental complaints against the Site during the past three years. One of them was related to air quality and five of them were related to land filling/ fly-tipping. Upon his site inspection and investigation, it is noted that a notification form was received by EPD for the acknowledgement on owners' permission of an intended construction waste deposition on Lots 777 and 969 in D.D. 78. The acknowledgement was given in March 2019 and the applicant had been advised that the acknowledgement on the notification form only represented that the depositing activity is in compliance with section 16B(3) of the Waste Disposal Ordinance. The depositing activity still has to be in compliance with other applicable laws of Hong Kong;
- (c) it is noted that there is a stream course running in close proximity to the Site (**Plan A-2**). The applicant's FI (**Appendix Ib**) stated that the ponds have not been filled, no pesticides would be used and no toilet would be provided on Site. As advised by PlanD, the ponds have been largely reinstated in September 2019 after partial filling observed in March 2019. Impact to the adjacent stream course is not anticipated. Should the application be approved, the applicant is advised to strictly observe all relevant pollution control ordinances, particular on waste management and disposal, and put in place necessary precautionary/ pollution control measures to prevent any pollution of the nearby stream course during the proposed pond filling works and when carrying out agricultural activities;
- (d) there is no existing public sewer in the vicinity of the Site. The applicant shall have to provide his own sewage treatment and disposal measures to cater for any sewage arising from the application, in compliance with the requirements of ProPECC PN 5/93 where appropriate; and
- (e) it is noted that the nearest domestic structure is about 25m to the east of the Site (**Plan A-2**). Should the application be approved, the applicant is advised to strictly comply with all relevant requirements in Noise Control Ordinance, and the Authorized Person and the contractors are expected to take full account of environmental matters and follow ProPECC PN 2/93 in controlling construction noise during non-restricted hours (i.e. from 7 a.m. to 7 p.m. of normal days, i.e. Mondays to Saturdays not being a public holiday) to avoid adverse construction noise impacts.

Landscape

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

- (a) she has no objection to the application from landscape planning point of view;
- (b) based on the aerial photo of 2017, the Site is situated in an area of rural landscape character comprising of clustered tree groups, vegetated areas and some temporary structures (**Plan A-3**). According to her site record, while some existing trees of common species are found in the proximity between the ponds, the Site is covered by vegetation such as *Ludwigia hyssopifolia* (草龍), an aquatic/semi-aquatic plant species that are common for waterlogged/marsh area. There is also a stream course running along the

southwestern side of the Site in close proximity (**Plan A-2**);

- (c) having reviewed the FI (**Appendix Ie**) submitted by the applicant, it is noted that construction of site access would not be required for the proposed operation, and the resultant site level would follow the existing ground level of the adjoining land. In view of the above, significant adverse impact on existing landscape resources is not anticipated; and
- (d) since there is no major public frontage along the site boundary and clustered tree groups are found in close proximity of the Site, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

Water Supply

9.1.6 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Traffic

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

- (a) since there is no change to the permitted land use for the Site, he has no objection to the application from the traffic engineering point of view subject to the condition that no construction vehicles are allowed to use the North District roads at the peak hours (7 a.m. - 9 a.m. and 5 p.m. - 7 p.m.) from Mondays to Fridays (except public holidays); and
- (b) the village road connecting the Site with Lin Ma Hang Road is not managed by his department (**Plan A-1**). The land status of the access leading to the Site should be checked with the lands authority. The management and maintenance responsibilities of the same access should also be clarified with the relevant lands and maintenance authorities accordingly.

Building Matters

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

- (a) the Site is zoned "AGR". Certificate of exemption may be issued under Buildings Ordinance (Application to the New Territories) Ordinance, Cap. 121 by the Director of Lands to the buildings for agricultural uses. Otherwise section 14 of the Buildings Ordinance (BO), Cap. 123 shall apply to the application; and

- (b) his detailed comments are at **Appendix II**.

District Officer's Comments

- 9.1.9 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals on the application. The incumbent North District Council (NDC) member of the subject constituency has no comment on the application. The Indigenous Inhabitant Representative and the Resident Representative of Chuk Yuen object to the application due to adverse drainage impact and potential landslide hazard to the surrounding area.

- 9.2 The following Government departments have no objection/ comment on the application:

- (a) Chief Highway Engineer/New Territories East, Highway Department (CHE/NTE, HyD);
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (c) Director of Fire Services (D of FS); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 6.11.2018, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix III**). A NDC member and the Chairman of Sheung Shui District Rural Committee have no comment on the application. The Hong Kong Bird Watching Society, World Wide Fund for Nature Hong Kong and two individuals object to the application mainly on the grounds that the proposed operation is not in line with the planning intention of "AGR" zone that there is no strong justification in how the proposed pond filling would facilitate agriculture activities; the Site has high potential for agricultural rehabilitation; and the proposed operation would have adverse drainage impact and cause potential landslide hazard to the surrounding area.

11. Planning Considerations and Assessments

11.1 The current application is for filling of ponds by 2m in thickness with soil suitable for agricultural purpose for permitted agricultural use at the Site falling within the "AGR" zone. The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. As fish ponds should be reserved for fish culture activities, DAFC does not support the application.

11.2 Whilst agricultural use in the "AGR" zone is always permitted, any pond filling will require planning permission from the Board. The requirement for planning permission for pond filling operation is to ensure that it would not cause adverse drainage and environmental impacts on the adjacent areas as most parts of the low-lying areas in Ta Kwu Ling North is flood prone. Therefore, any development must demonstrate that the

proposal would not cause any increase in the flooding susceptibility of the adjoining areas. According to CE/MN, DSD, the applicant should provide more information in relation to the drainage aspect of the proposed operation. As far as the flooding susceptibility of the surrounding area is concerned, the applicant fails to demonstrate that the filling of ponds would not cause adverse drainage impact on the area.

- 11.3 Although the applicant claims that the ponds would be filled up for 2m in thickness by soil suitable for agricultural purpose, PlanD's site inspections in March and April 2019 found that portions of Ponds 2 and 3 and adjoining land have been filled and some construction materials have been found at the two ponds (**Plans A-2 and A-3b**). According to the latest site inspection in September 2019, the Site has been largely reinstated (**Plans A-2, A-3 and A-4a to A-4c**). Nevertheless, DAFC advised that the Site had been filled with a mixture of sand and rock not suitable for cultivation purpose. It is a case of "destroy first, build later" activity which is undesirable and should not be encouraged. Should the application be approved, it would set an undesirable precedent for other similar applications and encourage unauthorized filling of ponds/land prior to obtaining planning permission. The cumulative impact of approving such applications would result in a general degradation of the environment of the area.
- 11.4 According to the applicant's FI (**Appendix Ib**), no pesticides would be used and no toilet would be provided on Site. EPD considers that environmental impact to the adjacent stream course is not anticipated and has no objection to the application from environmental planning point of view. CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective as significant adverse impact on the existing landscape resources is not anticipated. Other Government departments consulted, including CE/C of WSD, C for T, CHE/NTE of HyD, PM(N) of CEDD, D of FS and C of P have no objection to or no comment on the application.
- 11.5 Regarding the adverse public comments as detailed in paragraph 10 and the local objections conveyed by DO(N), HAD in paragraph 9.1.9 above, the Government department's comments and the planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
- (a) the applicant fails to demonstrate that the filling of ponds would not cause adverse drainage impact on the surrounding area; and
 - (b) the approval of the application would set an undesirable precedent for other similar applications within the "AGR" zone. The cumulative impact of approving such applications would result in a general degradation of the environment of the area.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 4.10.2023, 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 and implementation of drainage proposal before the commencement of the pond filling work on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) no part of the Site shall be filled to a depth exceeding 2m, as proposed by the applicant;
- (c) no contaminated soil and waste as defined under the Waste Disposal Ordinance Cap. 354 including construction waste and demolition materials should be used to fill the Site, as proposed by the applicant;
- (d) no construction vehicles are allowed to use the North District roads at the peak hours (7 a.m. - 9 a.m. and 5 p.m. - 7 p.m.) from Mondays to Fridays (except public holidays); and
- (e) if condition (a), (b), (c) or (d) is not complied with during the approval period, 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 IV**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 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.

14. Attachments

Appendix I	Application Form received on 29.10.2018
Appendix Ia	Supplementary Information received on 1.11.2018
Appendix Ib	Further Information received on 22.11.2018
Appendix Ic	Letter dated 4.12.2018 requesting for deferment of consideration of the application
Appendix Id	Further Information received on 19.2.2019
Appendix Ie	Further Information received on 21.2.2019
Appendix If	Letter dated 8.4.2019 requesting for deferment of consideration of the application
Appendix Ig	Further Information received on 27.5.2019
Appendix Ih	Letter dated 27.6.2019 requesting for deferment of consideration of the application
Appendix II	Detailed Departmental Comments

Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and A-3b	Aerial Photo and UVA Photos
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2019**