

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-MTL/2**

- Applicant** : Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lot 354 (Part) in D.D. 89, Ho Sheung Heung, Sheung Shui, New Territories
- Site Area** : 717.58 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ma Tso Lung and Hoo Hok Wai Outline Zoning Plan (OZP) No. S/NE-MTL/3
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Filling of Pond and Land for Permitted Agricultural Use

**1. The Proposal**

- 1.1 The applicant seeks planning permission for filling of pond (about 1.2 m in thickness) and land (about 1 m in thickness) on the Site 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 “GB” on the approved Ma Tso Lung and Hoo Hok Wai OZP No. S/NE-MTL/3. According to the Notes of the OZP, whilst ‘Agricultural Use’ in “GB” zone is always permitted, any filling of land/pond for the permitted agricultural use requires planning permission from the Town Planning Board (the Board).
- 1.2 The Site comprises a pond (about 538 m<sup>2</sup>, i.e. about 75% of the Site) and its adjoining land (about 179 m<sup>2</sup>, i.e. about 25% of the Site). According to the applicant, the proposed filling of pond and land (as shown on **Plans A-2 to A-4**) by about 1.2 m and 1 m in thickness respectively is to facilitate the always permitted agricultural use (i.e. growing fruit trees).
- 1.3 The Site is accessible to Ho Sheung Heung Road via Fai King Road (**Plan A-1**). According to the applicant, the proposed number of dumping trucks entering the Site would be limited to 2 trips per day and all vehicular traffic would be carried out from 8:30 a.m. to 11:30 a.m. and 2:30 p.m. to 5:30 p.m. respectively on Mondays to Fridays, excluding Saturdays, Sundays and public holidays. It is estimated that the proposed pond and land filling works would be completed in one month’s time (i.e. 40 trips in total). The site layout plan submitted by the applicant is at **Drawing A-1**.

1.4 In support of the application, the applicant has submitted the Application Form with attachments received on 18.11.2020 (**Appendix I**).

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 10 of the Application Form and its attachments at **Appendix I**. They can be summarized as follows:

- (a) the proposed filling of pond (about 1.2 m in thickness) and land (about 1 m in thickness) would facilitate the Site level aligning with the existing ground level of the adjoining land;
- (b) the proposed pond and land filling works would avoid flooding and remove the vegetation at the Site which is currently filled with overgrown weeds at a low-lying area;
- (c) the Site would be used for growing fruit trees like lychee and longan; and
- (d) the applicant has previously applied for permission for the pond and land filling works at Site from Environmental Protection Department (EPD) and was notified that planning permission is required for such operation.

## **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 obtain the consent of the 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 the Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to this application. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development (other than redevelopment) in “GB” zone;
- (b) an application for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding areas. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the proposed development should not be susceptible to adverse environmental effects from

pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

**5. Previous Application**

There is no previous application for the Site.

**6. Similar Application**

There is no similar application for pond and/or land filling within the same “GB” zone.

**7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on A-3 and site photos on A-4)**

7.1 The Site is:

- (a) part of a pond in the western portion and partly covered with vegetation in the eastern portion (**Plan A-2** and photo 2 on **Plan A-4**); and
- (b) accessible from Ho Sheung Heung Road via Fai King Road (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) to the further north is also a pond located in an area zoned “Conservation Area” (“CA”);
- (b) to the east and further east are a storage area and a piece of vegetated unused land abutting Ng Tung River (**Plans A-1 and A-2**);
- (c) to the southeast and south are some domestic structures and a knoll zoned “CA” respectively; and
- (d) to the northwest and southwest are some domestic structures, a pond and a site used for open storage of construction materials and machineries.

**8. Planning Intention**

8.1 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.

8.2 According to the Explanatory Statement of the OZP, permission from the Board is required for filling of land/pond within the “GB” zone as these activities may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment.

8.3 The Site is also close to the Ho Sheung Heung Egretty zoned “CA” on the OZP. That egretty is one of the largest egretties in Hong Kong with increasing number of breeding

birds in recent decade. The Ho Sheung Heung Egretty together with its peripheral secondary woodland and fishponds are zoned “CA” to protect and conserve the ecological value of the egretty and associated habitat, to protect the natural landscape and topographical features as well as to restrict further development in the immediate vicinity of the egretty.

## **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 a private lot which is an Old Schedule lot held under 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. There is no objection to the proposed filling of pond/land from the lease perspective;
- (b) there are some Government land (G.L.) adjoining the Site (**Plan A-2**). The applicant should ensure that filling works would not affect any adjoining G.L. especially the G.L. which forms part of the pond proposed to be filled up. The applicant is required to demonstrate as to how all the adjoining G.L. would not be affected by the proposed operation, and any safety measures to be taken in that part of the filling works. Any unauthorized filling of pond on G.L. and disturbance to any G.L. are unacceptable and will be subject to enforcement action; and
- (c) should the application be approved, the owner of the lot concerned shall apply to his office for permitting structures to be erected on Site. The application for the erection of any temporary structure(s) will be considered by Government in its landlord’s capacity and there is no guarantee that it will be approved. If the application is approved, it will be subject to such terms and conditions to be imposed including payment of rent or fee as considered appropriate by his office.

### **Traffic**

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

- (a) based on the submitted information, he has no in-principle objection to the application from traffic engineering point of view subject to no adverse traffic impact to existing road network due to the proposed operation; and
- (b) the vehicular access between the Site and Ho Sheung Heung Road is not managed by his department (**Plan A-1**). The applicant should seek comment from the responsible party.

### **Agricultural and Nature Conservation**

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

- (a) his recent site inspection revealed that the western part of the Site is a fish pond and the eastern part of the Site is occupied by some trees of common species (**Plans A-3 and A-4**). The Ho Sheung Heung Egretty to its south, together with its peripheral secondary woodland and fishponds are zoned “CA” in the vicinity to protect and conserve the ecological value of the egretty and associated habitat, the natural landscape and topographical features nearby (**Plan A-1**);
- (b) he does not support the application from fish culture perspective. The pond should be reserved for fish culture purpose. Any filling of pond for other usages is not supported. The applicant should clarify the agricultural activities (e.g. type of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site; justify the need for the proposed pond/land filling works for agricultural use; and the proposed fill materials to be used on Site for further assessment; and
- (c) from nature conservation point of view, he has no strong view on land filling at the eastern part of the Site as it is already disturbed. Should the application be approved, the applicant should be reminded to avoid disturbing any vegetation in the surrounding area.

### **Environmental**

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

- (a) he has reservation on the application from environmental planning point of view;
- (b) the Site is close to water sensitive receivers, including conservation areas at Ho Sheung Heung Egretty (about 30 m to the south) and Ng Tung river (about 100 m to the east) (**Plan A-1**);
- (c) the applicant shall provide further information and justifications to address (i) the issues of potential water quality impacts due to the proposed land and pond filling works, (ii) wastewater discharge from farming activities and wastewater discharge from any on-site toilets and wash-basins; and (iii) other environmental issues including air quality, noise and waste management arising from the proposal during its construction and operation stages;
- (d) regarding the claim in Part 10 of the application form, the applicant should be clarified that EPD never agreed to the land/pond filling at the Site nor did EPD agree to the proposed agricultural use. The claim refers only to a notification form received by EPD for the acknowledgement on owners' permission of an intended construction waste deposition on Lot 354 in D.D. 89. The acknowledgement was given in October 2020 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;

- (e) from sewerage perspective, 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 agricultural uses, in compliance with the requirements of ProPECC PN 5/93 where appropriate. There is no substantiated environmental complaints against the Site in the past three years; and
- (f) it is noted that the nearest domestic structure is located next to the Site (**Plan A-2**). Should the application be approved, the applicant is advised to fully implement all relevant environmental pollution control during construction to minimize the environmental impacts.

### **Drainage**

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

- (a) he has reservation on the application from public drainage viewpoint;
- (b) the applicant is required to assess the impacts and demonstrate in the submission with the implementation of necessary mitigation measures, the additional drainage resulted from the proposed pond/land filling works on Site 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) should the application be approved, an approval condition to request the applicant to submit and implement a drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent area; and
- (d) the Site is in an area where no public sewerage connection is available.

### **Landscape**

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

- (a) she has reservation on the application from landscape planning point of view;
- (b) based on the aerial photo of 2020, the Site is located in an area of rural inland plains landscape character surrounded by ponds, clustered tree groups and some temporary structures (**Plan A-3**). The Site is sandwiched between the “CA” zones to the north and to the south of the Site (**Plans A-1 and A-2**);
- (c) according to her recent site inspection, it is observed that the eastern portion of the Site is partly hard paved and partly covered by vegetation with native trees/ ornamental trees. The existing pond is located at the western portion of the Site. Having reviewed the submitted information, she has the

following comments from landscape planning perspective:

- (i) there is no information on the treatment of existing trees in the application. The potential landscape impact arising from the land filling on the existing trees cannot be reasonably ascertained; and
  - (ii) there is concern that the proposed filling of pond, if approved, would encourage more similar filling of pond within the area. The cumulative impact of such approval would further reduce the pond area and alter the surrounding landscape character within the “GB” zone; and
- (d) since the Site is surrounded by existing vegetation buffer and there is no major public frontage along the site boundary. In view of the above, should the application be approved, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

### **Water Supply**

9.1.7 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.

### **Building Matters**

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

- (a) it is noted that the application involves proposed filling of pond and land for agricultural use, formal submission under the Buildings Ordinance (BO) is required for any proposed new works, including any site formation works like filling of pond and land. Detailed comments under BO will be provided at the plan submission stage; and
- (b) his advisory comments are at **Appendix III**.

### **District Officer’s Comments**

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

- (a) he has consulted the locals on the application. The incumbent North District Council of subject constituency supports the application; and

- (b) the Chairman of Sheung Shui District Rural Committee, the Resident Representative (RR) and the Indigenous Inhabitant Representative of Ho Sheung Heung have no comment on the application.

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); and
- (c) Director of Fire Services (D of FS).

## **10. Public Comments Received During Statutory Publication Period (Appendix II)**

On 27.11.2020, the application was published for public inspection. During the statutory public inspection period, 18 public comments were received. A NDC member indicates no comment on the application. The remaining 17 public comments received including 4 from the WWF-HK, Kadoorie Farm and Botanic Garden, the Hong Kong Bird Watching Society and Designing Hong Kong Limited and 13 from local residents and individuals. They object to the application mainly on the grounds that the proposed operation is not in line with the planning intention of “GB” zone; there are a variety of birds and animals visiting the area; the proposed operation would have irreversible adverse ecological impact to the surrounding area and undermine the integrity of the wetland ecosystem; the existing tranquil environment should be retained; it is doubtful if the Site is for genuine agricultural use; the proposed operation would increase the flooding risk and result in adverse drainage impact to the adjoining domestic structures; and the setting of undesirable precedent leading to general degradation of the wetland environment and habitat of the area.

## **11. Planning Considerations and Assessments**

11.1 The application is for proposed pond and land filling on the Site entirely zoned “GB”. Majority of the Site is currently part of a pond (**Plan A-2**). According to the applicant, the proposed pond filling and land filling with soil by 1.2 m and 1 m in thickness respectively is to raise the level of the Site to align with the level of adjoining land for growing fruit trees. Whilst agricultural use is always permitted in “GB” zone, DAFC does not support the proposed operation from fish culture perspective in that the pond should be reserved for fish culture purpose. Any filling of pond for other usages is not supported. There is insufficient information in the submission to justify the need for the proposed pond/land filling works for agricultural use.

11.2 As mentioned in paragraph 8.2, the requirement for planning permission for pond/land filling operation is to ensure that it would not cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. As no information is provided in the submission to demonstrate that the proposed pond/land filling works would not cause adverse drainage impact and an unacceptable increase in the risk of flooding on the surrounding area, CE/MN of DSD has reservation on the application. On the environmental impact perspective, the Site is in the vicinity of the Ho Sheung Heung Egretty and Ng Tung River, which are water sensitive receivers. DEP has reservation on the application as the Ho Sheung Heung Egretty together with its peripheral secondary woodland and fishponds zoned “CA” are to protect and conserve the ecological value of the egretty and associated habitat (**Plans A-1 and A-3**). There is no information in the



submission to demonstrate that the proposed operation would not have adverse water quality impact and other environmental issues arising from the proposed operation. Since there is no information in the submission to demonstrate that there are no adverse drainage and environmental impacts on the surrounding areas, the application does not comply with TPB-PG No. 10.

- 11.3 The Site is situated in an area of rural landscape character surrounded by ponds, clustered tree groups and some temporary structures in between two “CA” zones (**Plans A-1 and A-3**). CTP/UD&L of PlanD has reservation on the application from landscape planning point of view as there is no information on the treatment of existing trees on land portion of the Site. The potential landscape impact arising from the land filling on the existing trees cannot be reasonably ascertained. Also, there is no previous application on the Site nor similar applications within the subject “GB” zone for filling of pond/land, approving the application would encourage more similar filling of pond in the area. The cumulative impact of approving such applications would further reduce the pond area and alter the landscape character of the area.
- 11.4 Other Government departments consulted, including C for T, CHE/NTE of HyD, PM(N) of CEDD, CE/C of WSD and D of FS have no objection to or no comment on the application.
- 11.5 Regarding the adverse public comments as mentioned in paragraph 10 above, the relevant Government departments’ comments and 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 in paragraph 10 above, the Planning Department does not support the application for the following reasons:
  - (a) the proposed development is not in line with the Town Planning Board Guidelines No. 10 for Application for Development within “GB” zone under section 16 of the Town Planning Ordinance in that the applicant fails to demonstrate that the filling of pond and land would not cause adverse drainage and environmental impacts on the surrounding area; and
  - (b) the approval of the application would set an undesirable precedent for other similar applications within the “GB” zone. The cumulative impact of approving such applications would further reduce the pond area and alter the landscape character of the area.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 8.1.2025, 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 to a thickness exceeding 1.2 m for pond and 1 m for land, as proposed by the applicant;

- (b) the submission and implementation of a drainage proposal before the commencement of the pond/land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the submission and implementation of an environmental assessment before the commencement of the pond/land filling works on the Site to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (d) if the above planning condition (a) 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; and
- (e) if any of the above planning conditions (b) or (c) is not complied with before the commencement of the pond/land filling works on the Site, 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 III**.

### **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**

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|---------------------|---|
| <b>Appendix I</b>   | Application Form received on 18.11.2020 |
| <b>Appendix II</b>  | Public Comments                         |
| <b>Appendix III</b> | Recommended Advisory Clauses            |
| <b>Drawing A-1</b>  | Proposed Layout Plan                    |
| <b>Plan A-1</b>     | Location Plan                           |
| <b>Plan A-2</b>     | Site Plan                               |
| <b>Plan A-3</b>     | Aerial Photo                            |
| <b>Plan A-4</b>     | Site Photos                             |