



Secretary, Town Planning Board 15/F, North Point Government Offices 333 Java Road, North Point, Hong Kong (E-mail: tpbpd@pland.gov.hk)

By email only

30 December 2019

Dear Sir/Madam,

# <u>Comments on the planning application for the proposed Comprehensive</u> <u>Residential Development at Nam Sang Wai, Yuen Long (A/YL-NSW/275)</u>

Tung Shing Lei is home to 84 nests of breeding ardeids as recorded in 2018 and was the second largest egretry in Deep Bay. Besides, it is also located approximately 200m to 500m from the Wetland Conservation Area (WCA) which is intended "to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds" under the Town Planning Board Planning Guideline No. 12C. Given the ecological importance and sensitivity of Tung Shing Lei, the Hong Kong Bird Watching Society (HKBWS) objects to the captioned planning application based on the following 12 reasons:

- 1. Not in line with the general planning intention of the statutory plan
- 2. Provision of public housing is misleading and cannot justify the proposed private housing development
- 3. Misinterpretation of the government housing policy to develop the whole U zone for housing
- 4. Devalue the application site by generalizing it as unused land
- 5. Wetland loss due to pond filling
- 6. Inadequate ecological surveys
- 7. Ecological importance of Tung Shing Lane Egretry
- 8. Failed to identify the exact locations of Tung Shing Lane Egretry
- 9. Underestimate direct/indirect impacts on the Tung Shing Lane Egretry



# 香港觀鳥會 Hong Kong Bird Watching Society

電話 Tel No. +852 2377 4387 傳真 Fax No. +852 2314 3687

#### 電郵 E-mail info@hkbws.org.hk 網頁 Web site www.hkbws.org.hk

地址 香港九龍荔枝角青山道532號偉基大廈7C Address 7C, V Ga Building, 532 Castle Peak Road, Lai Chi Kok, Kowloon, Hong Kong

- 10. Obstructing flight path of breeding ardeids from/to Tung Shing Lane Egretry
- 11. Adverse impacts of the proposed high-rise residential development
- 12. Cumulative ecological impacts and undesirable precedent set on Deep Bay area

## 1 Not in line with the general planning intention of the statutory plan

- 1.1 According to the general planning intention of the approved Nam Sang Wai Outline Zoning Plan No. S/YL-NSW/8, the plan is to "<u>conserve</u> the ecological value of the fish ponds which form an <u>integral part of the wetland ecosystem</u> in the Deep Bay Area...the area further away from the fish ponds is to protect the ecological integrity of the wetland ecosystem, and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds."
- 1.2 Moreover, the application site is located within U zone, where "development within the areas has to be comprehensively planned as piecemeal development or redevelopment would have the effect of degrading the environment and thus jeopardizing the long-term planning intention of the areas." Meanwhile, "any private developments or redevelopments require planning permission from the Board so as to ensure that the environment would not be adversely affected is intended."
- 1.3 According to the aerial photograph extracted from Hong Kong Map Service 2.0 in January 2018, most of the application site are ponds and wellvegetated land (Figure 1). We are concerned the footprint of the development will lead to a <u>direct loss of wetland and natural features</u>. We consider the proposed high-rise residential development is <u>incompatible</u> with the surrounding rural environment and the fishponds further away.

# 2 Provision of public housing is misleading and cannot justify the proposed private housing development

2.1 According to the Executive Summary, Introduction (Section 1), Proposed Scheme at the Application Site (Section 4) and Planning Justification of the Supporting Planning Statement (Section 5) of the current application, the applicant repeatedly stated that there is "*potential for additional of about*  *11,310 public housing flats and about 340 private housing flats*" to be provided according to the Indicative Layout Plan.

- 2.2 Instead of further explaining the justifications of the proposed private property estate development which offers only private housing, the applicant seems to emphasize 11,340 public housing flats will be provided as illustrated in the Indicative Layout Plan and can offer "planning gains to the society" as the public to private housing ratio is more than 70:30. We consider it is indeed misleading and the audience may have a false impression that the proposed development would have direct relationship with the provision of public housing flats.
- 2.3 On the contrary, the proposed development has <u>nothing to do with</u> <u>provision of public housing</u>, which means even though the current application is approved, the Indicative Layout Plan for the U zone <u>would not</u> <u>be implemented</u> as it is just an "imaginary" plan proposed by the applicant without authority. The claim that the proposed high-density property estate development would in a way help achieve a public to private housing ratio of more than 70:30 is <u>simply misleading</u>, and thus we consider the development is not well justified as there are limited "*planning gains to the society*".

# 3 Misinterpretation of the government housing policy to develop the whole U zone for housing

3.1 The applicant marked the whole "U" zone on the map of Potential Housing Sites Identified Under Land Use Reviews in Yuen Long District (Position as at October 2017) produced by the Planning Department<sup>1</sup> (Figure 2) to indicate that 'the Tung Shing Lei "U" zone was earmarked as one of the 25 additional housing sites which are mostly estimated to be available for housing development in the five years of 2019/2020 to 2023/24...It was later confirmed that the subject "U" zone is identified for public housing purpose'<sup>2</sup>.

<sup>&</sup>lt;sup>1</sup> <u>https://gia.info.gov.hk/general/201712/13/P2017121300386\_274011\_1\_1513148535054.pdf</u>

<sup>&</sup>lt;sup>2</sup> The Planning Statement of Application No. A/YL-NSW/275

- 3.2 However, from the Annex II submitted by the Secretary for Development to the LegCo Question 15 at the meeting of 13 December 2017<sup>3</sup>, the identified site is actually at Au Tau located at the south of West Rail Line along Long Fai Road, where is also the brownfield site identified in the Study on Existing Profile and Operations of Brownfield Sites in the New Territories (Figure 3)<sup>4</sup>. The Planning Department illustrated the potential site with a dot, which refers to specifically the site in Au Tau instead of the whole "U" zone (Figure 2). However, the applicant further drew a red line along the boundary of U zone on the above mentioned map, <u>creating a false impression that the Planning Department identified the whole zoning as potential housing site and thus trying to justify the proposed development.</u>
- 3.3 Moreover, referring to the written reply to LegCo Question 15, the site in Au Tau is for private housing instead of public housing as presented by the applicant (Figure 4). We consider the justifications are invalid as the applicant has misinterpreted the government housing policy, and <u>it seems</u> to mislead the public that the both the public and private development proposal is recognized by the government.

### 4 Devalue the application site by generalizing it as unused land

- 4.1 According to the Planning Justification of the Supporting Planning Statement (Section 5.2), it is claimed that the proposal can help unleash the used land as *"majority part of the Application Site are left unused or occupied by squatters and brownfield operations"*.
- 4.2 We consider the description is <u>misleading</u>. Referring to the habitat map prepared by the applicant, <u>only about 27.4% of the site are mapped as developed land</u>, which has included the squatters and brownfields. While for the remaining parts, accounting for about 72.6%, are mapped as either active pond, abandoned pond, abandoned agricultural land or plantation (Table 1). In section 7.2.5 and 7.2.6 of the Ecological Impact Assessment Report (EcoIA), even various water bird species were recorded using the ponds within the application site.

<sup>&</sup>lt;sup>3</sup> <u>https://gia.info.gov.hk/general/201712/13/P2017121300386\_274026\_1\_1513148535119.pdf</u>

<sup>&</sup>lt;sup>4</sup> <u>https://www.pland.gov.hk/pland\_en/p\_study/comp\_s/Brownfield/Brownfield\_e.html</u>

Types of Habitat	Size (ha)	Percentage (%)		
Developed Land	1.47	27.4		
Ponds	1.96	36.6		
Plantation	1.11	20.7		
Abandoned Pond	0.69	12.8		
Abandoned Agricultural Land	0.14	2.6		
Total	5.36	100		

**Table 1.** The size and percentage of different types of habitat

4.3 Using the word "unused" would give a false impression to the audience that the land is ready to be developed with any land uses. However, as the socalled "unused" land are actually inactive ponds, fallow arable land and plantation, it is more reasonable to <u>recognize</u> the value of these active and inactive agricultural land resources, so as to avoid the degradation of the rural environment and to better protect the ecological integrity of the wetland ecosystem in Deep Bay as a whole.

### 5 Wetland loss due to pond filling

In section 7.2.5 and 7.2.6 of the EcoIA, the ponds "are used by waterbirds (mainly Little Egret and Chinese Pond Heron, also with some Great Egret, Intermediate Egret and Little Grebe) to a certain extent, mainly along the pond bund edge (interface between pond bund and the water surface)". In Section 6.1.3, the applicant has stated that "the ponds were assessed with low to moderate value, subject to the level of active management by pond operators". Despite that, 1.96 ha of the ponds would be filled for the proposed development and such impacts are considered as "insignificant". Given the proximity of the application site to the WCA, the ponds are still being used by various species of waterbirds, and their ecological linkage with the Deep Bay wetland ecosystem, we consider that the ponds should not be filled and there should be no-net-loss in wetland in terms of both area and function at the application site.

#### 6 Inadequate ecological surveys

6.1 According to the Section 4.1.4 of the EcoIA submitted by the applicant, "surveys were conducted between March 2019 and August 2019 covering wet and dry seasons, including habitat mapping, plant, mammal, bird, herpetofuna, butterfly, dragonfly and aquatic communities." (Table 2)

Year and Month	2019					
Item	Mar	Apr	May	Jun	Jul	Aug
Habitat and Vegetation						
Bird						
Tung Shing Lane Egretry						
Count						
Tung Shing Lane Egretry						
flight path survey						
Mammal						
Herpetofauna						
<b>Butterflies &amp; Dragonfly</b>						
Aquatic communities						

**Table 2.** Months of conducted ecological surveys submitted by the applicant

- 6.2 According to the Environmental Impact Assessment Ordinance (EIAO) Guidance Note No. 7/2010 "Ecological Baseline Survey for Ecological Assessment"<sup>5</sup>, it is recommended that in order "to obtain good results, a target taxa group should be surveyed at the time of the year <u>when the group</u> <u>is more active</u>, conspicuous or easy to be identified...the actual timing of survey may need to be adjusted if a target species has special seasonal or diurnal pattern."
- 6.3 However, back to the current ecological surveys, all the surveys were conducted from <u>March to August</u> which can only represent the oversummering birds and passage migratory birds. As the ecological survey almost <u>ignores the entire dry season and the months when **overwintering**</u>

<sup>&</sup>lt;sup>5</sup> <u>https://www.epd.gov.hk/eia/hb/materials/GN7.pdf</u>

**birds** and **passage migrants** visiting Hong Kong, we consider the ecological surveys failed to comprehensively review the ecological baseline. Hence, the ecological impacts of the proposed development were <u>underestimated</u>.

## 7 Ecological importance of Tung Shing Lane Egretry

- 7.1 <u>Tung Shing Lane egretry is the second largest egretry in Deep Bay in 2018</u> <u>and has been actively used by ardeids for about 20 years.</u> In 2018, 84 nests were recorded, contributing to about 17% of the total ardeids' nests in the Deep Bay area. Therefore, the Tung Shing Lane egretry, which is within the application site, is an important egretry in Hong Kong and <u>should be an</u> <u>adequately protected</u>.
- 7.2 Two ardeid species, namely Little Egrets (*Egretta garzetta*) and Chinese Pond Herons (*Ardeola bacchus*), mainly nest and breed at the egretry in Tung Shing Lei, in which their nesting and roosting sites are regarded as of *"Regional Concern"* due to their restrictedness<sup>6</sup>. We thus consider they are bird species of conservation interest particularly at their nesting and roosting sites while the <u>ecological value</u> of the nesting and roosting habitat <u>of Tung Shing Lane Egretry should be considered as "High"</u>. The potential impacts on the ecologically important egretry should not be overlooked.
- 7.3 However, in Table 11 of the EcolA, the applicant has evaluated the overall ecological value of the developed area with nursery and breeding ground of two avifauna species as of <u>"Low"</u> value. In Table 17 of the EcolA, the ecological value of the application site with trees serving as egretry was assessed as <u>"Moderate"</u>.
- 7.4 It is confusing that the egretry has different ecological values as evaluated by the applicant, and thus should be clarified. In fact, we consider the Tung Shing Lane Egretry <u>should be of **"High"**</u> instead of "Moderate" or "Low" ecological value. Hence, the value and importance of the Tung Shing Lane Egretry is <u>underestimated</u> by the applicant.

<sup>&</sup>lt;sup>6</sup> Fellowes et al.: Fauna of Conservation Concern (2002)

#### 8 Failed to identify the exact locations of Tung Shing Lane Egretry

- 8.1 Under the EIAO Guidance Note GN1/2002, it sets out 10 basic principles of the EIA process, which suggest avoidance, pre-emption and prevention of adverse environmental consequences as one of them. Referring to EIAO TM Annex 16 Section 5.4.1, "the General Policy for mitigating impacts on important habitats and wildlife, in the order of priority, are Avoidance, Minimizing and Compensation."
- 8.2 For the policy of Avoidance, it emphasizes that 'potential impacts shall be avoided to the maximum extent practicable such as adopting suitable alternatives (e.g. change of site, design, construction method, alignment, layout, programme, etc). In extreme cases when the ecological assessment identifies some very serious impacts which could not be mitigated, the "no-go" alternative may be the only realistic option and shall be included and assessed against all other options.'
- 8.3 According to Figure 6 of the EcoIA "Flight zones of ardeids of Tung Shing Lane Egretry", the applicant has identified about 9 egretry locations. It is observed by the applicant that "ardeids were nesting in several trees of various species and bamboo located separately around village houses/huts to the north of West Rail line. The locations of these trees with ardeids nests at Tung Shing Lane Egretry are shown in the Figure."
- 8.4 However, from our surveys conducted in 2019, apart from the observed locations identified by the applicant, there are a double of number of egretry locations recorded at the trees adjacent to the West Rail Line and at the southern side of the pond. As such, <u>these "missing" egretry locations will be directly destroyed by the proposed development</u>, which is also indicated in the Tree Treatment Plan at Green Corridor & Residential Area C2A & C2B as trees to be fell. Moreover, the <u>proposed residential high-rise buildings T10 and T11 will be immediately at/to the north of the Tung Shing Lane egretry, which means the breeding habitats will be highly disturbed during both construction and operation phase. The proposed development thus <u>failed to follow the Principle of "Avoidance"</u>.</u>

### 9 Underestimate direct/indirect impacts on the Tung Shing Lane Egretry

- 9.1 Referring to the Direct Impact in Section 7.2 of the EcolA, it is stated that the vegetation of and surrounding the preserved nesting trees is not subject to site formation while the losses of habitats are considered insignificant. As the applicant failed to identify the existing egretry locations of the breeding ardeids through the ecological surveys, the applicant also failed to identify the direct adverse impacts on the egretry. The proposed residential development would in fact cause direst loss of part of the nesting colony, which is an extremely significant impact on the breeding ardeids.
- 9.2 Besides, given the proximity of the proposed residential towers to the egretry, we are concerned the environmental impacts of the residential development including noise and light pollution (e.g. noise and vibration from non-percussive and percussive piling; and the use of cranes and other Powered Mechanical Equipment) during both construction and operation phase would have heavy disturbance to the egretry and deteriorates the habitat quality. Breeding egrets are susceptible to disturbance by human activities. The presence of human disturbances close to nesting colonies may discourage ardeids from nesting<sup>7</sup>, or even lead to abandonment of their breeding areas or nestlings.
- 9.3 Moreover, the estimated population for the proposed development is 11,150. Such a significant increase in human activities around the egretry, especially under the nesting trees during the breeding season, would have serious adverse impacts on the egretry and the breeding success of the ardeids.
- 9.4 From the Mitigation in Section 8, the applicant stated that "hoarding will be established along the boundary of the Egretry Protection Zone (Two areas of Egretry Protection Zone will be designated to protect these two groups of trees) during construction phase". However, as the locations of egretry identified are inaccurate, the proposed mitigation measure of setting up Egretry Protection Zone would also fail to fully preserve the trees serving for breeding ardeids and cause severe disturbance to the egretry.

<sup>&</sup>lt;sup>7</sup> Wong, C.L.C. and Woo, L.C.K. 2003. *Egretry counts in Hong Kong, with particular reference to the Mai Po Inner Deep Bay Ramsar Site: Summer 2003 Report*. The Hong Kong Bird Watching Society.

9.5 As the direct/indirect impacts are seriously underestimated and the proposed mitigation measures just ineffective to protect the egretry from direct loss and various disturbances, we urge the Board to <u>reject</u> this application to protect the second largest egretry in Deep Bay from any development threats.

#### 10 Obstructing flight path of breeding ardeids from/to Tung Shing Lane Egretry

10.1 From the Mitigation in Section 8, the applicant stated that "the development layout has been designated to locate the high-rise buildings outside the three identified major flight zones". However, according to the previous ardeid's flight path survey conducted for the application no. A/YL-NSW/267 in 2018 (Figure 5), almost half of the proposed towers are located within the flightpaths of the Tung Shing Lane egretry, direct impacts of obstructing flight path is anticipated. We are concerned the proposed development would have adverse impacts on the breeding ardeids and breeding success.

#### 11 Adverse impacts of the proposed high-rise residential development

- 11.1 The proposed development consists of 16 towers of residential buildings, with a height ranging from 78.3m to 135m excluding rooftop features. It is highly visible over a large area due to its building height the maximum building height (i.e. +139mPD, excluding rooftop features) is much taller than the hill to the south (i.e. about +42.2mPD) and the nearby village setting, in which the general development intensity is of a maximum plot ratio of 0.4 and not more than 3-storey high. We consider that this is clearly incompatible with the surrounding rural environment.
- 11.2 Moreover, as the anticipated population is 11,150. <u>This massive population</u> caused by the proposed high-rise development would also lead to adverse ecological impacts (i.e. increase in disturbance due to light and noise pollution, etc.). We are concerned the proposed development would have adverse impacts on the habitat quality and wildlife immediately adjacent to the application site and in the Deep Bay wetlands.
- 11.3 Furthermore, the approval of this application for the high-rise development would set <u>undesirable precedent</u> to the similar applications in both Nam

Sang Wai area and Deep Bay area. As such, we object to the proposed highrise residential development.

#### 12 Cumulative ecological impacts and undesirable precedent set in Deep Bay area

- 12.1 As stated in the Nam Sang Wai OZP, "development within the areas has to be comprehensively planned as piecemeal development or redevelopment would have the effect of degrading the environment and thus jeopardizing the long-term planning intention of the areas". Cumulative ecological impacts to the fishponds of Deep Bay area need to be carefully assessed given that a number of other residential developments have already been proposed in close proximity of the application site.
- 12.2 The developments include application no. A/YL-NSW/241, A/YL-NSW/242, A/YL-NSW/267, Y/YL-NSW/3, Y/YL-NSW/4 and A/YL-NSW/274, all of which are approximately less than 1km from the application site (Figure 6). All the above developments are close to the breeding site and flight path of egretry in Tung Shing Lane, and also the largest Great Cormorant night roost in Hong Kong at Nam Sang Wai. We are concerned that the disturbances arising from all of these residential and commercial developments would <u>cumulatively create a significant amount of disturbances resulting in the abandonment of these egrets' breeding site and Great Cormorant night roosts.</u>
- 12.3 Moreover, the approval of this application will set an undesirable precedent to the future similar applications in the Deep Bay area, and thus nullifying the statutory planning control mechanism. We urge the Board to reject this application in order to protect WCA and WBA from any development threats.

# **13** Justifications for the decision and comments made by Government departments and the Board

According to the Hong Kong Planning Standards and Guidelines (HKPSG), Chapter 10, Section 2.1 (iii), the Board has the responsibility to "control adjoining uses to <u>minimise adverse impacts on conservation zones</u> and optimise their conservation value". We note that all other Government bureaux/departments are also bound to the HKPSG, the Agriculture, Fisheries and Conservation Department (AFCD) and the Planning Department (PlanD) has the responsibility to advise the Board on the

ecological and planning aspects in particular<sup>8</sup>. Given AFCD's mission to conserve natural environment and safeguard the ecological integrity<sup>9</sup> and the proposed development is not in line with the planning intention of the statutory plan, HKBWS would also expect AFCD and PlanD to object this application. Should AFCD, PlanD or the Board feels otherwise, we urge that the appropriate justifications are provided.

The HKBWS respectfully requests the Board to take our comments into consideration and **reject** the current application. Thank you for your kind attention.

Yours faithfully,

Surtmei

Wong Suet Mei Assistant Conservation Officer The Hong Kong Bird Watching Society

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The Conservancy Association Designing Hong Kong Kadoorie Farm and Botanic Garden WWF – Hong Kong TrailWatch

<sup>&</sup>lt;sup>8</sup> AFCD Role of Department. Available at:

http://www.afcd.gov.hk/english/aboutus/abt role/abt role.html

<sup>&</sup>lt;sup>9</sup> AFCD Vision and Mission. Available at:

http://www.afcd.gov.hk/english/aboutus/vision mission/abt vision mission.html

**Figure 1.** According to the aerial photograph extracted from Hong Kong Map Service 2.0 in January 2018, there are ponds and well vegetated land within the application site (marked with red line), while 2-storey village houses and structures are found at the west. We are concerned the footprint of the development will lead to a <u>direct loss</u> in wetland and natural features. We consider the proposed high-rise residential development is <u>incompatible</u> with the surrounding rural environment and the fishponds further away.



**Figure 2.** The applicant marked the whole "U" zone on the map of Potential Housing Sites Identified Under Land Use Reviews in Yuen Long District (position as at October 2017) produced by the Planning Department to indicate that 'the subject "U" zone is identified for public housing purpose' (top). However, Planning Department in fact originally illustrated the potential site with a dot, which refers to specifically the site in Au Tau instead of the whole "U" zone (bottom). The applicant drew a red line along the boundary of U zone on the above mentioned map, creating <u>a false impression that</u> <u>Planning Department identified the whole zoning as potential housing site and thus trying to justify the proposed residential development</u>.



**Figure 3.** According to the map by Planning Department, the identified potential housing site is at Au Tau (marked with red dot, same as in Figure 2). It is located at the south of West Rail Line along Long Fai Road, which is also the brownfield site identified in the Study on Existing Profile and Operations of Brownfield Sites in the New Territories. The application site is marked with red line.



**Figure 4.** Referring to the written reply to LegCo Question 15, the site in Au Tau is for private housing instead of public housing as presented by the applicant.

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**Figure 5.** From the Mitigation in Section 8, the applicant stated that "the development layout has been designated to locate the high-rise buildings outside the three identified major flight zones" (left). However, according to a previous ardeid's flight path survey conducted for the application no. A/YL-NSW/267 in 2018, <u>almost half of the proposed</u> towers are located within the flightpaths of the Tung Shing Lane egretry (right), direct impacts of obstructing flight path is anticipated.



**Figure 6.** The Google Earth aerial photo showing the developments (application no. A/YL-NSW/241, A/YL-NSW/242, A/YL-NSW/267, Y/YL-NSW/3, Y/YL-NSW/4 and A/YL-NSW/274) which all are approximately less than 1km from the application site (marked with red line). All the above developments are close to the breeding site and flight path of egretry in Tung Shing Lane, and also the largest Great Cormorant night roost in Hong Kong at Nam Sang Wai. We are concerned that the disturbances arising from all of these residential and commercial developments would <u>cumulatively create a significant amount of disturbances resulting in the abandonment of these egrets' breeding site and Great Cormorant night roosts</u>.

Rejected application no. A/YL-NSW/242

Approved application no. A/YL-NSW/241

Approved application no. Y/YL-NSW/4

> Approved application no. Y/YL-NSW/3

Current application no. A/YL-NSW/274

Pending application no. A/YL-NSW/274

> Withdrawn application no. A/YL-NSW/267