

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PN/54

<u>Applicant</u>	:	Mr. Mak Por
<u>Site</u>	:	Lots 80 (Part) and 81 (Part) in D.D. 135 and Adjoining Government Land, Ha Pak Nai, Yuen Long, New Territories
<u>Site Area</u>	:	About 5,410m ² (including government land of about 100m ²)
<u>Lease</u>	:	Block Government Lease (demised for agricultural purposes)
<u>Plan</u>	:	Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan No. S/YL-PN/9
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Temporary Place of Recreation, Sports or Culture (Fishing Ground) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary place of recreation, sports or culture (fishing ground) for a period of 3 years. The Site is currently being used for the applied use under planning permission (No. A/YL-PN/43) valid until 7.9.2018.
- 1.2 According to the Notes for the “AGR” zone on the OZP, ‘Place of Recreation, Sports or Culture’ is a Column 2 use, which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 3 years.
- 1.3 The Site is related to five previous applications (Nos. A/YL-PN/8, 20, 32, 37 and 43) for the same use submitted by the same applicant as the current application. The last Application No. A/YL-PN/43 was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 17.7.2015. All the time-specific approval conditions have been compiled with and the planning permission is valid until 7.9.2018. Details of the previous applications are summarized at paragraph 5 below and at **Appendix II**.

- 1.4 A comparison of the major development parameters of the current application and the last approved application is as follows:

Major Development Parameters	Last Approved Application (A/YL-PN/43) (a)	Current Application (A/YL-PN/54) (b)	Difference (b) – (a)
Site area	About 5,317m ²	About 5,410m ²	+ 93m ²
Applied Use	Temporary Place of Recreation, Sports or Culture (Fishing Ground) for a Period of 3 Years	Temporary Place of Recreation, Sports or Culture (Fishing Ground) for a Period of 3 Years	No change
Total floor area	88.3m ²	40.1m ²	- 48.2m ²
No. of structures	2 rain shelters of 48.2m ² and 40.1m ² respectively	1 rain shelter of 40.1m ²	Only 1 rain shelter under current application
Height of structures	2.1m; 1 storey	2.1m; 1 storey	No change
No. of parking spaces	Nil	Nil	No change
Loading/unloading spaces	Nil	Nil	No change
Operation hours	7:00 a.m. to 9:00 p.m. from Mondays to Sundays	7:00 a.m. to 9:00 p.m. from Mondays to Sundays	No change

- 1.5 The site plan and location plan of the rain shelter submitted by the applicant are at **Drawings A-1** and **A-2** respectively.
- 1.6 According to the applicant, the estimated number of visitors is about 2 to 8 on weekdays; and 10 to 20 on Saturdays and public holidays. All visitors should reach the fishing ground by Green Minibus Route No. 33 to Ha Pak Nai. No parking space will be provided at the Site. The operation hours are from 7:00 a.m. to 9:00 p.m. from Mondays to Sundays.
- 1.7 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 31.5.2018 **(Appendix I)**
 - (b) Email of 5.7.2018 confirming that no pond filling will be carried out at the Site **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendices I** and **Ia**. They can be summarized as follows:

- (a) In face of the persistent keen competition in fish farming industry, income has been declining. It is difficult to maintain the livelihood and afford basic

expenses of the family. The applicant wishes to transform his business to operate fishing ground and to be self-reliant, so as to afford the basic expenses of the family members and make a living.

- (b) No construction works, including dredging and construction of drainage channel, and pond filling will be carried out at the Site.
- (c) No toilet will be provided at the Site. Visitors will use the public toilet located behind the fishing ground.

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 obtaining consent of the land owners. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

As the Site is still covered by valid planning permission (No. A/YL-PN/43), it is not subject to any active enforcement case.

5. Previous Applications

- 5.1 The Site is involved in five previous applications (Nos. A/YL-PN/8, 20, 32, 37 and 43). Details of the previous applications are summarised at **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 Application No. A/YL-PN/8 for fishing ground and barbecue spot and Application Nos. A/YL-PN/20 and A/YL-PN/32 for fishing ground submitted by the same applicant as the current application were approved with conditions by the Committee/Board on review on 18.6.2004, 15.8.2008 and 7.10.2011 respectively for a period of 3 years. All the approval conditions for Application Nos. A/YL-PN/8 and A/YL-PN/20 had been complied with; and the planning permissions lapsed on 19.6.2007 and 16.8.2011 respectively. The planning permission under Application No. A/YL-PN/32 was revoked on 7.7.2012 due to non-compliance with approval conditions on submission and implementation of landscape and tree preservation proposal.
- 5.3 Application No. A/YL-PN/37 for the same use submitted by the same applicant was approved with conditions by the Committee on 7.9.2012 for a period of 3 years. The major considerations were that approving the application on a temporary basis would not undermine the long-term planning intention; it would unlikely cause significant adverse traffic, environmental and drainage impacts; and approving the application was in line with the previous decisions of the Board/Committee. All the approval conditions have been complied with. The planning permission lapsed on 8.9.2015. Renewal Application No. A/YL-PN/43 was approved with conditions by the Committee on 17.7.2015. All the approval conditions have been complied with. The planning permission is valid until 7.9.2018.

5.4 Compared with the last approved application, the current application is submitted by the same applicant for the same use on the same site, with a slightly larger site area (+ 93m²), smaller floor area (- 48.2m²) and reduction in the number of structure (-1).

6. Similar Application

There is no similar application within the same “AGR” zone on the OZP.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

7.1 The Site is:

- (a) occupied mainly by a fish pond and is currently used as a recreational fishing ground with valid planning permission under Application No. A/YL-PN/43; and
- (b) accessible via a local track linking to Nim Wan Road, which connects to Deep Bay Road and the Lau Fau Shan Roundabout.

7.2 The surrounding areas have the following characteristics:

- (a) to the north across Nim Wan Road are a public toilet, unused land, a restaurant and open storage of miscellaneous items;
- (b) to the northeast are a pond, residential dwellings, orchards, vacant land and unused land;
- (c) to the east are an orchard, residential dwellings and unused land;
- (d) to the west are a structure under construction and a fishing ground with valid planning permission under Application No. A/YL-PN/52; and
- (e) to the southeast, south and southwest are a storage yard, a farm and unused land.

8. Planning Intention

The “AGR” zone is intended 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 and the public comment are summarized as follows:

Land Administration

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

- (a) The Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of government land (GL) (about 100m² subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (c) The Site is accessible to Nim Wan Road through GL. LandsD provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The private lot which is covered by Short Term Waiver (STW) is listed below:

Lot No.	STW	Purposes
81 in D.D. 135	3673	Temporary Place of Recreation, Sports or Culture (Fishing Ground)

- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) Should planning approval be given to the subject planning application, the STW holder will need to apply to LandsD for modification of the STW conditions if there are any irregularities on Site and the lot owner of the lot without STW will need to apply to LandsD for permit the structures to be erected or regularize any irregularities on Site. Besides, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application(s) will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Building Matters

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the Buildings Department (BD), they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

Environment

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

- (a) The following information provided in the application is noted:
 - (i) No construction works (including dredging, drainage channel works) will be carried out at the Site.
 - (ii) No toilet and no parking space will be provided.

- (iii) The operation hours are from 7:00 a.m. to 9:00 p.m. daily.
- (b) Based on the above information, the application to continue the current use for fishing ground at the Site falling within “AGR” zone is not anticipated to have adverse environmental implications. He has no objection to the application.
- (c) There was no environmental complaint pertaining to the Site received in the past 3 years.

Nature Conservation

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

He has no objection in principle to the application provided that there is no pond filling at the Site. However, should the application be approved, the applicant should be advised to adopt appropriate measures to prevent any disturbance or environmental hygiene problems that may affect the nearby fishponds and fish culture activities during the operation of the proposed fishing ground.

Landscape

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

- (a) With reference to the site visit by his office on 22.6.2018, it is observed that the Site is currently operated as a fishing ground with trees generally along the site boundary. The Site is situated in an area of coastal plains landscape character. Significant change to the landscape character arising from the application is not anticipated. Hence, he has no objection to the application from the landscape planning perspective.
- (b) In view of the above, should the Board approve the application, in consideration that the landscape works have been implemented under previous application and that the trees are observed to be generally in fair condition, the condition to maintain the landscape screen planting including trees and shrubs in good condition for the duration of the approval period is opined adequate and appropriate.

Other Advisory Comments

- (i) The applicant is advised that the approval of the landscape proposal under S.16 application does not imply approval of Tree Works such as pruning, transplanting and felling under lease. Tree Works applications should be submitted direct to DLO for

approval.

- (ii) The applicant shall be reminded of the importance of general tree care as well as proper tree maintenance. Useful information on general tree maintenance is available for reference in 護養樹木的簡易圖解 (http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf) and the Handbook of Tree Management (Chinese Version: https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html) published by the GLTM Section, DEVB.

Traffic

9.1.6 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) The Site can be accessed to Deep Bay Road which is a single track road. On the basis of applicant's submitted documents which state the following, he has no adverse comment to the application from traffic engineering point of view.
 - (i) No parking spaces are proposed within the Site.
 - (ii) The number of visitors would not exceed 20 persons per day.
- (b) The applicant shall remind visitors to arrive the subject site by using public transport services.

9.1.7 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Nim Wan Road. Presumably, the relevant departments will provide their comments.
- (d) The application may have interface with EPD's road upgrading at Nim Wan Road. Please seek comments of Environmental Infrastructural Division, EPD.

9.1.8 Comments of the Environmental Infrastructural Division, Environmental Protection Department (EID, EPD):

- (a) EPD is currently carrying out a consultancy study titled

“Agreement No. CE4/2015 (HY) West New Territories (WENT) Landfill - Study of Road Access (Upgrading of Nim Wan Road and Deep Bay Road) - Feasibility Study”.

- (b) The study comprises the exploration and recommendation of upgrading works of the existing Nim Wan Road and Deep Bay Road from the WENT Landfill rear entrance at Ha Pak Nai to Lau Fau Shan roundabout. The road upgrading proposal is at feasibility study stage. The study is still ongoing and is expected to be completed by end 2019.
- (c) Having reviewed the location of the Site, he considers that there could be interfacing issues between the site area and the works limit of the road upgrading. Since the study is only at feasibility exploration stage, works limit of the road upgrading proposal will be subject to further review. Having considered the implementation programme explored in the feasibility study and the pre-mature status of the road upgrading proposal, the study team is not in position to comment on the planning application.

Drainage

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

- (a) He has no objection in principle to the proposed development from a drainage point of view.
- (b) Should the Board considers that the application is acceptable from the planning point of view, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to maintain the existing drainage facilities and submit condition record of the existing drainage facilities to the satisfaction of his Division.

Fire Safety

9.1.10 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked

on the layout plans.

- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Others

9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

He has no particular comment on the application from electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organising and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the concerned site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

9.1.12 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department’s (FEHD) facilities will be affected and such work/operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from such activity/operation, the applicant should arrange disposal properly at her own expenses.
- (c) Proper licence/permit issued by his Department is required if there is any catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

District Officer’s Comments

9.1.13 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

His Office has not received any locals’ comment on the subject application.

- 9.2 The following government departments have no comment on the application:
- (a) Antiquities and Monuments Office, Leisure and Cultural Services Department (AMO, LCSD);
 - (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
 - (c) Chief Engineer/Lands Works, Civil Engineering and Development Department (CE/LW, CEDD);
 - (d) Commissioner of Police (C of P);
 - (e) Director of Leisure and Cultural Services (DLCS); and
 - (f) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD).

10. Public Comments Received During Statutory Publication Period

On 8.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 29.6.2018, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The “AGR” zone is intended 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. This application is to continue using an existing fish pond for recreational fishing ground. It would not cause significant change to the character of the existing fish pond. No pond filling is proposed under this application. The DAFC has no objection in principle to the application and advises the applicant to adopt appropriate measures to prevent any disturbance and environmental hygiene problems that may affect the nearby fish ponds and fish culture activities during the operation of the fishing ground. The CTP/UD&L, PlanD has no objection as significant change to the landscape character arising from the development is not anticipated. As such, approving the planning application on a temporary basis would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The development is in an area of rural landscape character dominated by fish ponds, orchards and tree groups. The development is considered not incompatible with the surrounding land uses.
- 11.3 Relevant government departments, including DAFC, DEP, CTP/UD&L of PlanD, AC for T/NT of TD, CHE/NTW of HyD, CE/MD of DSD and D of FS have no objection to or no adverse comment on the application. The development would unlikely cause significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas. There has been no environmental complaint concerning the Site received in the past 3 years. To minimize any potential environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on Site will be subject to enforcement action by the Planning Authority.

- 11.4 There are five previous applications at the same site for the same use approved since 2004. Approval of the current application is in line with the previous decisions of the Committee.
- 11.5 There is no public comment received.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 above, the Planning Department considers that the temporary place of recreation, sports or culture (fishing ground) could be tolerated for a period of 3 years.
- 12.2 Should the Committee 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 **20.7.2021**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 7:00 a.m. from Mondays to Sundays is allowed on the Site, as proposed by the applicant, during the planning approval period;
- (b) the existing landscape screen planting including trees and shrubs on the Site shall be maintained at all times during the planning approval period;
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of a condition record of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.10.2018**;
- (e) the submission of a fire service installations 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 **20.1.2019**;
- (f) in relation to (e) above, the implementation of the fire service installations 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 **20.4.2019**;
- (g) if any of the above planning conditions (a), (b) or (c) 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;
- (h) if any of the above planning conditions (d), (e) or (f) 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

- (i) upon expiry of the planning permission, the reinstatement of the 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 **Appendix III**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

the development is not in line with the planning intention of the "AGR" zone, which 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. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

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 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 period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 31.5.2018
Appendix Ia	Email of 5.7.2018 confirming that no pond filling will be carried out at the Site
Appendix II	Previous applications covering the application site
Appendix III	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Location Plan of the Rain Shelter
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos