

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1097

- Applicant** : Mr. TO Wong represented by Metro Planning and Development Company Limited
- Site** : Lots 209 (Part), 214 S.A (Part), 214 RP, 215 S.A (Part), 215 S.B (Part), 220 and 221 (Part) in D.D. 128 and Adjoining Government Land, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 3,345 m² (Including about 270 m² Government Land)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Coastal Protection Area” (“CPA”)
- Application** : Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years. The Site falls within an area zoned “Coastal Protection Area” (“CPA”) on the Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12 (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of 3 years within the zones requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP.
- 1.2 The Site involves two previous applications (No. A/YL-HT/805 and 991) for different temporary place of recreation, sports or culture uses. The last application (No. A/YL-HT/991) for the same use on the same site by the same applicant was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 8.4.2016, but was revoked on 8.10.2017 due to non-compliance with approval condition related to implementation of the tree preservation and landscape proposal. The Site is currently being used for farming activities (**Plans A-2 and A-4**).

- 1.3 The Site is accessible from Deep Bay Road via a local track (**Drawing A-2 and Plan A-2**). As shown on the layout plan at **Drawing A-3**, the proposed ingress/egress point is at the north western boundary of the Site. About 83% (2,780m²) of the Site is farming area while about 17% (565m²) of the Site will be hard-paved for circulation purpose. One structure for mobile toilet with a total floor area of 2m² is proposed. Two parking spaces are also proposed at the south western side of the Site (**Drawing A-3**). The operation hours are from 9:00 a.m. to 7:00 p.m. daily. The maximum number of visitors per day is 40. There will be two times slots a day so that the Site will serve no more than 20 persons at the same time. The location plan, access plan, proposed layout plan and drainage plan are at **Drawings A-1 to A-4** respectively.

	Last Application (A/YL-HT/991)	Current Application (AYL-HTF/1097)	Difference
Site Area	3,345m ²	3,345m ²	0
Farming Area	2,780m ²	2,780m ²	0
Hard-paved Area	565m ²	565m ²	0
Total GFA	172m ²	2m ²	-170m ²
No. of Temporary Structures	4	1	-3
Uses of Temporary Structures	Rain Shelter, Site Office, Staff Rest Room and Mobile Toilet	Mobile Toilet	N/A

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 2.8.2019 **(Appendix I)**
 - (b) Supplementary Planning Statement received on 2.8.2019 **(Appendix Ia)**
 - (c) Further Information (FI) clarifying number of visitors **(Appendix Ib)** received on 5.9.2019

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary planning statement (**Appendix Ia**). They can be summarized as follows:

- (a) The objectives of the proposed use are to cultivating the interest and knowledge of the participants in organic farming and providing an opportunity for the participants to experience organic farming.
- (b) The operation hours are from 9:00 a.m. to 7:00 p.m. daily including Sundays and public holidays. There will be no night time operation. The proposed use will not involve land filling or pond filling at the Site.
- (c) The proposed use is similar to agricultural use which is always permitted within the “CPA” zone. The Board has approved a fishing ground adjoining the Site on a temporary basis.
- (d) The proposed use is compatible with the surrounding landscape and uses.

- (e) There is no environmental, traffic, visual, landscape and drainage impacts to the surrounding.

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

The applicant is not the “current land owner” and has also 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 posting site notice and sending registered post to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

It is noted that the Site is being used as a farm and is not subject to enforcement action.

5. Previous Applications

- 5.1 The Site involves 2 previous applications (No. A/YL-HT/805 and 991) for various place of recreation, sports or culture uses. The previous application No. A/YL-HT/805, submitted by the same applicant covering a much larger site, was for temporary organic farm with education and activity centre and small-scale barbecue spot for a period of 3 years. The application was rejected by the Committee and the Board upon review on 7.9.2012 and 4.1.2013 respectively for the reasons of not in line with the planning intention, no strong planning justification for a departure from such planning intention even on a temporary basis, failing to demonstrate no adverse environmental, drainage and landscape impacts from the development with an extensive area of over 2.2 hectares and some 25 structures (with a total area of about 1,011 m²) and setting an undesirable precedent.
- 5.2 The last application (A/YL-HT/991) for the same use on the same site by the same applicant was approved by the Committee on 8.4.2016 on the considerations of not undermining the long-term planning intention of the “CPA” zone, no adverse departmental comments and the technical concerns raised by Government departments could be addressed by approval conditions. However, the application was revoked on 8.10.2017 due to non-compliance with approval condition related to implementation of the tree preservation and landscape proposal. Comparing with the last application, the current application only involves 1 single-storey mobile toilet of floor area of 2m² while the last application involves four structures with a total floor area of not exceeding 172m² for a rain shelter, site office, staff rest room and mobile toilet. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6. Similar Applications

Within the same “CPA” zone, 3 similar applications (No. A/YL-HT/838, 1010 and 1094) involving the same site for temporary place of recreation, sports or culture (fishing ground) and ancillary refreshment kiosk were approved with conditions by the Committee between 2013 and 2019 mainly on considerations of not undermining the

long-term planning intention of the “CPA” zoning, no adverse departmental comments and the technical concerns raised by Government departments could be addressed by approval conditions. Details of these applications and the Committee’s decisions are summarized at **Appendix III** while the location is shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plan A-2 to Plan A-4)

7.1 The Site is:

- (a) currently used as a farm (**Plan A-4**); and
- (b) accessible from Deep Bay Road via a local track (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (c) to its north is pond. Further north across the Hang Hau Tsuen Channel are the residential dwellings of Hang Hau Tsuen;
- (d) to its east are unused/vacant land and two open storage yards (**Plan A-2**);
- (e) to its south is vegetated slope; and
- (f) to its west are some single-storey residential structures. To its northwest is a site for temporary place of recreation, sports or culture (fishing ground) and ancillary refreshment kiosk under the planning permission of Application No. A/YL-HTF/1094 (**Plan A-2**).

8. Planning Intention

8.1 The planning intention of “CPA” zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. It may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion.

8.2 There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted.

9. Comments from Relevant Government Departments

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

Land Administration

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

- (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 GL (about 270 m² subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed. The LandsD announced on 28.3.2017 that it will strengthen its enforcement actions against unlawful occupation of GL and tighten its arrangements for processing applications for regularisation of unlawful occupation of GL. New measures for handling regularisation application were implemented immediately with effective from the same date. For cases of unlawful occupation of GL commencing on or after 28.3.2017, the department will no longer accept any regularisation applications made by the occupiers.
- (c) The Site is accessible from Deep Bay Road through GL and private lot(s). His office does not guarantee any right-of-way over the GL to the Site.
- (d) Lot 221 in D.D. 128 is covered by a Short Term Waiver (STW) No. 4638 for temporary place of recreation, sports or culture (fishing ground) and ancillary refreshment kiosk.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) Should planning approval be given to the planning application, the STW holders will need to apply to his office for modification of the STW conditions where appropriate and the lot owner(s) without STW will need to apply to his office for permitting the structures to be erected or regularize any irregularities on site, if any. 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. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) for any of the above 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.

Traffic

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

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.

- (c) The local track leading to the Site is not under Transport Department's (TD) purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

9.1.3 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 the nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Nature Conservation

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

- (a) The Site is currently under active cultivation. The proposed use would involve passive recreational use, i.e. farming activities in the Site only, whilst neither pond filling nor land filling would be required. No temporary structure except a mobile toilet is proposed. In this regard, he has no adverse comment on the application.
- (b) Should the application be approved, the applicant is advised to ensure that the operation of the proposed hobby farm and the associated visitors' activities would not encroach on or affect the surrounding area in particular the wooded knoll and ponds to the south and north of the Site respectively, as well as mangrove/mudflat habitat along the coast of Deep Bay.

Environment

9.1.5 Comment of the Director of Environmental Protection (DEP):

- (a) DEP has no adverse comment on the application. There is no environmental complaint pertaining to the Site in the past three years.
- (b) Should the planning application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites".

Landscape

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

- (a) The Site is located to the north of Deep Bay Road and lies in an area

zoned "CPA". The Site is the subject of the previous application No. A/YL-HT/991 for hobby farm use, the landscape proposal was accepted but not implemented. The current application is seeking planning permission for the same use by the same applicant for a period of 3 years.

- (b) With reference to the aerial photo of 2018, the Site is mainly used for agriculture with a minor portion of the land hard-paved for circulation purpose. Some small trees are observed at the north-eastern corner of the Site. The Site is situated in an area of rural landscape character dominated by tree groups, fish ponds, active and fallow farmlands, and village houses. The proposed use is not incompatible with the surrounding environment. He has no objection to the application from landscape planning perspective.
- (c) In view of the above, it is recommended to impose a landscape condition to maintain all existing trees within the Site in good condition for the duration of the planning approval period should the application be approved by the Committee.

Drainage

9.1.7 Comments of the Chief Engineer/Mainland North, DSD (CE/MN, DSD):

- (a) He has no objection in principle to the proposed application from a drainage point of view. Should the Town Planning Board consider 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 implement and maintain the proposed drainage facilities to the satisfaction of his department.
- (b) The applicant is reminded that the development should neither obstruct overland flow nor adversely affect existing stream course, natural streams, village drains, ditches and the adjacent areas.
- (c) The applicant should consult DLO/YL and seek consent from the relevant owners for the proposed final discharge to the existing pond and any works to be carried out outside his lot boundary before commencement of the drainage works.

Building Matters

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

- (a) 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 captioned application.
- (b) 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 application site under the BO.

- (c) Before any new building works (including containers/open sheds as temporary buildings, demolition 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.
- (d) 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.
- (e) 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.

Fire Safety

9.1.9 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 FSI 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

9.1.10 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 and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding;
- (b) Proper licence / permit issued by FEHD is required if there is any

catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public; and

- (c) For any waste generated from the such work / operation, the applicant should arrange disposal properly at their own expenses.

District Officer's Comments

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

His office has not received any comment from the locals on the application.

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

- (a) Antiquities and Monuments Office (AMO);
- (b) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD);
- (c) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD)
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure, Cultural and Services (DLCS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 9.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 30.8.2019, 2 public comments were received from the public objecting to the application (**Appendices IV-1 to IV-2**) on the following grounds:

- (a) the last application no. (A/YL-HT/991) of similar nature was revoked;
- (b) there is adverse traffic impact; and
- (c) farming is not a compatible use within the "CPA" zone.

11. Planning Considerations and Assessments

11.1 The subject application is for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years at the Site zoned "CPA" on the OZP. The "CPA" zone is intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. The application mainly involves farming activities with minimal hard-paving for circulation (565m² or 17% of the Site). It is noted that the Site is currently under active cultivation and the proposed use would be mainly related to agricultural activities. In this regard, DAFC has no adverse comment on the application. As such, approving the application on a

temporary basis will not undermine the long-term planning intention of the “CPA” zoning.

- 11.2 The Site is surrounded by recreational use, fish ponds and scrubland (**Plan A-2**). The proposed development is considered not incompatible with the surrounding areas.
- 11.3 There is no adverse comment from the concerned Government departments, including DEP, C for T, CE/MN, DSD and CTP/UD&L, PlanD. The proposed development will unlikely create significant adverse environmental, traffic, drainage and landscaping impacts to the surrounding areas. To minimize any possible environmental impacts and nuisance on the surrounding developments, and to address the technical requirements of the concerned Government departments, relevant 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. Should the planning application be approved, the applicant will be advised to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize the possible environmental impacts on the nearby sensitive receivers.
- 11.4 The Committee has approved 1 application for the same use at the Site and 3 similar applications for recreational use within the same “CPA” zone (**Plan A-1**). Approval of this application is in line with the Committee’s previous decisions. Although the last application (No. A/YL-HT/991) for the same use by the same applicant was later revoked on 8.10.2017 due to non-compliance with approval condition related to implementation of the tree preservation and landscape proposal, the same applicant has complied with other approval conditions in respect of the implementation of accepted drainage proposal, the submission of tree preservation and landscape proposal and the submission and implementation of fire services installations proposal for the previous application. For the current application, CE/MN, DSD, FSD and CTP/UD&L, PlanD have no objection to the application and CTP/UD&L, PlanD recommends incorporating an approval condition to maintain all existing vegetation within the Site in good condition should the application be approved. In view of the above, sympathetic consideration can be given to the applicant for the current application. However, shorter compliance period is recommended in order to monitor the progress on compliance with approval conditions. Moreover, should the application be approved, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.
- 11.5 There were 2 public comments objecting to the application mainly on grounds stated in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.4 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department considers

that the proposed temporary place of recreation, sports or culture (hobby farm) 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 **20.9.2022**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 7:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the approval period;
- (b) no public announcement system is allowed on the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (d) the implementation of the accepted drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.3.2020**;
- (e) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) all existing vegetation within the Site should be maintained in good condition at all times during the planning approval period;
- (g) the submission of a fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **20.12.2019**;
- (h) in relation to (g) above, the implementation of the 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 **20.3.2020**;
- (i) if the above planning condition (a), (b), (c), (e) or (f) 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;
- (j) if any of the above planning conditions (d), (g) or (h) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon expiry of the planning permission, the reinstatement of the Site to 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 V**.

- 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 "Coastal Protection Area" ("CPA") zone, which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. There is no strong planning justification in the submission for a departure from such 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 reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 2.8.2019
Appendix Ia	Supplementary Planning Statement received on 2.8.2019
Appendix Ib	FI clarifying number of visitors received on 5.9.2019
Appendix II	Previous Applications covering the Site
Appendix III	Similar Applications within the same "CPA" zone
Appendix IV-1 to IV-2	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Proposed Site Access Plan
Drawing A-3	Proposed Landscape Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**