

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1100

- Applicant** : Ms. Sin Lan-Fung represented by Metro Planning and Development Company Limited
- Site** : Lots 222 S.B (Part), 222 RP (Part), 223 (Part), 224 S.D (Part), 225, 226, 227 and 228 (Part) in D.D. 128, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 3,924 m²
- Lease** : Lots No. 223, 224 S.D, 225, 226, 227 and 228 in D.D. 128 :
Block Government Lease (demised for agricultural use); and

Lots No. 222 S.B and 222 RP in D.D. 128 :
Tai Po New Grant No. 5560 (New Grant Agricultural Lot)
- 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 “CPA” on the Approved Ha Tsuen Fringe OZP No. S/YL-HTF/12 (**Plans A-1a and A-1b**). 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 zone 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 four previous applications (No. A/YL-HT/290, 310, 317 and 805) for pond filling for agriculture use and temporary organic farm use. The last application No. A/YL-HT/805 (covering the Site and the land at its north, northeast and southeast in a much larger site extent) for temporary organic farm with ancillary education and activity centre and small-scale barbeque spot for a period of 3 years, was rejected by the Board upon review on 4.1.2013. The Site is currently being used for farming activities (**Plans A-2, A-4a and A-4b**).

- 1.3 The Site is accessible from Deep Bay Road via a local track (**Drawing A-1 and Plan A-2**). As shown on the layout plan at **Drawing A-2**, the proposed ingress/egress point is at the north eastern boundary of the Site. Three temporary structures with total floor area of 100m² and building height of 1 storey are proposed for site office, rain shelter and storage of tools and fertilizer uses. Ancillary goat keeping is also proposed. Five private car parking spaces are also proposed at the north eastern portion of the Site. 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 for the farming activities so that the Site will serve no more than 20 persons at the same time. The applicant proposes to remove the existing hard-paved area at the northeast and south portions of the Site. No land/pond filling will be carried out at the Site. No public announcement system will be installed at the Site. The access plan, proposed layout plan and drainage plan are at **Drawings A-1 to A-3** respectively.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form and attachments received on 5.11.2019 (**Appendix I**)
 - (b) Supplementary Planning Statement received on 5.11.2019 (**Appendix Ia**)
 - (c) Further Information (FI) clarifying the removal of the existing hard paving of the Site with an updated layout plan on 13.12.2019 and 17.12.2019 (**Appendix Ib**)

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 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.
- (c) The proposed use is compatible with the surrounding landscape and uses.
- (d) There is no environmental, traffic, visual, landscape and drainage impacts to the surroundings.

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

The applicant is not the “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 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

The Site is subject to an enforcement action against unauthorised development (UD) involving recreation use (including climbing facilities and hobby farm). Enforcement Notice (EN) was served on 4.11.2019 and will be expired on 4.1.2020. If the requirement of the EN is not complied with upon expiry of the notice or without planning permission, prosecution action will be taken against the notice recipients.

5. Previous Applications

- 5.1 The Site involves four previous applications (No. A/YL-HT/290, 310, 317 and 805) for pond filling for agriculture use and temporary organic farm use. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plans A-1a and A-1b**.
- 5.2 Applications No. A/YL-HT/290, 310 and 317 (covering a portion of the Site and the land/ponds at its north and northeast in a larger site extent) for pond filling for agriculture uses were rejected by the Committee in 2003. The rejection reasons were that the proposal involved permanent filling of fish ponds which would result in significant loss of flood storage and no technical assessment had been submitted to demonstrate no adverse drainage impact; part of the concerned site fell within the proposed resumption limit of the Hang Hau Tsuen Channel and Associated Works Phase I project and approval of the applications would pose constraint to the implementation of the project; the proposed development was not in line with the planning intention of the “CPA” zone; there was insufficient information to demonstrate no adverse landscape impact; and the proposed development would set an undesirable precedent for other similar applications.
- 5.3 The last application No. A/YL-HT/805 (covering the Site and the land at its north, northeast and southeast in a much larger site extent) for temporary organic farm with ancillary education and activity centre and small-scale barbecue spot was rejected by the Board on review on 4.1.2013 on similar rejection reasons as those for Applications No. A/YL-HT/290, 310 and 317 except for the first and second reasons listed above.

6. Similar Applications

Within the same “CPA” zone, 5 similar applications (No. A/YL-HT/838, 991, 1010 A/YL-HTF/1094 and 1097) for various temporary place of recreation, sports or culture uses were approved with conditions by the Committee between 2013 and 2019 mainly on considerations of only using the existing fish ponds as recreational fishing ground and no pond filling being involved, 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 **Plans A-1a and A-1b**.

7. The Site and Its Surrounding Areas (Plans A-2, A-4a and A-4b)

- 7.1 The Site is:

- (a) currently used as a farm (**Plan A-4b**) in the south and west portion and hard paved in the northeast and portions for vehicle parking; and
- (b) accessible from Deep Bay Road via a local track to the northeast (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (c) to its north 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**);
- (d) to its west, southwest and northwest are some temporary residential structures and a temple and to its further west is mangrove of the Deep Bay;
- (e) to its south is a scrubland; and
- (f) to its east and southeast are storage areas, a plant nursery, a sitting out area, a tree climbing school and various open storage yards.

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 six Old Schedule Agricultural Lots held under the Block Government Lease (Lots No. 223, 224 S.D, 225, 226, 227 and 228 all in D.D.128) and two New Grant Agricultural Lots both held under Tai Po New Grant No. 5560 (Lots No. 222 S.B and 222 RP both in D.D. 128) which contain the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site falls within “Sha Kong Miu (North) Site of Archaeological Interest” (AM98-0924). Comments from Antiquities and Monuments Office should be sought.

- (c) The Site is accessible from Deep Bay Road through GL and private lot(s). His office provides no maintenance works over the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should planning approval be given to the planning application, the lot owner(s) without Short Term Waiver (STW) will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on site, if any. 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) Recent site visit found that the Site is currently used as a hobby farm. Part of the Site, mainly the north eastern and south eastern portions, is already paved. The proposed development appears to involve passive recreational use, i.e. farming activities in the Site only whilst neither pond filling nor land filling would be required. Only 3 temporary structures of 1 storey are proposed. The applicant has also responded in his letter dated 17.12.2019 that they are willing to remove the existing hard paving of the Site. In this regard, he has no adverse comment on the application.
- (b) Should the application be approved, the applicant is required to remove the existing hard paving of the Site. The applicant is also 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 pond to the northwest of the Site, as well as mangrove / mudflat habitat along the coast of Deep Bay.
- (c) Incidentally, it is noted that goat keeping is proposed in the hobby farm, according to the Proposed Layout Plan (**Drawing A-2**). The Public Health (Animals and Birds) (Exhibitions) Regulations, Cap. 139F, regulates all persons who exhibit animals or birds in return for a fee paid by the public admitted to enter the venue for the exhibition. In this regard, the applicant will need to apply for a license if he or she is exhibiting the goats for a fee. Please refer to the following link for details of the regulations:

https://www.pets.gov.hk/english/animal_business/exhibition_licence.html#tab_03
- (d) On the contrary, no license is needed to keep goats in the New Territories areas. To combat nuisance, the applicant is advised to tend the goats all the time if the goats are roaming and free grazing.

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, located to the north of Deep Bay Road, lies in an area of "CPA" zone. The current application seeks planning permission for

temporary hobby farm use for a period of 3 years.

- (b) With reference to the site visit conducted by his office on 22.11.2019, it is observed that the north eastern portion of the site is hard paved for car parking, while the rest of the site area is mainly used as farmlands with a row of existing trees of common species along the northern boundary within the Site. The applied use appears to be already in operation. The proposed use of the unpaved area is not indicated in the revised proposed layout plan. An existing pond is located to the north of the Site, while other temporary structures are found to the east and west of the Site. The Site is situated in an area of rural landscape character predominated by mudflats, vegetated areas, fish ponds and small temporary structures.
- (c) When comparing the aerial photos of 2017 and 2018, it is noted that the farmlands at the north eastern portion of the site had been cleared and paved with concrete. The extensive hard paving of the Site is incompatible with the surrounding natural environment of the “CPA” zone. Approval of the application may set an undesirable precedent to encourage similar applications to form the site prior to obtaining planning permission. The cumulative impact of which would result in a general degradation of the nature environment and landscape quality of the area.
- (d) Based on the above, he has reservations on the application from landscape planning perspective.
- (e) In consideration that the Site is not facing any prominent public frontage and significant visual impact arising from the proposed development is not envisaged, it is recommended to impose an approval 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 TPB.
- (f) It should be reminded that approval of the section 16 application by the Board does not imply the approval of tree works such as felling/transplanting or pruning under lease. Tree works applications should be submitted direct to relevant authority for approval if necessary.

Drainage

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

He has no in principle objection to the proposed application from drainage point of view. Should the Board consider that the application is acceptable from planning point of view, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of DSD. His detailed comments are at **Appendix V**.

Building Matters

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

- (a) 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 Building Authority should be obtained, otherwise they are UBW under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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) 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.
- (d) The Site does not abut on a specified street of not less than 4.5m wide and 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.

District Officer's Comments

9.1.10 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.

Others

9.1.11 Comments of the Antiquities and Monuments Office, Development Bureau (AMO, DEVB):

In view of the location and scope of the proposed temporary place of recreation, sports or culture (hobby farm), the AMO has no objection to the application from cultural heritage viewpoint. Nevertheless, the applicant is required to inform AMO immediately if antiquities or supposed antiquities are discovered within the Site for the proposed temporary place of recreation, sports or culture (hobby farm).

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

- (a) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD);
- (b) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Leisure, Cultural and Services (DLCS);
- (e) Commissioner of Police (C of P); and
- (f) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 15.11.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 6.12.2019, 2 public comments were received from individuals objecting to the application (**Appendices IV-1 and IV-2**) on the following grounds:

- (a) hobby farm is not a compatible use in the “CPA” zone;
- (b) there is adverse traffic impact; and
- (c) a previous application no. A/YL-HT/805 was rejected by the Board on the grounds that the developments have adverse environmental, drainage and landscape impacts on the surrounding area.

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. It is noted that the Site is currently under active cultivation and the proposed use would be mainly related to agricultural activities (**Drawing A-2**). 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 (**Plans A-2 and A-3**). 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 and CE/MN, DSD. The proposed development will unlikely create significant adverse environmental, traffic and drainage impacts to the surrounding areas. CTP/UD&L of PlanD has reservation on the application as approval of the application would set an undesirable precedent encouraging other similar applications to clear and form the Site before planning permission is obtained. In this regard, the applied use is mainly agriculture use and involves mainly cultivation area with limited number of structures and the applicant will remove the existing hard paving in the Site. 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 five similar recreational use applications (No. A/YL-HT/838, 991, 1010, and A/YL-HTF/1094 and 1097) within the same “CPA” zone (**Plans A-1a and A-1b**). Approval of this application is in line with the Committee’s previous decisions. For those rejected applications (No. A/YL-HT/290, 310, 317 and 805), the rejection reasons were mainly involving permanent filling of fish ponds and adverse drainage and landscape impacts. For the current application, the existing hard-paved area will be removed, no land/pond filling is involved and adverse drainage and landscape impacts are not expected.
- 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 **3.1.2023**. 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) removal of the existing hard-paving on the Site, as proposed by the applicant, before the operation of the proposed use;
- (c) no land/pond filling, as proposed by the applicant, is allowed on the site during the approval period;
- (d) no public announcement system is allowed on the Site, as proposed by the applicant, at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (f) the submission of 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 **3.7.2020**;
- (g) in relation to (f) above, the implementation of drainage proposal within **9 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **3.10.2020**;
- (h) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (i) all existing trees within the Site should be maintained in good condition at all times during the planning approval period;
- (j) 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 **3.7.2020**;
- (k) in relation to (j) 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 **3.10.2020**;
- (l) if the above planning condition (a), (b), (c), (d), (e), (h) or (i) 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;
- (m) if any of the above planning conditions (f), (g), (j) or (k) 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
- (n) 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:
- (a) the development is not in line with the planning intention of the "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; and
 - (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact on the surrounding areas.

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 and attachments received on 5.11.2019
Appendix Ia	Supplementary Planning Statement received on 5.11.2019
Appendix Ib	FI clarifying to remove the hard paving of the Site with an updated layout plan on 13.12.2019 and 17.12.2019
Appendix II	Previous Applications covering the Site
Appendix III	Similar Applications within the same "CPA" zone
Appendices IV-1 and IV-2	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Site Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Drainage Plan
Plans A-1a and A-1b	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos