

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL  
FOR TEMPORARY USE  
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-PN/62**

- Applicant** : Mr. MAK Chi-ming
- Site** : Lot 19 in D.D.135 and adjoining Government Land (GL), Pak Nai, Yuen Long, New Territories
- Site Area** : 11,214 m<sup>2</sup> (including GL of about 1,083m<sup>2</sup> or 9.7%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
- Zoning** : “Coastal Protection Area” (“CPA”) (98.6%) and area shown as ‘Road’ (1.4%)
- Application** : Renewal of Planning Approval for Temporary Recreation Use (Fishing Ground) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks renewal of planning approval for temporary recreation use (fishing ground) for a period of 3 years at the application site (the Site). The Site falls mainly within an area zoned “Coastal Protection Area” (“CPA”) (98.6%) with a minor portion within an area shown as ‘Road’ (1.4%) on the Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9 (**Plan A-1**). According to the covering Notes of the OZP, subject to temporary uses for open storage and port back-up purposes which are prohibited in areas zoned “CPA”, temporary use or development of any land or buildings not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). The Site is currently occupied for the applied use with valid planning permission under Application No. A/YL-PN/50.
- 1.2 The Site is involved in 5 previous applications for the same fishing ground use. The last application (No. A/YL-PN/50) for the same use submitted by the same applicant was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 8.9.2017 for a period of 3 years until 8.9.2020 (**Plan A-1**).

- 1.3 According to the applicant, the fish pond will be continued be used as fishing ground. There are two rain shelters for resting purpose, a container-converted structure for toilet use and 25 private car parking spaces in the southern part of the Site. There are about 10 visitors per day on Mondays to Saturdays, and about 30 on Sundays. Sewage generated from the development is discharged to a septic tank to the south outside the Site (**Drawing A-5**). The layout plan, fire services installation plan, drainage plan, landscape plan and sewage discharge plan are at **Drawings A-1 to A-5** respectively.
- 1.4 The layout and development parameters of the last approved application (No. A/YL-PN/50) and the current application are the same as detailed in the following table:

| <b>Major Development Parameters</b> | <b>Last Approved Application (A/YL-PN/50) (a)</b>                        | <b>Current Application (A/YL-PN/62) (b)</b> |
|-------------------------------------|--|---|
| Site Area                           | about 11,214 m <sup>2</sup> (including GL of about 1,083m <sup>2</sup> ) |   |
| Applied Use                         | Temporary Recreation Use (Fishing Ground) for a Period of 3 Year         |   |
| Total Floor Area                    | about 274 m <sup>2</sup>   |   |
| No. of Structures                   | 3<br>(for rest area and toilet use)                                      |   |
| No. of Parking Spaces               | 25<br>(all for private cars<br>[5m x 2.5m])                              |   |
| Operation Hours                     | 8:00 a.m. to 9:00 p.m. daily   |   |

- 1.5 In support of the application, the applicant has submitted the Application Form and attachments on 26.6.2020 (**Appendix I**).

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

The justifications put forth by the applicant in support of the application are detailed in the Application Form (**Appendix I**). They can be summarized as follows:

- (a) There has been no complaint on the fishing ground in the past 3 years.
- (b) All the approval conditions including provision of fire services installation, tree preservation and landscaping, and drainage facilities have been complied with.
- (c) There are about 10 vehicles entering the Site during the busiest periods on Sundays and the others mainly visit the Site by means of public transport. A passing bay is located outside the entrance of the Site. The development will not cause any traffic impact on other road users.

- (d) There is fresh water supply for the development. Sewage generated from the development, including those from the toilet, is discharged to a septic tank near the Site, and would not cause any water pollution to river channels.
- (e) There are no adverse drainage, water pollution and visual impacts on the surrounding area.
- (f) There is no residential use adjacent to the fishing ground. The development will not create any noise nuisance to others. The opening hours would be from 8:00 a.m. to 9:00 p.m. daily.

### **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 obtaining consent of the current land owners. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, TPB PG-No. 31A is not applicable.

### **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB PG-No. 34C) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

### **5. Background**

The Site is not subject to planning enforcement action.

### **6. Previous Applications**

- 6.1 The Site involves 5 previous applications (No. A/YL-PN/7, 16, 28, 39 and 50) for temporary fishing ground. Amongst the 5 previous applications, 4 were approved and 1 was rejected by the Committee. Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-PN/7 for temporary fishing ground for a period of 3 years was rejected by the Committee on 27.2.2004 for the reasons that no information was provided to demonstrate that the proposed development would not have adverse traffic and hygiene impacts on the surrounding areas; and approval of the application would set an undesirable precedent.
- 6.3 Applications No. A/YL-PN/16, 28, 39 and 50 for temporary fishing ground for a period of 3 years were approved by the Committee with conditions between 2008 and 2017 on the considerations that conversion of an existing fish pond would not undermine the long-term planning intention of the “CPA” zone, the development would unlikely cause significant adverse environmental and drainage impacts, and

approval of the application was in line with the previous decision of the Board on similar cases in the area. All the approval conditions were complied with.

- 6.4 Compared with the last approved application (No. A/YL-PN/50), the current application was submitted by the same applicant for the same use on the same site with the same development parameters.

## **7. Similar Applications**

- 7.1 There are 6 similar applications (No. A/YL-PN/22, 36, 44, 48, 53 and 57) for temporary recreation use (fishing ground) for a period of 3 years within the same “CPA” zone. Amongst the 6 similar applications, 4 were approved and 2 were rejected. Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-PN/22, 36, 44 and 57 involving almost the same site were approved by the Committee with conditions for a period of 3 years between 2009 and 2019. They were related to conversion of an existing fish pond for fishing ground use. The major considerations were that approval of the application on a temporary basis would not jeopardise the planning intention of “CPA” zone given no significant change in character anticipated and no pond filling/excavation required; concerned Government departments had no objection to/no adverse comment on the application; and approval was in line with previous decisions of the Board.
- 7.3 Application No. A/YL-PN/48 for proposed temporary place of recreation (fishing ground) with ancillary vehicle park and office was rejected by the Committee on 28.7.2017. It was involved in illegal pond filling activities. The rejection grounds were that the development was not in line with the planning intention of the “CPA” zone; there was insufficient information to demonstrate no adverse environmental, ecological, landscape and traffic impacts on the surrounding areas; and approval of the application could be misread as acquittal of the ‘destroy first’ actions.
- 7.4 Application No. A/YL-PN/53 for proposed temporary place of recreation (fishing ground) was rejected by the Committee on 18.5.2018. It involved construction of a new fish pond and 5 temporary structures. The rejection grounds were that the development was not in line with the planning intention of the “CPA” zone; and there was insufficient information to demonstrate no adverse environmental impact on the surrounding areas.

## **8. The Site and Its Surrounding Areas (Plan A-2 to Plan A-4)**

- 8.1 The Site is:
- (a) largely a fish pond. There are 2 rain shelters and a container-converted structure on the south for rest area and toilet uses respectively;
  - (b) currently used as a recreational fishing ground covered by valid planning permission under application No. A/YL-PN/50; and
  - (c) accessed directly from Nim Wan Road which is a single-lane rural road.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate north and northwest are vacant land and a site with planning permission for utility installation for private project (electricity transformer room) use and excavation of land. To the further north are several ponds, residential structures, orchard, a vegetable collection point and shrubland;
- (b) to the east across Nim Wan Road are a pond, residential dwellings and unused land;
- (c) to the south across Nim Wan Road are residential dwellings and vacant land; and
- (d) to the southwest and west are vacant land, plant nursery, an open storage yard which is a suspected unauthorized development.

## **9. Planning Intention**

The “CPA” zoning 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 may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion. 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 the development is an essential infrastructure project with overriding public interest may be permitted.

## **10. Comments from Relevant Government Departments**

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

### **Land Administration**

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

- (a) The Site comprises an Old Schedule Agricultural Lot 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) Lot No. 19 in D.D. 135 is covered by Short Term Waiver No. 3674 (STW3674) for the purposes of temporary recreation use (fishing ground).
- (c) No permission is given for occupation of the GL included in the Site (about 1,083m<sup>2</sup> subject to verification). The act of occupation of GL without Government’s prior approval is not allowed.
- (d) Should the planning approval be given to the application, the STW holders will need to apply to his office for modification of the STW

conditions where appropriate. 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. Application(s) for any of the above will be considered by 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 LandsD.

### **Traffic**

#### 10.1.2 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 road.

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

- (a) The access arrangement should be commented by TD.
- (b) If the proposed access arrangement is agreed by TD, a proper road connection or run-in/out should be constructed to the satisfaction of HyD.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (d) HyD shall not be responsible for the maintenance of any access connecting the Site and Nim Wan Road.

### **Nature Conservation**

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

He has no strong view on the application which proposed the same existing use as the previously approved application and does not involve any filling of pond. Should the application be approved, the applicant should be advised to implement necessary measures to avoid causing disturbance to the nearby fish ponds and the fish culture activities there during the operation of the fishing ground.

### **Environment**

#### 10.1.5 Comment of the Director of Environmental Protection (DEP):

- (a) The applicant seeks renewal of planning approval for temporary recreation use (fishing ground) for a period of 3 years at the Site which falls within an area zoned “CPA” on the approved Sheung Pak Nai and Ha Pak Nai OZP. The Site is the subject of a planning permission (No. A/YL-PN/50) for the same use for a period of 3 years which was approved by the Committee on 8.9.2017. It is noted that the applicant proposed discharging the sewage generated from the development to an adjacent septic tank outside the Site.
- (b) As per his comment on the previous application, sewage treatment outside the Site is not desirable as there could be issues concerning the access right for future operation and maintenance of the sewage treatment system. Having said that, in view that it is operating with valid planning permission without any complaint or prosecution record in the past three years, he has no objection to the application and no planning approval condition is required.
- (c) There is no environmental complaint pertaining to the Site in the past three years.

### **Landscape**

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

- (a) The Site is located at Sheung Pak Nai and falls within an area zoned “CPA” and an area shown as ‘Road’ on the approved Sheung Pak Nai and Ha Pak Nai OZP No. S/YL-PN/9. The Site is the subject of last approved application A/YL-PN/50 for temporary fishing ground use, to which he had no objection from landscape planning perspective. The current application is seeking renewal of planning approval for the same use for a period of 3 years.
- (b) With reference to the site visit on 13.7.2020 and aerial photo of 2019, the Site is composed of a fish pond with existing trees found along the northern, western and southern boundaries. Temporary structures are observed at the south-eastern corner of the Site. The Site is situated in an area of rural landscape character dominated by fish ponds, tree groups and farmland. Significant change to the landscape character arising from the continued use is not envisaged. He has no objection to the application from landscape planning perspective.

### **Drainage**

#### 10.1.7 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.
- (b) Should the 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 maintain the existing drainage facilities on site and to submit condition record of those drainage facilities to the satisfaction of his office.

### **Building Matters**

10.1.8 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 Building Department (BD), they are unauthorised 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) are to be carried out on the leased land of the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorised 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 (B(P)R) 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 B(P)R at the building plan submission stage.

### **Fire Safety**

10.1.9 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. In addition, the applicant should be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of the proposed FSIs to be installed should be clearly marked on the layout plans.



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

### **Water Supply**

10.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing waterworks reserve (WWR) will be affected as shown on **Plan A-2**. No structure shall be built or materials stored within this waterworks reserve. Free access shall be made available at all times for staff of the Director of Water Supplies and their contractor to carry out construction, inspection, operation, maintenance and repair works.
- (c) No trees or shrubs with penetrating roots may be planted within the waterworks reserve or in the vicinity of the water main.
- (d) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

### **District Officer's Comments**

10.1.11 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 and has no comment from departmental point of view.

10.2 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, CEDD (CE/LW, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Leisure, Cultural and Services (DLCS);
- (e) Antiquities and Monuments Office, Development Bureau (AMO, DevB);  
and
- (f) Commissioner of Police (C of P).

## **11. Public Comment Received During Statutory Publication Period**

On 3.7.2020, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received (**Appendix V**) objecting to the application on the grounds that the development is not in line with the planning intention of the "CPA" zone.

## **12. Planning Considerations and Assessments**

- 12.1 The applicant seeks planning permission for renewal of planning approval for temporary recreation use (fishing ground) for a period of 3 years at the Site zoned “CPA” on the OZP. The planning intention of the “CPA” zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. The development is not entirely in line with the planning intention of the “CPA” zone. However, the existing fish pond at the Site will not be adversely affected by the development. DAFC has no objection to the application from nature conservation perspective. CTP/UD&L of PlanD also has no objection as significant change to the landscape character arising from the development is not anticipated. Temporary approval of the application for a period of 3 years would not frustrate the long-term planning intention of the “CPA” zone.
- 12.2 The Site is situated in an area of rural landscape character dominated by fish ponds, tree groups and farmland. The recreational fishing ground is not incompatible with the surrounding land uses.
- 12.3 The application is generally in line with the TPB PG-No. 34C in that there has been no material change in planning circumstances since the granting of the previous approval under Application No. A/YL-PN/50, the applicant has complied with all the approval conditions, and the 3-year approval period sought is of the same time frame as the previous approval.
- 12.4 The development would unlikely cause significant adverse environmental, landscape, drainage and traffic impacts to the surrounding areas. Relevant Government departments including DEP, CTP/UD&L, PlanD, CE/MN, DSD and C for T have no objection to or adverse comment on the application. To address the technical concerns of concerned Government departments and to minimize any potential nuisance, appropriate approval conditions are recommended in paragraph 13.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on the Site will be subject to enforcement action by the Planning Authority.
- 12.5 There are 4 previous approved applications covering the Site for the same use since 2008. All the time-limited approval conditions of these applications were complied with. Within the same “CPA” zone, there are 4 similar applications approved for temporary recreation use (fishing ground). Approval of the current application is in line with previous decisions of the Committee.
- 12.6 There is one public comment received on the application objecting to the application on the grounds as summarized in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

## **13. Planning Department’s Views**

- 13.1 Based on the assessment made in paragraph 12, and having taken into account the public comment mentioned in paragraph 11, the Planning Department considers that the temporary recreation use (fishing ground) could be tolerated for a further period of 3 years.

- 13.2 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 and be renewed from 9.9.2020 to **8.9.2023**. 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 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time 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 existing drainage facilities on the Site within **3 months** from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.12.2020**;
- (e) all existing trees on the Site shall be maintained in good condition at all times during the planning approval period;
- (f) the submission of fire service installations proposal within **6 months** from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **9.3.2021**;
- (g) in relation to (f) above, the implementation of fire service installations proposal within **9 months** from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **9.6.2021**;
- (h) if any of the above planning conditions (a), (b), (c) or (e) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (i) if any of the above planning conditions (d), (f) or (g) 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.

[Approval conditions are the same as those under the permission for Application No. A/YL-PN/50, except condition (e) is updated to accord with the department's latest requirement.]

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the "CPA" zoning 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. There is a general presumption against development in this zone. The development is not in line with the planning intention of the “CPA” zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

#### **14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

#### **15. Attachments**

|                     |   |
|---------------------|---|
| <b>Appendix I</b>   | Application Form and attachments received on 26.6.2020  |
| <b>Appendix II</b>  | Extract of Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) |
| <b>Appendix III</b> | Previous applications covering the application site   |
| <b>Appendix IV</b>  | Similar applications within the same “CPA” zone   |
| <b>Appendix V</b>   | Public Comment  |
| <b>Appendix VI</b>  | Advisory Clauses  |
| <b>Drawing A-1</b>  | Layout Plan   |
| <b>Drawing A-2</b>  | Fire Services Installation Plan   |
| <b>Drawing A-3</b>  | Drainage Plan   |
| <b>Drawing A-4</b>  | Landscape Plan  |
| <b>Drawing A-5</b>  | Sewage Discharge Plan   |
| <b>Plan A-1</b>     | Location Plan   |
| <b>Plan A-2</b>     | Site Plan   |
| <b>Plan A-3</b>     | Aerial Photo  |
| <b>Plan A-4</b>     | Site Photos   |

**PLANNING DEPARTMENT  
AUGUST 2020**