

RNTPC Paper No. A/YL-LFS/359
For Consideration by
the Rural and New Town
Planning Committee
on 20.3.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/359

- Applicant** : Mr. So Shu Yuen and Ms. Tang Lai Ha
- Site** : Lot 1236 S.B in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 3,800 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/9
- Zoning** : “Green Belt” (“GB”)
- Application** : Filling and Excavation of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicants seek planning permission for filling and excavation of land at the application site (the Site) for permitted agricultural use (**Plan A-1**). The Site falls within an area zoned “GB”. According to the Notes of the OZP for “GB” zone, ‘agricultural use’ is a Column 1 use which is always permitted. However, any filling of land/pond or excavation of land, including that to effect a change of use to any of those specified in Columns 1 and 2 require permission from the Town Planning Board (the Board). Eastern portion of the Site is currently hard-paved and excavated without obtaining planning permission while western portion of the Site is currently grassed. Some temporary structures and converted containers are found on site.
- 1.2 According to the applicants, the Site is accessible via a local track leading from Deep Bay Road (**Drawing A-1 and Plans A-2, A-3a and 3b**). The vehicular ingress/egress points are located at the north-eastern boundary of the Site while two pedestrian access points are located at the south-eastern and western boundaries of the Site (**Drawing A-1 and Plan A-2**). Western portion of the Site (about 2,615 m² or 69% of the Site) will be used for agricultural land while eastern portion of the Site is filled/excavated for ancillary agricultural uses (**Drawing A-1**). The areas for filling and excavation of land are about 1,130m² (29.74%) and 55m² (1.45%) respectively, the depth of which are about 0.1m and 2m respectively. On the land filling area (i.e. hard-paved area), there will be ten structures (with a total floor area

of about 514.8m² and building height of about 2.3m – 5.18m) for farm house, storage, toilet, lookout, sheep shed, kennel, electric room and temporary structures as resting place uses. Besides, the applicants propose to install 30 solar panels with a total size of about 60 m² for solar energy collection for their own use. For the land excavation area, a water tank is proposed (**Drawing A-1**).

- 1.3 In support of the application, the applicants have submitted the following documents:
- (a) Application Form received on 23.1.2020 with lot index (**Appendix I**) plan and proposed layout plan

2 Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed at **Appendix I**. They are summarized as follows:

- (a) More than 90% of the Site is proposed for the development like natural conservation area except the internal access, water tank and slope stabilisation.
- (b) The self-contained solar panel can help to restore the natural ecosystem.
- (c) The slope stabilisation for life and property protection as well as the internal access and structure installation for farming and sheep farming can help to restore the natural environment.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4 Background

The Site is subject to an active planning enforcement case (No. E/YL-LFS/490) (**Plan A-2**) and the alleged unauthorized development (UD) is filling of land. The Enforcement Notice (EN) was issued to the registered land owners on 12.7.2019 requiring the UD to be discontinued by 26.7.2019. The Reinstatement Notice (RN) was issued on 29.8.2019 requiring to remove the leftover, debris and fill materials (including hard-paving) on the land and to grass the land by 29.11.2019. The concerned applicants on 5.9.2019 sought to review the decision of the Planning Authority. The review is being handled by Secretary for Development (SDEV) and the RN is being suspended pending SDEV’s decision on the review application. The Site will be kept under close monitoring for further action.

5 Town Planning Board Guidelines

- 5.1 The Town Planning Board Guidelines for “Application for Development within the

Green Belt zone under Section 16 of the Town Planning Ordinance” (TPB PG-No. 10) are relevant to the application. Relevant extracts of the Guidelines are attached at **Appendix II**.

5.2 The Town Planning Board Guidelines for “Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance” (TPB PG-No. 12C) are also relevant to this application. According to the said Guidelines, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including agricultural uses) are however exempted from the requirement of EcoIA.

6 Previous Application

The Site does not involve any previous planning application.

7 Similar Applications

7.1 There are eight similar applications (No. A/YL-LFS/9, 10, 101, 132, 133, 136, 201 and 202) involving five sites for various pond/land filling for agricultural use within the same “GB” zone. Applications No. A/YL-LFS/9 and 10 (for pond filling for agricultural use outside the WBA) were approved by the Committee on 23.8.1996 on the considerations of in line with the planning intention of the “GB” zone, compatible with the surrounding area, not within the Deep Bay Buffer Zone and the study area of the “Study on the Ecological Value of Fish Ponds in the Deep Bay Area”, and no objection from relevant departments including EPD and DSD. Application No. A/YL-LFS/132 (for land filling for plant nursery) was approved upon review by the Board on 19.8.2005 on the considerations of filling of land with soil for agricultural use and no pond filling within the WBA. However, the proposed agricultural use at the site has not materialized to date.

7.2 Applications No. A/YL-LFS/101, 133, 136 and 201 (the first three involving the same site) were rejected by the Committee/the Board upon review between 2003 and 2010. These sites are all for pond filling for agricultural use within the WBA. The rejection reasons mainly include not in line with the relevant TPB Guidelines for ‘Application for Development within the Green Belt zone’ and ‘Application for Development within the Deep Bay Area’; no information to demonstrate no adverse drainage and landscape impacts on the surrounding area and the need for pond filling; and setting an undesirable precedent for similar applications.

- 7.3 Application No. A/YL-LFS/202 (for land filling for agricultural use outside the WBA) was rejected by the Board upon review on 17.12.2010 on the grounds that the site would be higher than the surrounding areas after the proposed land filling. The applicant failed to justify the need to fill up the site and the filling depth being applied for, and to demonstrate that the proposed land filling would not have adverse drainage and landscape impacts on the surrounding area. Details of these applications and the Committee/Board's decisions are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

8 **The Site and Its Surrounding Areas** (Plan A-1 to Plan A-4b)

8.1 The Site is:

- (a) located on a sloping ground ranging from 18.7mPD to 22mPD from west to east;
- (b) currently partly hard-paved, partly excavated and partly grassed with some temporary structures and converted containers; and
- (c) accessible via a local track leading from Deep Bay Road (**Plans A-3a and A-3b**).

8.2 The surrounding areas have the following characteristics (**Plans A-2 to A-3b**):

- (a) to the north is a burial ground;
- (b) to the east are residential dwellings (the closest residential dwelling is about 41m away);
- (c) to the west and south west are some existing tree clusters and woodland; and
- (d) to its immediate south are fallow agricultural land and to the further south in the "V" zone are residential dwellings in Mong Tseng Wai.

9 **Planning Intention**

The planning intention of "GB" zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. As filling of land/pond and excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

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 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) Should the planning application be approved, the lot owner(s) of the lot without 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, only application for regularization or erection of temporary structure(s) will be considered. 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.

Landscaping

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

- (a) The Site which is located to the north of Mong Tseng Wai lies in an area of “GB” zone. The current application seeks planning permission for land filling and excavation for permitted agricultural use. The Site is not subject to any previous planning application.
- (b) With reference to the site visit by his office on 2.3.2020 and the aerial photo taken in 2018, the eastern part of the Site is partly hard paved and some mature trees are observed in this area. The rest of the Site is generally covered with wild vegetation. Scattered piles of construction materials are found stacked in the Site. The Site is situated in a rural landscape character surrounded by woodland to the south and west, and existing tree clusters to the north and east. Village houses are found to the further south of the Site. The extensive hard paving is considered not compatible with the landscape character of the surrounding area. According to the submitted layout plan, the filling and excavation of land at the eastern part of the Site for construction of farm house, tool storage, animal shelters and watering hole would likely involve removal of the existing mature trees. However, no information on condition of the existing landscape resources and their proposed treatments is provided in the application. The potential landscape impacts arising from the proposed development could not be ascertained.
- (c) When comparing the aerial photos taken in 2018 and 2015 (**Plans A-3a and A-3b**), an extensive site clearance was carried out since 2015 and all the large existing trees at the northern and western parts of the Site were removed. Significant adverse landscape impact has taken place.

- (d) Approval of the application would set an undesirable precedent to encourage other similar developments to blanket clear the site prior obtaining planning approval. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding environment and undermine the integrity of the “GB” zone. In view of the above, he has reservation on the application from landscape planning perspective.

Nature Conservation

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

- (a) The Site falls within the “GB” zone and possesses a potential for agricultural rehabilitation. The applicants should provide more details of the agricultural activities (e.g. cultivation area, type of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site, justify the need for filling and excavation of land for agricultural use, and provide more information about the fill materials for the Board’s consideration.
- (b) According to Agriculture, Fisheries and Conservation Department’s (AFCD) record, they have received an application for Letter of Approval for erecting agricultural structures at Lots 1238 S.B in D.D. 129 in August 2017 by another applicant and forwarded the application to LandsD in September 2017 for further processing and approval. However, she has no information on whether the application has been approved or not.
- (c) The Site is partly paved and partly covered with vegetation of common species. She has no comment on the application from nature conservation point of view.
- (d) It is noticed that the applicants also propose to have sheep shed and kennel in the Site. The applicants should be reminded that under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from AFCD. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap 139I Public Health (Animals) (Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations.
- (e) On the other hand, the dogs kept by the applicants should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and they are reminded to observe Cap 169 Prevention of Cruelty to Animals Ordinance at all times.
- (f) 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 that regards, the applicants will need to apply for licence 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

- (g) On the contrary, no licence is needed to keep goats in the New Territories areas. To combat nuisance, it is advised that the applicants tend the goats all the time if the goats are roaming and free grazing.

Traffic

10.1.4 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) The local track leading to the Site is not under TD's 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.

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

- (a) The access arrangement should be commented by TD.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and public road.

Environment

10.1.6 Comments of the Secretary for the Environment (S for ENV)

- (a) Development of renewable energy (RE) is an important part of Environment Bureau (ENB) efforts in combating climate change. Increasing the use of RE, a zero-carbon energy, can help decarbonise our electricity generation sector, which contributes to about two-thirds of the carbon emissions in Hong Kong. In particular, if it is to achieve a carbon reduction that is compliant with Paris Agreement's well below 2°C target in 2050, it is estimated that about 80% of our electricity would need to come from zero-carbon energy sources hence promoting the development of RE has been an integral part of our decarbonisation strategy.
- (b) ENB's policy is for the Government to take the lead in developing RE where technically and financially feasible and to create conditions that are conducive to community participation. For the private sector, ENB and the power companies have introduced the Feed-in Tariff (FiT) Schemes, providing financial incentives which can encourage the private sector to invest in distributed RE. ENB has also introduced a series of measures to facilitate and support members of the public in developing RE. Examples include relaxing the restrictions in relation to installation of PV systems at the rooftop of village houses and introducing a new scheme

called "Solar Harvest" to install small-scale RE systems for eligible schools and welfare non-Governmental organisations. EMSD has also revamped its "HK RE Net" to provide useful information in respect of developing RE to the public.

- (c) Despite ENB's efforts mentioned above, due to objective factors including, inter alia, topographical constraints, the RE potential in Hong Kong is modest. As such, she strongly supports the development of RE systems by the community as this would help contribute to increasing the use of RE in Hong Kong."

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

- (a) No substantiated environmental complaint pertaining to the Site has been received in the past three years.
- (b) In view of the nature and scale of the proposed development, he has no objection to the application. The applicant is reminded to strictly comply with relevant pollution control ordinances, including Waste Disposal Ordinance and Water Pollution Control Ordinance, and to implement appropriate pollution control measures to minimise any potential environmental impacts during construction. Reference could be made to relevant publications/guidelines including the following:

Recommended Pollution Control Clauses for Construction Contracts

https://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc_1.html

ProPECC PN 1/94 Construction Site Drainage

https://www.epd.gov.hk/epd/sites/default/files/epd/english/resources_publications/files/pn94_1.pdf

Drainage

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

- (a) He has no objection in principle to the application from drainage point of view.
- (b) 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 drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his department.

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 the satisfaction of D of FS.

- (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.

Geotechnical Matters

10.1.10 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) He has no adverse geotechnical comment on the application. GEO is not a law enforcement agency for the control of land activities.
- (b) The applicant should be reminded to submit building/site formation/slope remedial/excavation works to the Buildings Department for approval as required under the provisions of the Building Ordinance.

Building Matters

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

- (a) As there is no record of approval granted by the Building Authority (BA) for the existing structures at the Site, BD 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 BA, 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 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 Site under the BO.
- (d) Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained,

otherwise they are UBW. An Authorized Person 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) 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 B(P)R at the building plan submission stage.

District Officer's Comments

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

His office has received one comment from the representative of Mong Tseng Wai Tsuen on the application objecting to the application mainly on the grounds of pollution, hygiene, fung shui, slope safety and 'destroy first, build later' problems (**Appendix IV**).

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

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

11 Public Comments Received During Statutory Publication Period

On 7.2.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 28.2.2020, 13 public comments were received from the Hong Kong Bird Watching Society, Designing Hong Kong, a villager and a member of the public objecting to the application and the reasons are summarized below (**Appendices V-1 to V-13**):

- (a) the proposed development is not in line with the planning intention of the "GB" zone;
- (b) the proposed development is not in line with the TPB Guidelines for 'Application for Development within the Deep Bay Area';
- (c) the proposed development will generate possible adverse traffic, environmental, landscape, drainage, sewage, landslide, health and fung shui impacts and lead to degradation of the surrounding area;

- (d) the Board should not encourage “destroy first, build later” attitude; and
- (e) approval of the application would set an undesirable precedent for similar applications within the same “GB” zone.

12 Planning Considerations and Assessments

- 12.1 The current application is for filling and excavation of land for permitted agricultural use at the Site. The Site is zoned “GB” on the OZP which is to define the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. Whilst agricultural use is always permitted within the “GB” zone, filling and excavation of land within “GB” zone is subject to planning permission as it may cause adverse drainage impact on the adjacent areas and adverse impact on the natural environment. The filling and excavation of land have been carried out at the Site without planning permission. In this respect, the applicants are applying for filling and excavation of land at the eastern portion of the Site (about 1,185m² (about 30%)) for ancillary agricultural use (i.e. for farm house, storage, toilet, lookout, sheep shed, kennel, electric room, temporary structures as resting place uses, water tank and internal access).
- 12.2 The Site is situated in a rural landscape character comprising fallow agricultural land, burial ground and residential dwellings. The applied use of filling and excavation of land (involving about 1,185m²) for agricultural use is considered not compatible with the surrounding areas.
- 12.3 According to the TPB PG-No.10 for Application for Developments within the “GB” Zone, any proposed development should be compatible with the surrounding areas and should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment. In this respect, CTP/UD&L, PlanD has reservation on the application from landscape planning perspective as the applied use involving extensive hard paving and vegetation clearance is considered not compatible with the landscape character of the surrounding areas, which comprise woodland, tree clusters and village houses. He also points out that approval of the application would set an undesirable precedent to encourage similar developments to the area. The cumulative impact of which result in a general degradation of the landscape quality of the surrounding environment and undermine the integrity of the “GB” zone. In this regard, the applied use is not in line with the TPB PG-No. 10.
- 12.4 Although DAFC considers that the Site possesses potential for agricultural rehabilitation, she indicates that the applicant should provide more details of the agricultural activities (e.g. cultivation area, type of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site, justify the need for filling and excavation of land for agricultural use, and provide more information about the fill materials for the Board’s consideration. In this regard, there is no strong justification for the need for filling and excavation of land for the ancillary agricultural uses.
- 12.5 Relevant departments including C for T, CE/MN of DSD, DEP and D of FS have no adverse comment on the application on the traffic, drainage, environmental and fire

safety aspects.

- 12.6 No previous approval has been granted at the Site. Within the same “GB” zone, there were eight similar applications with different site extents for various pond/land filling for agricultural use. Three applications (No. A/YL-LFS/9, 10 and 132) were approved. The first two for pond filling for agricultural use outside the WBA were approved on the considerations of in line with the planning intention of the “GB” zone, compatible with the surrounding area, not within the WBA, no objection from relevant departments while the last one for land filling within the WBA was approved in view of no pond filling within the WBA. The other five similar applications (No. A/YL-LFS/101, 133, 136, 201 and 202) for pond/land filling for agricultural use were rejected between 2003 and 2010 for the reasons of not in line with the relevant TPB Guidelines for ‘Application for Development within the Green Belt zone’ and ‘Application for Development within the Deep Bay Area’; no information to demonstrate no adverse drainage and landscape impacts on the surrounding area and the need for pond/land filling; and setting an undesirable precedent for similar applications.
- 12.7 In view of the above, within the same “GB” zone, no approval for similar land filling and excavation for ancillary agricultural use (i.e. for farm house, storage, toilet, lookout, sheep shed, kennel, electric room, temporary structures as resting place uses, water tank and internal access for this current application) has been granted by the Committee for those applications within the WBA and with adverse departmental comments. Eastern portion of the Site has been filled and excavated without planning permission and subject to active enforcement actions. The applicants fail to justify the need for filling and excavation of land at the Site. Approval of the application would set an undesirable precedent and encourage proliferation of similar filling and excavation of land within the same “GB” zone thereby frustrating its planning intention. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area. As such, rejecting the current application is in line with the Committee’s previous decisions.
- 12.8 There are 13 public comments received objecting to the application on the grounds as summarized in paragraphs 10.1.10 and 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.7 are relevant.

13 Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 above and having taken into account the public comments mentioned in paragraphs 10.1.10 and 11 above, the Planning Department does not support the application for filling and excavation of land for permitted agricultural use for the following reasons:
- (a) the application is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10 for Application for Developments within the “Green Belt” Zone in that the filling and excavation of land, which has been completed, involves clearance of natural vegetation, thereby adversely affecting the natural landscape and incompatible with the surrounding areas; and
 - (b) the applicants fail to justify the need for land filling and excavation.

- 13.2 Alternatively, should the Committee decide to approve the application, no time clause for commencement of development is proposed as the land filling and excavation works under application have already been completed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission and 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 **20.12.2020**;
- (b) the submission and implementation of 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 **20.12.2020**; and
- (c) if any of the above planning conditions (a) or (b) 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.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 14.3 Alternatively, 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.

15. Attachments

Appendix I	Application Form received on 23.1.2020 with lot index plan, proposed layout plan and vehicular access plan
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Application for Development within the Green Belt Zone (TPB PG-No. 10)
Appendix III	Similar Applications within the Same "GB" Zones on the Approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/9
Appendix IV	Public Comment Relayed from District Officer/Yuen Long, Home Affairs Department
Appendices V-1 to V-13	Public Comments Received During Statutory Publication

Appendix VI	Period
Drawing A-1	Advisory Clauses
Plan A-1	Proposed Layout Plan
Plan A-2	Location Plan with Similar Applications
Plans A-3a to 3b	Site Plan
Plans A-4a to 4b	Aerial Photos
	Site Photos

**PLANNING DEPARTMENT
MARCH 2020**

**Relevant extracts of the Town Planning Board Guidelines for
Application for Development within Green Belt Zone
(TPB PG-No.10)**

1. To preserve the character and nature of the "GB" zone, the only uses which will always be permitted by the Town Planning Board (the Board) are compatible uses which are essential and for public purpose such as waterworks, water catchment areas, nature reserves, agriculture, forestry and certain passive recreational uses. Other uses, including government/institution/community (G/IC), residential development and public utility installations will require planning permission from the Board and each proposal will be assessed on its individual merits. Applications for development will be considered by the Board according to the criteria set out below.
2. Main Planning Criteria:
 - (a) an application for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
 - (b) the design and layout of any proposed development should be compatible with the surrounding areas. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
 - (c) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
 - (d) the vehicular access road and parking providing proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.

**Similar s.16 Applications for Filling and Excavation of Land for Permitted Agricultural Use
within the Same "GB" Zone on the Lau Fau Shan and Tsim Bei Tsui OZP**

Rejected Applications

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Zoning</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Rejection Reason</u>
1.	A/YL-LFS/101	Pond Filling for agricultural use (flower planting)	GB	20.6.2003 (upon review)	1, 2, 3
2.	A/YL-LFS/133	Pond Filling for Plant Nursery Use for a Period of 3 Years	GB	27.5.2005	1, 2, 4
3.	A/YL-LFS/136	Temporary Pond Filling for Agricultural Use (Flower Planting) for a Period of 3 Years	GB	18.11.2005 (upon review)	1, 2, 4
4.	A/YL-LFS/201	Proposed Pond Filling and Land Filling for Agricultural Use	GB	29.1.2010	1, 2, 3, 5
5.	A/YL-LFS/202	Proposed Land Filling (by 1.2m) for Agricultural Use	GB	17.12.2010 (upon review)	6

Rejection Reasons

1. The development did not comply with the revised Town Planning Board Guidelines for "Application for Developments within Deep Bay Area" in that there was insufficient information in the submission to demonstrate that the development would not have adverse ecological impacts on the surrounding areas.
2. There was no information in the submission to demonstrate that the proposed development would not have adverse drainage and landscape impact on the surrounding area.
3. Approval of the application would set an undesirable precedent for similar pond filling, the cumulative effect of approving such applications would result in a general degradation of the environment and ecology of the area.
4. There was insufficient information in the submission to demonstrate that there was a need for pond filling at the application site for plant nursery use.
5. The proposed development was not in line with the revised Town Planning Board Guidelines for Application for Development within the Green Belt under Section 16 of the Town Planning Ordinance in that there was a general presumption against development (other than redevelopment) in "Green Belt" ("GB") zone, and the proposed development would have adverse landscape impacts on the surrounding area.
6. The site would be higher than the surrounding areas after the proposed land filling. The applicant failed to justify the need to fill up the site and the filling depth being applied for, and to demonstrate that the proposed land filling would not have adverse drainage and landscape impacts on the surrounding area.

Approved Applications

	<u>Application No.</u>	<u>Proposed Uses</u>	<u>Zoning</u>	<u>Date of Consideration (RNTPC/TPB)</u>	<u>Approval Condition</u>
1.	A/YL-LFS/9	Pond Filling for Agricultural Use (Fruit Tree Plantation)	GB R(C)	23.8.1996	1, 2
2.	A/YL-LFS/10	Pond Filling for Agricultural Use (Fruit Tree Plantation)	GB	23.8.1996	1, 2
3.	A/YL-LFS/132	Temporary Land Filling for Plant Nursery Use for a Period of 3 Years	GB	19.8.2005 (upon review)	1, 2, 3

Approval Conditions

1. The provision of detailed information on the sources of fill materials and types of bunds used for the pond filling to demonstrate that the proposed pond filling will not cause adverse impact to the remaining fish ponds.
2. Revocation clause.
3. The submission of a Drainage Impact Assessment, implementation of flood mitigation measures/ provision of the proposed drainage facilities.

Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the application site (the Site);
- (b) the planning permission is given to the developments/uses under application. It does not condone any other developments/uses which currently occur on the Site but not covered by the application. The applicant shall be requested to take immediate action to discontinue such developments/uses not covered by the permission;
- (c) to note the comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) that the Site comprises 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. The lot owner(s) of the lot without 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, only application for regularization or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by the Lands Department 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 Lands Department;
- (d) to note the comments of the Director of Agriculture, Fisheries and Conservation (DAFC) as follows:
 - (i) the Site falls within the “GB” zone and possesses potential for agricultural rehabilitation. The applicants should provide more details of the agricultural activities (e.g. cultivation area, type of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site, justify the need for filling and excavation of land for agricultural use, and provide more information about the fill materials for the Board’s consideration.
 - (ii) According to Agriculture, Fisheries and Conservation Department’s (AFCD) record, they have received an application for Letter of Approval for erecting agricultural structures at Lots 1238 S.B in D.D. 129 in August 2017 by another applicant and forwarded the application to LandsD in September 2017 for further processing and approval.
 - (iii) It is noticed that the applicants also propose to have sheep shed and kennel in the Site. The applicants are reminded that under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from AFCD. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap 139I Public Health (Animals) (Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations.
 - (iv) On the other hand, the dogs kept by the applicants should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and they are reminded to observe Cap 169 Prevention of Cruelty to Animals Ordinance at all times.

- (v) 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 that regards, the applicants will need to apply for licence 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
- (vi) On the contrary, no licence is needed to keep goats in the New Territories areas. To combat nuisance, it is advised that the applicants tend the goats all the time if the goats are roaming and free grazing.
- (e) to note the comments of the Commissioner for Transport (C for T) that the applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site;
- (f) to note the comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD) that HyD shall not be responsible for the maintenance of any access connecting the Site and public road;
- (g) to note the comments of the Director of Environmental Protection (DEP) that the applicant is reminded to strictly comply with relevant pollution control ordinances, including Waste Disposal Ordinance and Water Pollution Control Ordinance, and to implement appropriate pollution control measures to minimise any potential environmental impacts during construction. Reference could be made to relevant publications/guidelines including the following:
- Recommended Pollution Control Clauses for Construction Contracts
https://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc_1.html
- ProPECC PN 1/94 Construction Site Drainage
https://www.epd.gov.hk/epd/sites/default/files/epd/english/resources_publications/files/pn94_1.pdf
- (h) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the captioned application. 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 Site under the BO. Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO. 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. 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 B(P)R at the building plan submission stage;

- (i) to note the comments of the Director of Fire Services (D of FS) that the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations (FSIs) to his department for approval. 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. 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; and
- (j) to note the comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) that the applicant is reminded to submit building/site formation/slope remedial/excavation works to the Buildings Department for approval as required under the provisions of the Building Ordinance.

Agenda Item 44

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/YL-LFS/359 Filling and Excavation of Land for Permitted Agricultural Use in “Green Belt” Zone, Lot 1236 S.B in D.D. 129, Lau Fau Shan, Yuen Long
(RNTPC Paper No. A/YL-LFS/359)

Presentation and Question Sessions

128. Ms Bonnie K.C. Lee, STP/TMYLW, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the filling and excavation of land for permitted agricultural use;
- (c) departmental comments – departmental comments were set out in paragraph 10 of the Paper;
- (d) during the first three weeks of the statutory publication period, 13 objecting comments from the Hong Kong Bird Watching Society, Designing Hong Kong Limited, a villager and an individual were received. Major objection grounds were set out in paragraph 11 of the Paper; and
- (e) the Planning Department (PlanD)’s views – PlanD did not support the application based on the assessments set out in paragraph 12 of the Paper. The filling and excavation of land had been carried out at the site without planning permission. The applied use of filling and excavation of land for agricultural use was considered not compatible with the surrounding areas. The Chief Town Planner/Urban Design and Landscape, PlanD had reservation on the application as the applied use involving extensive hard paving and vegetation clearance was considered not compatible with the landscape character of the surrounding areas, and approval of the application

would set an undesirable precedent to encourage similar developments to the area. The cumulative impact of which would result in a general degradation of the landscape quality of the surrounding environment and undermine the integrity of the “Green Belt” (“GB”) zone. In that regard, the applied use was not in line with the Town Planning Board Guidelines No. 10. While the Director of Agriculture, Fisheries and Conservation considered that the site possessed potential for agricultural rehabilitation, she advised that the applicant should provide more details of the agricultural activities to be conducted at the site, justify the need for filling and excavation of land for agricultural use, and provide more information about the fill materials for the Committee’s consideration. There was no strong justification for the need for filling and excavation of land for the ancillary agricultural uses. Other concerned government departments had no objection to or no adverse comment on the application. Within the same “GB” zone, no approval for similar land filling and excavation for agricultural use had been granted by the Committee for those applications within the Wetland Buffer Area and with adverse departmental comments. As such, rejecting the current application was in line with the Committee’s previous decisions. Regarding the adverse public comments, the comments of government departments and planning assessments above were relevant.

129. Noting that the applicant had also proposed to install 30 solar panels for solar energy collection for their own use, a Member enquired whether the installation of the solar panels would also be approved if the current application for filling and excavation of land was approved by the Committee. In response, Ms Bonnie K.C. Lee, STP/TMYLW, said that the proposed solar panels, which would be used to support the agricultural use at the site, could be regarded as an ancillary use to the permitted agricultural use, while the current application was for the filling and excavation of land.

Deliberation Session

130. After deliberation, the Committee decided to reject the application. The reasons were :

- “(a) the application is not in line with the planning intention of the “Green Belt” (“GB”) zone and the Town Planning Board Guidelines No. 10 for Application for Developments within the “GB” Zone in that the filling and excavation of land, which has been completed, involves clearance of natural vegetation, thereby adversely affecting the natural landscape and incompatible with the surrounding areas; and

- (b) the applicants fail to justify the need for land filling and excavation.”

城市規劃委員會

香港北角渣華道三百三十三號
北角政府合署十五樓

TOWN PLANNING BOARD

15/F., North Point Government Offices
333 Java Road, North Point,
Hong Kong.

傳 真 Fax: 2877 0245 / 2522 8426

By Post

電 話 Tel: 2231 4810

來函檔號 Your Reference:

覆函請註明本會檔號
In reply please quote this ref.: TPB/A/YL-LFS/359

8 April 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Sir/Madam,

**Filling and Excavation of Land for Permitted Agricultural Use
in "Green Belt" Zone, Lot 1236 S.B in D.D. 129, Lau Fau Shan, Yuen Long**

I refer to my letter to you dated 6.2.2020.

After giving consideration to the application, the Town Planning Board (TPB) decided to reject the application and the reasons are :

- (a) the application is not in line with the planning intention of the "Green Belt" ("GB") zone and the TPB Guidelines No. 10 for Application for Developments within the "GB" Zone in that the filling and excavation of land, which has been completed, involves clearance of natural vegetation, thereby adversely affecting the natural landscape and incompatible with the surrounding areas; and
- (b) you fail to justify the need for land filling and excavation.

A copy of the TPB Paper in respect of the application (except the supplementary planning statement/technical report(s), if any) and the relevant extract of minutes of the TPB meeting held on 20.3.2020, in both English and Chinese, are enclosed herewith for your reference.

Under section 17(1) of the Town Planning Ordinance, an applicant aggrieved by a decision of the TPB may apply to the TPB for a review of the decision. If you wish to seek a review, you should inform me within 21 days from the date of this letter (on or before 29.4.2020). I will then contact you to arrange a hearing before the TPB which you and/or your authorized representative will be invited to attend. The TPB is required to consider a review application within three months of receipt of the application for review. Please note that any review application will be published for three weeks for public comments.

Under the Town Planning Ordinance, the TPB can only reconsider at the review hearing the original application in the light of further written and/or oral representations. Should you decide at this stage to materially modify the original proposal, such proposal

should be submitted to the TPB in the form of a fresh application under section 16 of the Town Planning Ordinance.

If you wish to seek further clarifications/information on matters relating to the above decision, please feel free to contact Ms. Bonnie Lee of Tuen Mun & Yuen Long West District Planning Office at 2158 6288.

Yours faithfully,



(Raymond KAN)
for Secretary, Town Planning Board

(With Chinese Translation)

Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the application site (the Site);
- (b) the planning permission is given to the developments/uses under application. It does not condone any other developments/uses which currently occur on the Site but not covered by the application. The applicant shall be requested to take immediate action to discontinue such developments/uses not covered by the permission;
- (c) to note the comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) that the Site comprises 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. The lot owner(s) of the lot without 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, only application for regularization or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by the Lands Department 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 Lands Department;
- (d) to note the comments of the Director of Agriculture, Fisheries and Conservation (DAFC) as follows:
 - (i) the Site falls within the “GB” zone and possesses potential for agricultural rehabilitation. The applicants should provide more details of the agricultural activities (e.g. cultivation area, type of crops to be grown, market channel for the crop produce, etc.) to be conducted at the Site, justify the need for filling and excavation of land for agricultural use, and provide more information about the fill materials for the Board’s consideration.
 - (ii) According to Agriculture, Fisheries and Conservation Department’s (AFCD) record, they have received an application for Letter of Approval for erecting agricultural structures at Lots 1236 S.B in D.D. 129 in August 2017 by another applicant and forwarded the application to LandsD in September 2017 for further processing and approval.
 - (iii) It is noticed that the applicants also propose to have sheep shed and kennel in the Site. The applicants are reminded that under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from AFCD. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap 139I Public Health (Animals) (Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations.
 - (iv) On the other hand, the dogs kept by the applicants should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and they are reminded to observe Cap 169 Prevention of Cruelty to Animals Ordinance at all times.

- (v) 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 that regards, the applicants will need to apply for licence 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

- (vi) On the contrary, no licence is needed to keep goats in the New Territories areas. To combat nuisance, it is advised that the applicants tend the goats all the time if the goats are roaming and free grazing.

- (e) to note the comments of the Commissioner for Transport (C for T) that the applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site;
- (f) to note the comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD) that HyD shall not be responsible for the maintenance of any access connecting the Site and public road;
- (g) to note the comments of the Director of Environmental Protection (DEP) that the applicant is reminded to strictly comply with relevant pollution control ordinances, including Waste Disposal Ordinance and Water Pollution Control Ordinance, and to implement appropriate pollution control measures to minimise any potential environmental impacts during construction. Reference could be made to relevant publications/guidelines including the following:

Recommended Pollution Control Clauses for Construction Contracts

https://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc_1.html

ProPECC PN 1/94 Construction Site Drainage

https://www.epd.gov.hk/epd/sites/default/files/epd/english/resources_pub/publications/files/pn94_1.pdf

- (h) to note the comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) that if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application. 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 Site under the BO. Before any new building works (including containers / open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO. 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. 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 B(P)R at the building plan submission stage;

- (i) to note the comments of the Director of Fire Services (D of FS) that the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations (FSIs) to his department for approval. 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. 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; and

- (j) to note the comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD) that all proposed building works (including site formation and slope stabilization works) within private lots are required to submit to BD for approval under the BO. Therefore, the applicants might wish to consult BD for advice on the works carried out at the Site.