

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-HTF/1127

- Applicant** : Mr. HO Yat-Wah represented by Cada International (HK) Limited
- Site** : Lot 595 RP (Part) in D.D.128 and adjoining Government Land (GL),
Deep Bay Road, Yuen Long, New Territories
- Site Area** : About 2,100 m² (including GL of about 230m² or 11%)
- Lease** : New Grant No. 307 (demised for agriculture purpose only)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Coastal Protection Area” (“CPA”)
- Application** : Proposed Filling of Land for Permitted Agricultural Use (Mushroom Farm) and Ancillary Office

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land for permitted agricultural use (mushroom farm) and ancillary office at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for the “CPA” zone, ‘Agricultural Use (other than Plant Nursery)’ is a Column 1 use which is always permitted. However, any filling of land requires planning permission from the Town Planning Board (the Board). The Site is currently partly hard-paved and partly covered with soil/debris. Some temporary structures (converted containers) for office, storage and car parking uses, and some farming areas are also observed (**Plans A-4a and A-4b**).
- 1.2 The Site is accessible via Deep Bay Road (**Plans A-2 and A-3**). The applicant proposes to pave the southern portion of the Site (i.e. 1,180m² or about 56% of the Site) with concrete of about 0.15m in thickness to provide access path, smooth surface for placing machineries and clean environment for mushroom growing/breeding (**Drawing A-2**). As shown on the proposed layout plan at **Drawing A-1**, there will be 6 one-storey temporary structures of building height of 2.5m to 3.9m with total GFA of about 634m² for mushroom growing room, storage of fertilizer, mushroom breeding room, freezer room, rain shelter, rest room, office and bathroom uses. There will be 2 private car parking spaces. The layout plan and land filling plan are shown at **Drawings A-1 and A-2**

respectively.

1.3 In support of the application, the applicant submitted the following documents:

- (a) Application Form with attachments received on **(Appendix I)** 29.12.2021
- (b) Further Information (FI) received on 21.1.2022 responding **(Appendix Ia)** to Transport Department's (TD) comments [*exempted from publication requirements*]
- (c) FI received on 4.2.2022 clarifying the need for land filling **(Appendix Ib)** [*exempted from publication requirements*]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I and Ib**. The applicant indicates that the land filling is required to provide access path, smooth surface for placing machineries and clean environment for mushroom growing/breeding in order to facilitate the efficient operation of mushroom farm.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by publishing on local newspapers and posting site notice. Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the requirements under TPB PG-No. 31A are not applicable.

4. Background

The Site is subject to an enforcement action against unauthorized development (UD) of storage use (including deposit of containers). Enforcement Notice (EN) was served on 19.10.2021 and expired on 19.12.2021. UD at the Site was continued upon EN expiry. Further inspection will be conducted. Prosecution action would be taken against the notice recipients if UD was not discontinued or no valid planning permission was granted.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application for filling of land within the “CPA” zone.

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

7.1 The Site is:

- (a) currently partly hard-paved and partly covered with soil/debris;
- (b) some temporary structures (converted containers) for office, storage and car parking uses, and some farming areas are also observed; and
- (c) accessible via Deep Bay Road (**Plans A-2 and A-3**).

7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) to the east are residential dwellings, shrubland and a pond;
- (b) to the south across Deep Bay Road are grassland, a pond and an open storage yard of construction material which is a suspected UD;
- (c) to the west are a fish pond and a rescue centre for abandoned pets which is a suspected UD; and
- (d) to the north is mangrove in the Deep Bay.

8. Planning Intention

8.1 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 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.

8.3 Filling of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. In view of the conservation value of the area within this zone, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on

the application are summarised as follows:

Land Administration

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

- (a) The Site is comprised of Lot 595RP in D.D.128 held under New Grant No. 307 and GL. The New Grant Lot is granted for agriculture purpose only and no building of any description shall be erected on the lot.
- (b) No permission is given for occupation of the GL included in the Site (about 230m² subject to verification). The act of occupation of GL without Government's prior approval is not allowed.
- (c) Should planning approval be given to the application, the lot owner(s) will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on site, if any, or to waive the user restriction as stipulated in the lease conditions. The applicant has to either exclude the GL from the Site or obtain 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

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

He has no adverse comment on the application from traffic engineering point of view.

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

- (a) Adequate drainage measures shall be provided to prevent surface water running from the Site to the nearby public roads and drains.
- (b) The access road connecting the Site with Deep Bay Road is not and will not be maintained by HyD. HyD shall not be

responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Agriculture and Nature Conservation

- 9.1.4 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- (a) No licence is required to be issued by his department for operation of a mushroom farm. He has not received any application for a Letter of Approval from the applicant for the erection of agricultural structures.
 - (b) She has no strong view on the application from agricultural and nature conservation perspectives.

Environment

- 9.1.5 Comments of the Director of Environmental Protection (DEP):
- (a) He has no objection to the application.
 - (b) There is no substantiated complaint pertaining to the Site received in the past 3 years.
 - (c) The applicant should be reminded of the detailed comments at **Appendix III**.

Landscape

- 9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) According to the aerial photo of 2020, the Site is situated in an area of rural coastal plain landscape character predominated by ponds, grasslands, mangroves, vacant land, scattered tree groups, and disturbed by temporary structures and open storages. According to the site photos taken on 12.1.2022, the northern portion of the Site is partially bare soil and partially with cultivated vegetated area, while the southern portion of the Site is partially bare soil, hard-paved with temporary structures and presence of existing trees.
 - (b) With reference to the land filling plan of the planning statement, the proposed filling of land (0.15m depth) for part of the Site (about 1,180m²) may be in conflict with the existing trees within the Site. No information relating to proposed treatment on existing landscape resources are provided in the planning statement. Significant adverse landscape impact arising from the proposed development is anticipated.

- (c) In view that the “CPA” zone is primarily intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, the proposed filling of land is considered incompatible with the surrounding landscape setting.
- (d) The applicant should be reminded of the detailed comments at **Appendix III**.

Drainage

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

- (a) He has no objection in principle to the 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 conditions 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.

Building Matters

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

The applicant should be reminded of his detailed comments at **Appendix III**.

Others

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

He has no objection to the application. The applicant should be reminded of his detailed comments at **Appendix III**.

District Officer's Comments

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

His office did not receive any comments from the locals on the application.

9.2 The following departments have no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (c) Director of Fire Services (D of FS); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 7.1.2022, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual (**Appendix II**) was received objecting to the application on the grounds that the mushroom farm will produce a lot of waste that would negatively impact the surrounding environment.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed filling of land for permitted agricultural use (mushroom farm) and ancillary office at the Site zoned “CPA” on the OZP, which is intended to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. Whilst agricultural use (other than plant nursery) is always permitted within the “CPA” zone, filling of land within the “CPA” 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 Site is currently partly hard-paved and partly covered with soil/debris. The applicant proposes to pave the southern portion of the Site (about 1,180 m² or 56% of the Site) with concrete of 0.15m in thickness in order to provide access path, smooth surface for placing machineries and clean environment for mushroom growing/breeding in order to facilitate the efficient operation of the mushroom farm. While CE/MN of DSD and DAFC have no objection to/ no strong view on the application from the drainage and nature conservation perspectives, the applicant did not provide justifications for the genuine need of filling of land with concrete, which is excessive in scale of about 1,180 m² (56% of the Site), to carry out the mushroom farming activities and whether there is no alternative without affecting the sensitive coastal natural environment in the “CPA” zone. As such, the filling of land is considered not in line with the planning intention of the “CPA” zone. There is no strong planning justification in the submission for a departure from such planning intention.
- 11.2 The Site is situated in an area of rural coastal plain landscape character predominated by ponds, grasslands, mangroves, vacant land, scattered tree group and temporary structures (**Plan A-2**). In this regard, CTP/UD&L, PlanD considers that the proposed filling of land is not compatible with the surrounding landscape setting.
- 11.3 Besides, CTP/UD&L considers that the proposed land filling may be in conflict with the existing trees within the Site and no information relating to the

proposed treatment on the existing landscape resources are provided. Significant adverse landscape impact arising from the proposed development is anticipated. In this regard, the applicant fails to demonstrate that the proposed filling of land would not have adverse landscape impact.

- 11.4 Other relevant government departments, including C for T and DEP, have no objection to or no adverse comment on the application. The proposed development will unlikely create significant adverse traffic and environmental impacts to the surrounding areas.
- 11.5 There is neither previous application at the Site nor similar application for filling of land within the same “CPA” zone. Approval of the planning application may encourage other similar applications for filling of land within the area. The cumulative impact of which would result in further degradation of the landscape quality of the surrounding environment in the “CPA” zone.
- 11.6 There is one public comment objecting to the application on the grounds summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
 - (a) the proposed filling of land is not in line with the planning intention of the “Coastal Protection Area” (“CPA”) which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. There is no strong planning justification in the submission for a departure from the planning intention; and
 - (b) the applicant fails to demonstrate that the proposed filling of land would not have adverse landscape impact.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **18.2.2026**, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) the submission of a drainage proposal before commencement of the filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;

- (b) in relation to (a) above, the implementation of the drainage proposal upon completion of the filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) if any of the above planning conditions (a) or (b) is not complied with before commencement or upon completion of the filling works respectively, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 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, and the date when the validity of the permission should expire.

14. Attachments

Appendix I	Application Form with attachments received on 29.12.2021
Appendix Ia	FI received on 21.1.2022
Appendix Ib	FI received on 4.2.2022
Appendix II	Public Comment
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2022**