

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/391

- Applicant** : Mr. SHIH Tai Tou David
- Site** : Lots 174 and 181 in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 3,270 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** : “Coastal Protection Area” (“CPA”)
- Application** : Proposed Filling and Excavation of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling and excavation of land for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within the “CPA” zone on the OZP. According to the Notes of the OZP for “CPA” zone, ‘Agricultural Use (other than Plant Nursery)’ 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, requires planning permission from the Town Planning Board (the Board). The Site comprises two separate portions (i.e. the western portion (Lot 174) and the eastern portion (Lot 181)) (**Plan A-2**). The Site is currently vacant and covered with loose soil/gravel (**Plans A-4a and 4b**). There is no previous planning application covering the Site.
- 1.2 The Site is accessible via a local track leading from Deep Bay Road (**Drawing A-2 and Plan A-1**). As shown on the layout plan at **Drawing A-1** and indicated in the submission, the western portion (about 573 m²) will be filled with soil of about 1.2 m in thickness for cultivation purpose. For the eastern portion, part of which (about 1,400 m²) will be excavated of about 2 m depth to form two fish ponds for fish farming purpose while the remaining part (about 1,297 m²) will be filled with soil of about 1.2 m in thickness for cultivation purpose and the land filling can prevent coastal erosion. The layout plan and pedestrian access plan are at **Drawings A-1 and A-2** respectively.

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

- (a) Application Form with attachments received on 11.3.2021 (**Appendix I**)
- (b) Further Information (FI) received on 31.3.2021 with (**Appendix Ia**) responses to Transport Department (TD)'s comments
(*exempted from publication requirements*)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendices I and Ia**. They can be summarised as follows:

- (a) The applicant states that the agricultural products are for self-consumption. The planting species include vegetables and fruits.
- (b) The applicant claims that there is no vehicular access road but a local footpath in the village connecting to Deep Bay Road. Dump trucks will not be used for transportation of land filling material.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

Large part of the Site is subject to an active planning enforcement case (No. E/YL-LFS/509) and the alleged unauthorised development (UD) is filling of land (**Plan A-2**). The Enforcement Notice (EN) was posted to the registered land owners on 19.6.2020 requiring the UD to be discontinued by 3.7.2020. The Reinstatement Notice (RN) was posted on 8.7.2020 requiring the land owners to remove the leftovers, debris and fill materials (including hard-paving and asphalt) and to grass the land by 8.10.2020. The RN had not been complied with upon the expiry. The Site would be under close monitoring and prosecution would be taken.

5. Previous Application

The Site does not involve any previous planning application.

6. Similar Applications

- 6.1 Within the same “CPA” zone, there are 2 similar applications (No. A/YL-LFS/30 and 386) for filling of pond and/or land for different uses. Details of these applications are summarised at **Appendix II** and the locations of these application sites are shown on **Plan A-1**.

- 6.2 Application No. A/YL-LFS/30 for proposed pond filling and agricultural use¹ (planting of fruit tree) was rejected by the Rural and New Town Planning Committee (the Committee) on 28.8.1998 on the grounds that the proposed development did not comply with the then TPB-PG No. 12A for “Application for Developments within Deep Bay Buffer Zone”; there was insufficient information to demonstrate that the proposed development would not have significant adverse ecological and drainage impacts on the surrounding areas; and the proposed development would set an undesirable precedent for similar applications.
- 6.3 Application No. A/YL-LFS/386 for filling of land and pond to avoid mosquito breeding was rejected by the Committee on 22.1.2021 on the grounds that the proposed development was not in line with the planning intention of “CPA” zone and the proposed development would set an undesirable precedent for similar applications.

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

7.1 The Site is:

- (a) situated along the coastline of Deep Bay;
- (b) currently vacant and covered with loose soil/gravel; and
- (c) accessible via a local track from Deep Bay Road.

7.2 The surrounding areas have the following characteristics:

- (a) to the immediate north, northeast and northwest are a fish pond and wetlands along the coastline of Deep Bay and a storage yard which is suspected unauthorised development (UD);
- (b) to the immediate west, south and southeast are scrublands; and
- (c) to the further south are a warehouse which is suspected UD and scrubland.

8. Planning Intention

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

¹ For Application No. A/YL-LFS/30, ‘Agricultural Use’ was a Column 2 use which required planning permission from the Board under the then Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/2 when the application was submitted.

- 8.2 As filling of land/pond 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.

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 comprises Old Schedule Agricultural Lots (OSALs) 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) It is noted that the proposed filling and excavation of land is for agricultural use. His office has no objection to the proposed filling and excavation of land from the lease perspective.
- (c) It is noted that no structure is proposed on the Site by the applicant.

Traffic

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

It is noted that no vehicular access is proposed or to be granted under the application. He has no adverse comment from highways maintenance point of view. The applicant should be reminded of the detailed comments at **Appendix IV**.

Environment

- 9.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) He has no objection to the application.
- (b) There are 5 non-substantiated environmental complaints pertaining to the Site regarding the issues of waste and miscellaneous (dumping) have been received in the past three years.
- (c) The applicant should be reminded of the detailed comments at **Appendix IV**.

Landscaping

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

- (a) The Site involves filling and excavation of land for permitted agricultural use at an area zoned “CPA” on the OZP, which is currently preoccupied by lush vegetation and close to the coast of Deep Bay. Some temporary structures are found further away the Site. The proposed development includes filling part of the Site (about 1,870 m²) with soil of about 1.2 m depth to make the land suitable for farming, and excavating part of the Site (about 1,400 m²) with about 2 m depth for fish farming purpose.
- (b) While no structure is proposed under the development and the applicant claims that the filling of land is an effort to prevent coastal erosion, the proposed development would inevitably alter the natural coastline and sensitive coastal natural environment. The cumulative effect of approving similar applications would further alter the integrity of the “CPA” zone.
- (c) With reference to the aerial photo of 2020 (**Plan A-3a**), the Site is located in an area of rural coastal plain landscape character predominated by ponds, mangroves, vacant lands and woodlands with temporary structures and warehouses in the proximity. According to the site photos taken on 19.3.2021, both eastern and western portions of the Site are filled vacant land without any significant vegetation. An existing tree in poor condition without foliage is observed within the eastern portion of the Site. The proposed filling and excavation of land for permitted agricultural use is considered not entirely incompatible with the landscape character of the surrounding area.
- (d) By comparing the aerial photos since 2014 (**Plan A-3b**) and the site photos taken on 19.3.2021, vegetation clearance including tree removal, and unauthorised filling and excavation of land were observed within the Site over the years. Significant landscape impact, in particular on the original landscape resources within the Site, has taken place. Given that there is no similar application previously approved within the same “CPA” zone, there is concern that approval of the planning application may encourage other similar applications to blanket clear the site prior to obtaining planning approval 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. Hence, he has reservation on the application from landscape planning perspective.
- (e) The applicant should be reminded of the detailed comments at **Appendix IV**.

Nature Conservation and Agriculture

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

According to the aerial photo taken in 2020 by LandsD (**Plan A-3a**) and her recent inspection, it seems that suspected land filling work had already been carried out on the Site. As such, she does not support the current application.

Drainage

9.1.6 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 requiring the applicant to submit a drainage proposal including flood mitigation measures, to implement and maintain the proposed flood mitigation measures/drainage facilities to the satisfaction of his department. The flood mitigation measures shall be completed upon the completion of land and pond filling works.
- (c) The applicant should be reminded of the detailed comments at **Appendix IV**.

Building Matters

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

- (a) He has no comment to the proposed filling of land if it is not associated with any building construction.
- (b) The applicant should be reminded of the detailed comments at **Appendix IV**.

Geotechnical

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

- (a) He has no adverse comment on the application.
- (b) It is noted that land filling is proposed as part of the application. GEO is not responsible for the control of land filling activities.
- (c) It is noted that the Site is close to an existing seawall.

Marine Engineering

9.1.9 Comments of the Chief Engineer/District Work, Port Works Division, CEDD (CE/D, PWD, CEDD):

- (a) According to his record, no seawalls or marine structures maintained by his division are located within or in the vicinity of the Site.
- (b) The applicant should be reminded of the detailed comments at **Appendix IV**.

District Officer's Comments

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

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

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

- (a) Project Manager (West), CEDD(PM(W), CEDD);
- (b) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (c) Director of Fire Services (D of FS);
- (d) Commissioner of Police (C of P);
- (e) Marine Manager/ Planning and Development Section, Marine Department (MM/P&D, MD);
- (f) Commissioner for Transport (C for T); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 19.3.2021, the application was published for public inspection. During the statutory public inspection period, four public comments were received from Designing Hong Kong Limited, World Wild Fund for Nature Hong Kong, Kadoorie Farm and Botanic Garden and an individual (**Appendices III-1 to III-4**) objecting to the application on the grounds which are summarised below:

- (a) the proposed development is an unauthorised development, which has occupied the Site for several years without a valid planning permission. The Board should not encourage “develop first, apply later” attitude;
- (b) there is insufficient information in the submission to demonstrate that the proposed development would not generate adverse environmental, drainage, landscape and water quality impacts on the surrounding areas;
- (c) the proposed development would set an undesirable precedent for other planning applications within the “CPA” zone and lead to general degradation of natural environment and landscape of the area; and
- (d) the proposed development is not in line with the planning intention of “CPA” zone

and will generate possible adverse environmental impacts on the sensitive natural environment nearby.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed filling and excavation of land for permitted agricultural use. The Site is zoned “CPA” on the OZP which intends 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. 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. The Site comprises the western and eastern portions, in which the western portion (Lot 174) will be filled for cultivation purpose and the eastern portion (Lot 181) will be excavated and filled for fish farming and cultivation purposes. Whilst agricultural use (other than plant nursery) is always permitted within the “CPA” zone, filling and excavation of land within “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. While CE/MN of DSD has no objection to the application from the drainage perspective, DAFC points out that the Site has been filled according to the site inspection and she does not support the application. As such, there is no strong planning justification in the submission for a departure from the planning intention of the “CPA” zone.
- 11.2 The Site is located in an area of rural coastal plain landscape character predominated by ponds, mangroves, vacant lands and woodlands with temporary structures and warehouses. The proposed filling of land (involving about 1,870 m²) and excavation of land (involving about 1,400 m²) for agricultural use is considered not entirely incompatible with the surrounding area.
- 11.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. Since the Site is situated along the coastline of Deep Bay, the proposed filling and excavation of land will unavoidably change the natural coastline of Deep Bay and sensitive coastal natural environment. Moreover, it is noted that vegetation clearance including tree removal and unauthorised filling and excavation of land have been observed within the Site over the years (**Plans A-3a, A-4a and A-4b**). Significant landscape impact, in particular on the original landscape resources within the Site, has taken place. Given that there is no similar application previously approved within the same “CPA” zone, the proposed filling and excavation of land would likely raise concern that approval of the planning applicant may encourage other similar applications to blanket clear the site prior to obtaining planning approval 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.
- 11.4 Other relevant Government departments, including DEP, C for T and D of FS have no objection to or no adverse comment on the application. The proposed development will unlikely create significant environmental, traffic and fire safety impacts to the surrounding areas.
- 11.5 No previous approval has been granted for the Site but there are 2 similar applications (No. A/YL-LFS/30 and 386) for filling and/or excavation of land and/or

pond for different uses within the same “CPA” zone, which were rejected by the Committee in 1998 and 2021 on the similar grounds of not in line with the planning intention of “CPA” zone; insufficient information to demonstrate that the proposed development would not have significant adverse ecological and drainage impacts on the surrounding areas; and setting of undesirable precedent. The rejection of the current application is considered in line with the Committee’s previous decision.

- 11.6 There are 4 public comments received objecting to the application on the grounds as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into the public comments in paragraph 10 above, the Planning Department does not support the application for following reasons:

- (a) the proposed filling and excavation of land is not in line with the planning intention of the “CPA” zone which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment 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;
- (b) the applicant fails to demonstrate that the proposed filling and excavation of land would not have significant adverse landscape impacts on the surrounding areas; and
- (c) approval of the application would set an undesirable precedent for similar applications for filling and excavation of land within the “CPA” zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment of the area.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 30.4.2025, 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) no part of the Site shall be filled other than soil to a thickness exceeding 1.2 m, as proposed by the applicant;
- (b) no part of the Site shall be excavated to a depth of exceeding 2 m, as proposed by the applicant;
- (c) the submission of a drainage proposal before commencement of the land filling and excavation works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;

- (d) in relation to (c) above, the implementation of the drainage proposal upon completion of the land filling and excavation works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (e) if any of the above planning conditions (c) or (d) is not complied with before commencement or upon completion of the land filling and excavation 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 IV**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse the planning 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 received on 11.3.2021
Appendix Ia	Further Information received on 31.3.2021
Appendix II	Similar Applications within the same “CPA” Zone on the Approved Lau Fau Shan and Tsim Bei Tsui OZP
Appendices III-1 to III-4	Public comments Received During Statutory Publication Period
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Pedestrian Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plans A-3a and 3b	Aerial Photos
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
APRIL 2021**