

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/393

- Applicant** : Mr. TANG Tak-hong
- Site** : Lot 7 in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 758.8 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/10 currently in force
- Approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/9 at the time of submission
- Zoning** : “Coastal Protection Area” (“CPA”)
[No change to the zoning]
- Application** : Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling 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 is currently covered with loose soil/gravel and weeds (**Plan A-4**). An open shed and some miscellaneous items such as bricks and tiles are found on site. 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-2**). As shown on the proposed layout plan at **Drawing A-1** and indicated in the submission, part of the site (about 360 m² or 47% of the Site) will be filled with concrete of about 0.3 m in thickness. 15 fish tanks in various sizes will be placed at the Site. The remaining part (about 398 m² or 53% of the Site) will be filled with soil of about 0.3 m in thickness mainly for landscaping purpose. According to the applicant, the filled area will be at the same level of the adjacent areas. 9 temporary structures, including 3 storage rooms for ancillary uses, 1 electricity meter room and

5 canopies in various sizes will also be provided on site with a total gross floor area of about 241 m² and building height not exceeding 4.3 m. The applicant indicates that a truck will only be used for transporting concrete and soil during the site formation period and no parking space and loading and unloading bay will be provided on site. The proposed layout plan and the 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 16.3.2021 (**Appendix I**)
- (b) Further Information (FI) received on 22.4.2021 with responses to Transport Department (TD)'s and Agriculture, Fisheries and Conservation Department (AFCD)'s comments and clarification on the proposed layout of the Site (*exempted from publication requirements*) (**Appendix Ia**)
- (c) FI received on 27.4.2021 with responses to TD's comments (*exempted from publication requirements*) (**Appendix Ib**)

2. Justifications from the Applicant

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

- (a) The applicant is a current fish farmer and has operated a fish farm at Lot 9 in D.D. 129 nearby (**Plan A-2**). However, the land owner of Lot 9 in D.D. 129 did not rent the land to him, he had to find another site for fish farming.
- (b) Since the farming species rely on seawater nurturing, the applicant finds that the current site is appropriate for fish farming.
- (c) The applicant is a local villager of Sha Kiu Tsuen. The local villagers will not object to the application.
- (d) The proposed filling of land will not generate adverse noise and environmental impacts and no tree will be cleared.
- (e) The applicant claims that the proposed filling of land would help to consolidate the Site in order to place fish tanks for fish farming purpose.

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

If there is sufficient evidence to prove unauthorised development (UD) on site under the Town Planning Ordinance, the Site would be subject to planning enforcement action.

5. Previous Application

The Site does not involve any previous planning application.

6. Similar Applications

- 6.1 Within the same “CPA” zone, there are 3 similar applications (No. A/YL-LFS/30, 386 and 391) for filling of pond and/or land for different uses between 1998 and 2021. 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 proposed filling of land and pond to avoid mosquito breeding was rejected by the Board upon review on 7.5.2021 on the grounds that the proposed filling of land and pond was not in line with the planning intention of “CPA” zone and the proposed filling of land and pond would set an undesirable precedent for similar applications.
- 6.4 Application No. A/YL-LFS/391 for proposed filling and excavation of land for permitted agricultural use was rejected by the Committee on 30.4.2021 on the similar grounds as mentioned in paragraph 6.3 above and that the applicant failed to demonstrate no significant adverse landscape impacts on the surrounding areas.

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

7.1 The Site is:

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

7.2 The surrounding areas have the following characteristics:

- (a) to the north, northeast and northwest are ponds and wetlands along the coastline of Deep Bay;
- (b) to the immediate west and southwest are residential dwellings of Sha Kiu

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.

Tsuen and to the further southwest is a vehicle repair workshop which is suspected UD; and

- (c) to the south and southeast are scrublands and farmlands and to the east is a storage yard which is suspected UD.

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.
- 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 Lot (OSAL) 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) Letter of Approval (LoA) has been given on 4.12.2019 for the erection of agricultural structures as shown on its attached schedule on the Site.² Furthermore, Certificates of Exemptions (CoEs) in respect of Building Works, Site Formation Works (not exceed 3.4 mPD level) and Drainage Works have been given on 8.5.2020 for the construction of the aforesaid structures thereon.
 - (c) It is noted that the proposed filling of land is for agricultural use. His office has no objection to the proposed filling of land from the lease perspective subject to compliance of the conditions stipulated in the LoA and CoEs.

² LoA from LandsD was given on the proposed layout submitted in **Appendix I** but not the revised layout in **Appendix Ia** and **Drawing A-1**.

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) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Environment

9.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) He has no objection to the application.
- (b) No substantiated environmental complaint pertaining to the Site has been received in the past three years.
- (c) The applicant should be reminded of the detailed comments at **Appendix IV**.

Landscaping

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

- (a) The Site (about 758.8 m²) is located near the intertidal coast of Deep Bay and falls within an area zoned “CPA” on the OZP. The Site is not subject to any previous planning application. The Site is currently preoccupied by vegetation. There are lush vegetation and some ponds in the surroundings with some temporary structures found to the west of the Site. The proposed filling of land includes filling of concrete (360 m² which is about 47% of the Site) of about 0.3 m depth for fish farming purpose and filling of soil (398 m² which is about 53% of the Site) of about 0.3 m depth for tree-planting purpose, where the filled area will be at the same level of the adjacent areas with a GFA of about 241.2 m². The proposal also includes 9 temporary structures, including 3 storage rooms for ancillary uses, 1 electricity meter room, and 5 canopies with different sizes.
- (b) With the concrete filling proposed under the application, it would inevitably alter the natural coastline and sensitive coastal natural

environment. The cumulative effect of approving similar applications would further alter the natural coastline and sensitive coastal natural environment and affect 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 23.3.2021, the Site is mainly vacant with rubbles, weeds, and a group of *Musa x paradisiaca* (香蕉樹) at the southwestern corner of the Site. The proposed extensive concrete filling of land is considered not compatible with the landscape character of the surrounding area.
- (d) By comparing the aerial photos of 2016 to 2018 (**Plans A-3b and 3c**), vegetation clearance, unauthorised filling of land and hard paving were observed within the Site. Significant landscape impact 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, she has reservation on the application from the landscape planning perspective.
- (e) The applicant should be reminded of the detailed comments at **Appendix IV**.

Nature Conservation and Fisheries

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

- (a) She has no objection to the proposal of increasing fish culture area with amended area to be filled with concrete from fish culture perspective. The applicant is reminded to apply for agricultural structures with LandsD.
- (b) As the Site is mainly a bare ground with some temporary structures, she also has no strong view on the application from the ecological perspective.

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 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 drainage facilities to the satisfaction of his department. The flood mitigation measures shall be completed upon the completion of land filling works.

- (c) The applicant should be reminded of the detailed comments at **Appendix IV**.

Fire Safety

9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) The applicant should be reminded of the detailed comments at **Appendix IV**.

Building Matters

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

- (a) He has no comment on 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

9.1.10 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) The applicant should be reminded of the detailed comments at **Appendix IV**.

District Officer's Comments

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

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

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

- (a) Project Manager (West), CEDD(PM(W), CEDD);
- (b) Chief Engineer/Land Works, CEDD(CE/LW, CEDD);
- (c) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (d) Commissioner of Police (C of P); and
- (e) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period

On 23.3.2021, the application was published for public inspection. During the statutory public inspection period, 4 public comments were received from a District Council member, 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 applicant fails to demonstrate the need of the proposed filling of land with concrete for such a large area which may be harmful to the ecological habitats;
- (b) the proposed filling of land with vegetation clearance is suspected UD, which has occupied the Site for several years without a valid planning permission. The Board should not encourage “develop first, apply later” attitude;
- (c) there is insufficient information in the submission to demonstrate that the proposed filling of land would not generate adverse environmental, drainage and landscape impacts on the surrounding areas;
- (d) the proposed filling of land 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
- (e) the proposed filling of land 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 of land for permitted agricultural use. The Site is 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. 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. Whilst agricultural use (other than plant nursery) is always permitted within the “CPA” zone, filling 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. The Site involves the filling of concrete of about 360 m² (43% of the Site) and filling of soil of about 398 m² (53% of the Site) in order to place fish tanks for fish farming purpose. While CE/MN of DSD has no objection to the application from the drainage perspective and DAFC has no strong view on the

application from the ecological perspective, the applicant did not provide justifications for the genuine need of filling of land with concrete of about 360 m² (43% of the Site) and whether there are other alternatives for the applicant to carry out the fish farming activities without affecting the sensitive coastal natural environment in the “CPA” zone. 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 extensive concrete filling of land for permitted agricultural use is considered not compatible with the landscape character of the surrounding area.
- 11.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. Since the Site is situated near the intertidal coast of Deep Bay, the proposed filling of land will unavoidably change the natural coastline of Deep Bay and sensitive coastal natural environment. It is also noted that vegetation clearance, unauthorised filling of land and hard-paving have been observed within the Site since 2016 (**Plans A-3a to 3c and A-4**). Significant landscape impact has taken place. Given that there is no similar application previously approved within the same “CPA” zone, the proposed filling of land would likely raise 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.
- 11.4 Other relevant Government departments, including DEP and C for T have no objection to or no adverse comment on the application. The proposed filling of land will unlikely create significant environmental and traffic to the surrounding areas.
- 11.5 No previous approval has been granted for the Site. There are 3 similar applications (No. A/YL-LFS/30, 386 and 391) for filling and/or excavation of land and/or pond for different uses within the same “CPA” zone, which were all rejected by the Committee in 1998 and 2021 on 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, drainage and/or landscape 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 decisions.
- 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 assessments made in paragraph 11 and having taken into the public comments 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 “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 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 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 14.5.2025, 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 concrete/soil to a thickness exceeding 0.3 m, as proposed by the applicant;
- (b) the submission of a drainage proposal including flood mitigation measures before commencement of the land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) in relation to (b) above, the implementation of the drainage proposal including flood mitigation measures upon completion of the land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (d) if any of the above planning conditions (b) or (c) is not complied with before commencement or upon completion of the land 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 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 16.3.2021
Appendix Ia	Further Information received on 22.4.2021
Appendix Ib	Further Information received on 27.4.2021
Appendix II	Similar Applications within the same “CPA” Zone on the 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	Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plans A-3a to 3c	Aerial Photos
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2021**