

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/401

- Applicant** : Natural Agriculture Technology Park Company Limited
- Site** : Lot 74 RP in D.D. 129, Sha Kiu Tsuen, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 3,015 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
- Zoning** : “Coastal Protection Area” (“CPA”)
- Application** : Proposed Excavation of Land for Permitted Agricultural Use and Proposed Utility Installation for Private Project with Excavation and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed excavation of land for permitted agricultural use and proposed utility installation of private project with excavation and filling of land 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 a Column 1 use always permitted while ‘Utility Installation for Private Project’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). Notwithstanding the above, 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 Board. The Site is currently covered with loose soil/gravel and weeds (**Plans A-4a and 4b**). Temporary structures including an open shed and some converted containers, as well as miscellaneous items such as scrap metals, wood panels and plastic pipes are found on site. Two trucks are also parked 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-1 and Plan A-2**). As shown on the proposed layout plan at **Drawing A-2** and indicated in the submission, part of the site in the west (about 240 m² or about 8% of the Site) will be excavated of about 1.5 m in depth to form a pond for fish farming purpose. Another part of the Site in the east (about 25 m² or about 0.8% of the Site) will be excavated and filled with soil with 1.5 m depth for installation of an electricity pole

of 10 m high to support the operation of the agricultural activities. 5 temporary structures including 2 greenhouses, 2 storage rooms and 1 site office will also be provided on site with a total gross floor area of about 289 m² and building height not exceeding 4 m and 1 storey. 4 private cars parking spaces and 4 light goods vehicles parking spaces are also provided on site. The operation hours are from 7 a.m. to 6 p.m. from Mondays to Saturdays but no operation on Sundays and public holidays. The access plan and proposed layout 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 31.5.2021 (**Appendix I**)
- (b) Supplementary Information received on 2.6.2021 and 10.6.2021 (**Appendix Ia**)
- (c) Further Information received on 14.7.2021 providing justification on the installation of a 10-m high electricity pole and the number of parking spaces (**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 at **Appendices I and Ib**. They can be summarised as follows:

- (a) The applicant's company has been actively developing aquatic agriculture and organic farming to serve the local market.
- (b) The installation of a 10-m high electricity pole is one of the electricity connection proposals suggested by CLP.
- (c) The proposed private car parking spaces will serve the staff working on site while the proposed light goods vehicle parking spaces will be for transporting goods from/to the Site, 2 of which will be occupied frequently and the other 2 will be for back-up purpose.

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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by publishing notice on newspapers and posting site notice. 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 4 similar applications (No. A/YL-LFS/30, 386, 391 and 393) for filling of pond/land and/or excavation of land for different uses which were all rejected by the Rural and New Town Planning Committee (the Committee)/the Board upon review in 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 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.
- 6.5 Application No. A/YL-LFS/393 for proposed filling of land for permitted agricultural use was rejected by the Committee on 14.5.2021 on the similar grounds as mentioned in paragraphs 6.3 and 6.4 above. The applicant has submitted a review application on 4.6.2021 to the Board which is under processing.

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

7.1 The Site is:

- (a) 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:

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.

- (a) to the north, northeast and northwest are farmland, grassland, fishing ground and plant nursery;
- (b) to the immediate west are a residential dwelling (about 9m away) and grassland;
- (c) to the south are an open storage yard of construction material and warehouse and workshop which are suspected UDs and grassland; and
- (d) to the east and southeast are residential dwellings and grassland.

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 or 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.

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 an 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) The proposed container for staff rest room purpose in the subject proposal, in any event, shall not be used for domestic / residential purposes. No Short Term Waiver (STW) will be considered for domestic / residential use according to the prevailing policy.
 - (c) Should planning approval be given to the application, the lot owner(s) of the lot will need to immediately 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 rent or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads and reserve onto/from public roads.

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 Transport Department (TD).
- (b) If the proposed access arrangement is agreed by TD, a proper road connection to Deep Bay Road should be constructed to the satisfaction of TD and HyD.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (d) HyD shall not be responsible for the maintenance of any access connecting the Site and 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 3,015 m²) is located at the north of Deep Bay Road and falls within an area zoned “CPA” on the OZP. The Site is not subject to any previous planning application. The applicant seeks planning permission to excavate 240 m² of land with 1.5 m depth for fish farming purpose while excavate and fill 25 m² of land with 1.5 m depth for utility installation for private project. 5 temporary structures (about 2.44 m to 10 m high) for storage, greenhouse, rest room and electricity pole uses are proposed on site. 4 private cars and 4 light goods vehicles parking spaces are also proposed.
- (b) With reference to the aerial photo of 2020 (**Plan A-3**), 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, the Site is partially bare soil and partially vegetated with existing trees of common species including *Bombax ceiba* (木棉), *Syzygium jambos* (蒲桃), *Mangifera indica* (芒果), *Morus alba* (白桑), *Averrhoa carambola* (楊桃), *Leucaena leucocephala* (銀合歡) and groups of *Musa × paradisiaca* (香蕉). The proposed development is considered not entirely incompatible with the landscape character of the surrounding area.
- (c) With excavation and filling of land and a cluster of temporary structures, the proposed development would inevitably alter the sensitive coastal natural environment and the natural coastline in the vicinity. The cumulative effect of approving similar application in future would further affect the integrity of the “CPA” zone.
- (d) 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 encroaching into the “CPA” zone. 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 landscape planning perspective.
- (e) The applicant should be reminded of the detailed comments at **Appendix IV**.

Nature Conservation, Agriculture and Fisheries

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

The Site falls within the “CPA” zone. It is generally grassy with common vegetation. The Site possesses potential for agricultural rehabilitation. She has no strong view on the application. The applicant is advised to adopt

appropriate site management practices to prevent run-off affecting the adjacent fish pond.

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 and excavation works.

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) As there is no record of approval granted by the Building Authority for the existing structures at the Site, he is not in position to offer comments on the suitability for the use proposed in the application.
- (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) Director of Electrical & Mechanical Services (DEMS);
- (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 8.6.2021, the application was published for public inspection. During the statutory public inspection period, 7 public comments were received from Kadoorie Farm and Botanic Garden Corporation, World Wild Fund for Nature Hong Kong, The Conservancy Association, an environmental concern group and individuals (**Appendices III-1 to III-7**) objecting to the application on the grounds which are summarised below:

- (a) the proposed excavation and filling of land is not in line with the planning intention of “CPA” zone;
- (b) the Site is subject to vegetation clearance and is likely paved with concrete. The Board should not encourage “develop first, apply later” attitude;
- (c) the applicant did not provide relevant assessments regarding the proposed excavation and filling of land to demonstrate that the proposed development would not generate adverse impacts to the surrounding area; and
- (d) the proposed development will generate adverse environmental, drainage, landscape, visual and/or traffic impacts and fire safety issue and affect the safety and living quality of villagers.

11. Planning Considerations and Assessments

11.1 The application is for proposed excavation of land for permitted agricultural use and proposed utility installation for private project with excavation and filling of land. 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. Excavation and filling of land within “CPA” zone are subject to planning permission as they 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 and DAFC has no strong view on the application from the agricultural and fisheries perspective, the applicant did not provide justifications for the genuine need of excavation of land of 240 m² for fish farming. Moreover, according to the applicant, the proposed 10-m high electricity pole is one of the electricity connection proposals suggested by CLP, which is also involved excavation and filling of land. In this regard, the applicant fails to demonstrate that there are no other alternatives to carry out the proposed fish farming activities (including the installation of an electricity pole) 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 in the proximity. The proposed development is considered not entirely incompatible with the landscape character of the surrounding area.
- 11.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. With excavation and filling of land and a cluster of temporary structures, the proposed development would inevitably alter the sensitive coastal natural environment and the natural coastline in the vicinity. 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 encroaching into the “CPA” zone. The cumulative effect of approving similar applications in future would further affect the integrity of 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 excavation and filling of land will unlikely create significant environmental and traffic impacts to the surrounding areas.
- 11.5 No previous approval has been granted for the Site. There are 4 similar applications (No. A/YL-LFS/30, 386, 391 and 393) for filling of land/pond and/or excavation of land 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 7 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 excavation and filling of land and the proposed utility installation for private project are 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; and
- (b) approval of the application would set an undesirable precedent for similar applications for excavation and 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 23.7.2025, 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 excavated to a depth exceeding 1.5 m, as proposed by the applicant;
- (b) no part of the Site shall be filled other than soil to a depth exceeding 1.5 m, as proposed by the applicant;
- (c) the submission of a drainage proposal including flood mitigation measures before commencement of the land excavation and filling 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 including flood mitigation measures upon completion of the land excavation and filling 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 excavation and 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 31.5.2021
Appendix Ia	Supplementary Information received on 2.6.2021 and 10.6.2021
Appendix Ib	Further Information received on 14.7.2021
Appendix II	Similar Applications within the same “CPA” Zone on the Lau Fau Shan and Tsim Bei Tsui OZP
Appendices III-1 to III-7	Public comments Received During Statutory Publication Period
Appendix IV	Advisory Clauses
Drawing A-1	Access Plan
Drawing A-2	Proposed Layout Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2021**