

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/434

Applicant : Mr. Lu Changhong

Site : Lots 622 and 632 in D.D.129, Lau Fau Shan, Yuen Long, New Territories

Site Area : About 1,000m²

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/11

Zoning : “Green Belt” (“GB”)

Application : Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for filling of land for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “GB” on the approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/11. According to the Notes for the “GB” zone of the OZP, ‘Agricultural Use’ is always permitted. However, filling of land requires planning permission from the Board. The Site which comprises two separate portions is currently cleared of vegetation and covered with sand intermixed with rocks and construction wastes without valid planning permission (**Plans A-4a and A-4b**). The Site is not involved in any previous application.
- 1.2 The Site is currently accessible via an informal footpath branching off a local road that connects Deep Bay Road with Mong Tseng Wai/Mong Tseng Tsuen. As shown on the proposed layout plan at **Drawing A-1** and indicated in the submission, the entire Site would be filled with soil of about 0.8m in depth for cultivation. In addition, a total area of about 225m² will be further filled with concrete of about 0.15m in depth atop the soil filling for erection of 4 proposed structures above (see paragraph 1.3 below for details). The dimension of the concrete filling would be the same as the covered area of the proposed structures.
- 1.3 According to the applicant, the Site would be used for rehabilitation farming, wherein flowers/grasses, vegetables and penzai would be cultivated. As part of the permitted agricultural use, 4 structures (1 storey and not exceeding 4.5m) with a total floor area of about 225m² are proposed for agricultural storage, plant nursery, farm tools storage and toilet uses (**Drawing A-1**). The applicant also states that part of

the soil filling has been completed, whilst filling of cultivation soil and concrete paving have yet to be undertaken.

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

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|-----|--|---------------|
| (a) | Application Form received on 5.7.2022 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 11.7.2022 | (Appendix Ia) |
| (c) | Further Information (FI) received on 3.8.2022* | (Appendix Ib) |

** accepted and 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 at **Appendix I**. They can be summarised as follows:

- (a) The soil of the Site is heavily polluted and subject to prolonged inundation, and cannot be used for cultivation. The proposed filling of land is to replace the soil with those suitable for cultivation.
- (b) The proposed development is for the applicant's own farming only and not for commercial farming.

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 obtaining consent of the current land owner. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

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. The relevant assessment criteria are detailed at **Appendix II**.

5. Background

Recent site inspection revealed suspected filling of land on the Site. Should there be sufficient evidence to form an opinion of unauthorised development (UD) under the Town Planning Ordinance, planning enforcement action would be instigated as appropriate.

6. Previous Application

The Site is not involved in any previous planning application.

7. Similar Applications

- 7.1 Within the same “GB” zone, there are 2 similar applications (No. A/YL-LFS/359 and 382) for filling of land (with or without excavation) for permitted agricultural use in the past 5 years. Details of the similar applications are summarised in **Appendix III** and their locations are shown on **Plan A-1**.

Approved application

- 7.2 Application No. A/YL-LFS/382 involving filling of soil for planting of fruit trees was approved with conditions by the Committee on 8.1.2021 mainly on considerations that the applicant demonstrated the need for the land filling works; the land filling works was not incompatible with the surrounding areas; there was no adverse comment from concerned government departments in general, and the applicant proposed to replace the leftover soil on-site with soil suitable for cultivation.

Rejected application

- 7.3 Application No. A/YL-LFS/359 involving concrete-paving for erection of 10 structures (for farm house, storage, toilet, lookout, sheep shed, kennel, electric room and resting place) and land excavation for water tank was rejected by the Board on review on 17.7.2020 mainly on grounds of not in line with the planning intention; and insufficient information to assess the justification of slope stabilisation for the concrete-paving works, and hence failure to justify the need for land filling and excavation.

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

8.1 The Site is:

- (a) bisected into the eastern and western portions by Government Land and a stream thereon;
- (b) cleared of vegetation, and covered with sand intermixed with rocks and construction wastes without valid planning permission. The western portion of the Site is also deposited with construction materials, construction equipment and miscellaneous items; and
- (c) accessible via an informal footpath branching off an access road that connects Deep Bay Road with Mong Tseng Wai/Mong Tseng Tsuen.

8.2 The surrounding areas have the following characteristics. Some of the uses are suspected UDs subject to enforcement action by the Planning Authority:

- (a) to the immediate north are grassland and a pond. To the further north are warehouses, a recycling yard, a village house, ruin, vacant land and shrubland;
- (b) to the east is shrubland; and
- (c) to the south are shrubland, a residential dwelling and vacant land. To the

southwest are a residential dwelling, vacant land, grassland and a dumping ground. To the further south across a local road are storage yards and shrubland.

9. Planning Intention

- 9.1 The planning intention of the “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.
- 9.2 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.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraph 10.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices IV and V** respectively.
- 10.2 The following government departments have concerns/adverse comments on the application:

Nature Conservation and Agriculture

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

- (a) The Site was previously grown with vegetation (**Plan A-3b**). He could not identify any major physical factor that may affect the suitability of the soil on-site for cultivation then. For the current condition, site inspection by his office in July 2022 revealed that the Site was vacant and deposited with sand, gravels, rocks and construction waste, which could not be considered as suitable for cultivation.
- (b) Taking into account the proposed farming scale and operation, the proposed agricultural storage/farm tools storage seems excessive.
- (c) He has no comment on the application from nature conservation point of view.

Landscaping

- 10.2.2 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) The Site is situated in area of rural coastal plains predominated by

temporary structures, village houses, farmland, ponds and woodland. Some self-seeded vegetation within the Site was observed. The Site is currently vacant with no vegetation found.

- (b) However, by comparing the aerial photo taken in 2019 (**Plan A-3b**) and the site photos taken in July 2022 (**Plans A-4a and A-4b**), vegetation clearance and filling of land were found undertaken at the Site.
- (c) It is noted from the submissions that the proposed filling of soil is for cultivation. However, DAFC advised that the earth found on the Site is not suitable for cultivation. Also, no additional information is provided on the layout for the proposed agricultural use. In particular, there is insufficient information to justify the necessity of the 4 proposed structures of 3-4.5m high with filling of concrete (225m²) underneath.
- (d) As further degradation of the existing landscape character by the proposed structures with filling of concrete is envisaged, and the “GB” zone is intended to promote conservation of the natural environment, therefore, the applied development is considered incompatible with landscape character of the surrounding landscape setting.

Drainage

10.2.3 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, to implement and maintain the proposed drainage facilities to the satisfaction of his department.
- (c) He has no record of flooding at the Site in the past 5 years.

11. Public Comment Received During Statutory Publication Period

On 12.7.2022, the application was published for public inspection. During the statutory public inspection period, 1 public comment was received from an individual (**Appendix V**) objecting to the application on the ground that the applied development would extend brownfield use further into the “GB” zone which is already under development pressure.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed filling of land (i.e. soil of about 0.8m in depth for the entire Site of about 1,000m²; and concrete of about 0.15m for a total area of about 225m² atop the soil filling) for permitted agricultural use at the Site. The Site falls within the “GB” zone (**Plan A-1**), which is primarily intended 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. Whilst ‘Agricultural Use’ is always permitted within the “GB” zone, filling of land within the “GB” zone is subject to planning permission as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. While CE/MN of DSD and DAFC have no objection to the application from the drainage and nature conservation perspectives, DAFC has doubts over the genuine need of filling of land for the agricultural use from agriculture perspective.
- 12.2 With regard to the soil filling, the applicant claims that the soil of the Site is heavily polluted and cannot be used for cultivation. The proposed soil filling covering the entire Site (about 1,000m²) by a depth of about 0.8 is to replace the soil with those suitable for cultivation. However, the Site and its vicinity had all along been vegetated only until 2021 (**Plans A-3a and A-3b**). In this connection, DAFC advised that he could not identify any major physical factor that may affect the suitability of the soil at the Site for cultivation at the time when the Site has not yet been cleared of vegetation. He also advised that the sand, gravels, rocks and construction waste currently deposited at the Site (**Plans A-4a and A-4b**) could not be considered as suitable for cultivation. It is unclear how the Site could be used for cultivation under this circumstance. The applicant also claims that the soil on-site is subject to prolonged inundation and cannot be used for cultivation. In this regard, CE/MN of DSD advised that he has no record of flooding at the Site in the past 5 years.
- 12.3 As regard the proposed concrete filling, the applicant also proposes to further fill a total area of about 225m² with concrete of about 0.15m atop the soil filling for erection of 4 structures. With a total floor area of about 225m² and height of not exceeding 4.5m, the proposed structures are for agricultural storage (110m²), farm tools storage (40m²), plant nursery (55m²) and toilet (20m²) uses (**Drawing A-1**). Meanwhile, the applicant also claims that the Site is intended for his own leisure farming after retirement. However, no justification is provided as to why a farm of this nature and scale requires, inter alia, agricultural/farm tools storage (and hence the concrete paving underneath) of 150m² in total and a toilet of 20m². DAFC advised that, taking into account the proposed farming scale and operation, the proposed agricultural storage/farm tools storage seems excessive.
- 12.4 In a nutshell, there is insufficient information in the submission to justify that the proposed soil and concrete filling are necessary for the permitted agricultural use.
- 12.5 The Site is located in an area predominated by shrubland intermixed with temporary structures, graves and residential dwellings. Although there are such brownfields as warehouses, storage yards and a recycling yard in the vicinity of the Site, they are suspected UD subject to enforcement action by the Planning Authority. The proposed soil and concrete filling, with their needs yet to be justified, are considered not compatible with the surrounding areas.

- 12.6 According to the TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The development should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. The design and layout of any proposed development within “GB” zone should be compatible with the surrounding area. In this regard, aerial photo in 2019 (**Plan A-3b**) and site photos in July 2022 (**Plans A-4a and A-4b**) show that vegetation was cleared and filling of land with sand intermixed with rocks and construction wastes was undertaken. Noting concrete filling is also proposed, CTP/UD&L envisages further degradation of the existing landscape character, and considers the proposed filling of land incompatible with the landscape character of the surrounding landscape setting. Hence, the proposed filling of land is considered not in line with TPB PG-No. 10.
- 12.7 Other concerned departments including Head of Geotechnical Engineering Office of Civil Engineering and Development Department have no objection to or no comment on the applied development from geotechnical perspective.
- 12.8 There is no previous application covering the Site. Although the Committee had approved a similar application (No. A/YL-LFS/382) involving filling of soil for planting of fruit trees, the application did not involve concrete-paving but soil filling only. Moreover, the applicant demonstrated the need for the applied filling works, and undertook to remove the leftovers and refill soil suitable for cultivation. The current application is different in that concrete-paving is involved, and there is insufficient information to justify the necessity of the land filling works. In fact, the Board rejected a similar application (No. A/YL-LFS/359) on review on a similar ground of failure to justify the need for the applied land filling/excavation works involving concrete-paving. As such, rejecting the current application is not in conflict with the previous decisions of the Committee/Board.
- 12.9 There is a public comment received objecting to the application on grounds as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.8 above 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 comment mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:
- (a) the applicant fails to justify the need for the proposed filling of land; and
 - (b) the proposed filling of land is not in line with 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) in that the applicant fails to demonstrate that the applied filling of land would not have significant adverse landscape impact on the surrounding areas.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **26.8.2026**, 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 land 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 land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) if any of the above planning condition (a) or (b) 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 V**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant planning 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 applicant.
- 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, and the date when the validity of the permission should expire.

15. Attachments

Appendix I	Application Form received on 5.7.2022
Appendix Ia	Supplementary Information received on 11.7.2022
Appendix Ib	Further Information received on 3.8.2022
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)
Appendix III	Similar Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comment Received During Statutory Publication Period
Drawing A-1	Layout Plan of the Land Filling Works and the Permitted Agricultural Use
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan

Plans A-3a and A-3b Aerial Photos taken in 2021 and 2019
Plans A-4a and A-4b Site Photos

PLANNING DEPARTMENT
AUGUST 2022