

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/506

- Applicant** : Mr. Tang Chuk Ming represented by Mr. Lee Wai Leung
- Site** : Lot 1394 S.A in D.D. 129, Mong Tseng Wai, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 309m²
- 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** : “Village Type Development” (“V”)
- Application** : Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicants seek planning permission for proposed filling of land for permitted agricultural use at the application site (the Site) zoned “V” on the OZP (**Plan A-1**). According to the Notes for the “V” zone of the OZP, ‘Agricultural Use’ is always permitted, while filling of land requires planning permission from the Town Planning Board (the Board). The Site also falls within the Wetland Buffer Area (WBA) according to the Town Planning Board Guidelines No. 12C for ‘Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 12C). The Site is currently overgrown with vegetation (**Plans A-2 and A-4b**).
- 1.2 As shown on the proposed land filling plan at **Drawing A-1** and indicated in the submission, the entire Site (about 309m²) would be filled with cultivation soil of about 0.6m in depth. As a result of the proposed land filling works, the formation level of the Site would be raised from +3.3mPD to +3.9mPD. Drainage facilities would be provided (**Drawings A-2 and A-3**). No ecological impact assessment (EcoIA) is submitted in support of the proposed filling of land.
- 1.3 As indicated in the submission, upon completion of the proposed land filling works, the Site would be used for cultivation of grass, such as broadleaf carpetgrass and sportsfield grass, as well as permitted agricultural use in general.

- 1.4 As shown on **Drawing A-1**, the construction vehicles are proposed to access the Site from the northeast via a local track branching off Deep Bay Road¹. There would be about six construction vehicles (i.e. 5.3 tonnes light goods vehicles) trips generated per day during the construction period².
- 1.5 The Site is the subject of two previous application (No. A/YL-LFS/271 and 472) for land filling works lodged by the same applicant. The former was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 13.3.2015³, whilst the latter was rejected by the Committee on 14.7.2023 (details at paragraph 6 below). The current proposal is the same as the previous applications.
- 1.6 In support of the application, the applicant has submitted the Application Form which was received on 15.1.2024 (**Appendix I**).

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 Site is situated in a low-lying area where crops could not be grown due to inundation. Filling of land is therefore required for cultivation;
- (b) the proposed land filling works would not affect the surroundings; and
- (c) the proposed land filling works at the Site was subject to a previous planning permission (No. A/YL-LFS/271) in 2015. The proposal was not implemented due to coordination issue but is now ready to proceed.

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

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

4. Town Planning Board Guidelines

According to TPB PG-No. 12C, the Site falls within the WBA. The relevant assessment criteria are detailed at **Appendix II** and summarised as follows:

- (a) in considering development proposals in the Deep Bay Area, the Board adopts the principle of “no-net-loss in wetland” which provides for the conservation of continuous and adjoining fishponds. No decline in wetland or ecological functions

¹ As shown on **Plan A-3a** and Photos 1 and 2 of **Plan A-4a and A-4b**, part of the proposed construction vehicle access is currently overgrown with vegetation. However, the applicant has not applied for filling of land thereat.

² As indicated in the submission, no construction vehicle trip would be generated on Saturdays and Sundays. The land filling works are expected to be completed on 15.6.2024.

³ The land filling works approved under application No. A/YL-LFS/271 had not been implemented, and the planning permission lapsed on 14.3.2019.

served by the existing fish ponds should occur. As the fish ponds form an integral part of the Deep Bay Area wetland ecosystem, alternative uses could be considered suitable only if it could be demonstrated that they would not result in the loss of ecological function of the original ponds and if they complement the ecological functions of the wetlands and fishponds in and/or around the Deep Bay Area;

- (b) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (c) within the WBA, for development or redevelopment which requires planning permission from the Board, an EcoIA would also need to be submitted. Development/redevelopment which may have negative impacts on the ecological value of the WCA would not be supported by the Board, unless the EcoIA can demonstrate that the negative impacts could be mitigated through positive measures. The assessment study should also demonstrate that the development will not cause net increase in pollution load to Deep Bay. Some local and minor uses are however exempted from the requirement of EcoIA.

5. Background

The Site is not subject to any active planning enforcement action.

6. Previous Applications

- 6.1 The Site is the subject of two previous applications for proposed filling of land (by about 0.6m) for permitted agricultural use. One of them was approved while the other was rejected by the Committee. Details of the previous applications are summarised in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-LFS/271 was approved by the Committee on 13.3.2015 mainly on considerations that the proposed land filling to facilitate always-permitted agricultural use is not incompatible with the planning intention; there was no objection to/no adverse comment on the application from concerned government departments including the Director of Agriculture, Fisheries and Conservation (DAFC) and the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN, DSD); and the technical concerns could be addressed by approval conditions. In particular, while DAFC considered that the proposed land filling was not necessary for farming purpose and thereby could not be regarded as a supporting activity to agricultural use, DAFC noted that the vicinity of the Site was involved in an unauthorized land filling works subject to planning enforcement action⁴, and considered that the Site was fragmented from the fish ponds/wetland in the WCA by the said unauthorized works and therefore had limited ecological value

⁴ The concerned lots where the unauthorized land filling (UD) was undertaken were Lots 1390 S.A RP, 1397 RP, 1398 S.A, 1398 S.C, 1398 S.D, 1398 S.F, 1398 S.G, 1398 S.I, 1398 S.J, 1398 S.L and 1398 RP in D.D.129 (Enforcement Case No. E/YL-LFS/359) (**Plan A-2**). Enforcement Notice (EN) requiring the discontinuance of the UD and Reinstatement Notice (RN) requiring the reinstatement of the concerned lots (i.e. removal of leftovers, debris and fill materials, as well as grassing) were issued in October 2014 and January 2015 respectively. As the concerned lots were subsequently reinstated, Compliance Notices for the EN and RN were issued in September 2015.

(Plan A-3b).

- 6.3 Application No. A/YL-LFS/472 was rejected by the Committee on 14.7.2023 mainly on grounds of being not in line with TPB PG-No. 12C (viz. no EcoIA to demonstrate no negative off-site disturbance impact on the ecological value of the WCA); failure to demonstrate the need for the proposed filling of land; and failure to demonstrate no adverse landscape impact on the surrounding areas. In particular, as compared with the approved previous application, there has been a change in planning and ecological circumstances, i.e. dense vegetation has grown between the sites and the ponds/wetland in the WCA with the reinstatement of the previous unauthorized land filling works.

7. Similar Applications

- 7.1 Within/straddling the same “V” zone, there are nine similar applications for filling of land (with or without filling of pond) for agricultural use or New Territories Exempted Houses (NTEH) development. Four of them were approved whilst five were rejected by the Committee. Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

Approved applications

- 7.2 Application No. A/YL-LFS/270 for proposed filling of land for permitted agricultural use to the west of the Site was approved with conditions by the Committee on 13.3.2015 mainly on similar considerations as those mentioned in paragraph 6.1 above. Meanwhile, DAFC considered that the proposed land filling was for ground levelling purpose, and thereby could not be regarded as a supporting activity to agricultural use. However, two subsequent applications (No. A/YL-LFS/488 and 489) for the same development proposal were rejected by the Committee in 2023 and their details are at paragraph 7.6 below.
- 7.3 Applications No. A/YL-LFS/371 for proposed filling and excavation of land for permitted NTEH at the north of the “V” zone was approved with conditions by the Committee in 2020 mainly on considerations of no adverse comments from concerned government departments; not in contravention with TPB PG-No. 12C; and the technical concerns could be addressed by approval conditions.
- 7.4 Applications No. A/YL-LFS/387 and 413 for proposed NTEH and filling and excavation of land straddling the northern part of “V” zone and the “Green Belt” zone to the north were approved with conditions by the Committee in 2021 mainly on considerations of being generally in line with the Interim Criteria for Consideration of Application for NTEH/Small House in New Territories and TPB PG-No. 10 on ‘Application for Development within the Green Belt Zone’; concerned government departments generally have no objection to/adverse comment on the application; and the technical concerns could be addressed by approval conditions.

Rejected applications

- 7.5 Applications No. A/YL-LFS/463, 491 and 496 for proposed filling of pond and filling of land for permitted houses (NTEH - Small Houses) were rejected by the Committee on 5.5.2023 mainly on grounds of being not in line with TPB PG-No.

12C (viz. no EcoIA to demonstrate no net-loss in wetland and negative off-site indirect impact on the ecological value of the WCA); and failure to demonstrate no adverse drainage impact.

- 7.6 Applications No. A/YL-LFS/488 and 489 (at the same site as application No. A/YL-LFS/270) for proposed filling of land for permitted agricultural use were rejected by the Committee on 14.7.2023 mainly on similar grounds as stated in paragraph 6.3 above.

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

8.1 The Site is:

- (a) currently overgrown with vegetation; and
- (b) inaccessible as the immediate vicinity of the Site is also overgrown with vegetation. The nearest vehicular access to the northeast is accessible from a local track branching off Deep Bay Road (**Plans A-2 and A-3a**).

8.2 The surrounding areas are predominated by fallow agricultural land. Residential dwellings are mainly found to the north of the Site, whilst fish ponds within the “Conservation Area” and the WCA are located at about 21m to the south. Other uses such as vehicle parks and a temple are also found in the vicinity. Some of the uses are suspected unauthorized development subject to planning enforcement action.

9. Planning Intention

- 9.1 The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.
- 9.2 According to the Explanatory Statement of the OZP, as filling of land/pond and excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

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

- (a) He has no adverse comment on the application.
- (b) The Site comprises an Old Schedule Agricultural Lot 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.
- (c) A Small House application on Lot 1394 S.A in D.D.129 (i.e. the Site) is under processing.

Nature Conservation and Agriculture

10.1.2 Comments of DAFC:

Nature Conservation

- (a) The Site falls within the WBA. Based on his staff's recent site inspection, the Site is a piece of wetland overgrown with common vegetation.
- (b) The Site is close to the fish ponds/wetland within the WCA and the "CA" zone to the south with dense vegetation in between. No EcoIA or other information has been submitted to demonstrate that the proposed filling of land would not cause a net-loss in wetland function and negative off-site disturbance impact to the wetland/fishponds at the WCA to the south of the Site.

Agriculture

- (c) Local farmers may occasionally carry out replenishment of lost top soil or levelling of ground to prevent excessive surface run-off. The thickness of replenished soil or the amount of earth that need to be redistribute in ground levelling is dependent on many factors such as topography of the land and the extent of erosion. Generally speaking, the amount of top soil needed for vegetable farming is about 30-45 cm.
- (d) Nevertheless, the Site is covered with dense vegetation. He cannot identify any major physical factors that may affect the suitability of the soil at the Site for cultivation in general.

Landscaping

10.1.3 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 landscape character predominated by village houses, ponds, marshland and woodland. Dense vegetation in a wet environment and water resource were found within the Site.
- (b) The applicant stated in the submission that the proposed filling of land is for cultivation of grass for sports field and/or for the agricultural

uses. Significant landscape impact on the existing wetland vegetation and water resource within the Site arising from the proposed filling of land is envisaged. No information is provided in the submission to demonstrate that the proposed filling of land would not have adverse landscape impact on the Site and surrounding areas.

- (c) As there is a large area of the existing ponds within the “CA” zone just to the south, she has grave concern that the proposed filling of land would further degrade the landscape resources and quality of the WBA and adjacent “CA” zone. As such, the proposed filling of land is considered incompatible with the surrounding areas.

Drainage

10.1.4 Comments of the 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, an approval condition should be stipulated requiring the applicant to submit a drainage proposal, implement and maintain the proposed drainage facilities to the satisfaction of his department.
- (c) The Site is not subject to any record of flooding. Based on his preliminary assessment, it is believed that there would be overland flow from the north passing through the Site. Although the Site is a local sag point, the existing land characteristics of the Site and its vicinity are generally grassland/vegetated land where infiltration or rainfall absorption by soil is expected. Besides, the stream to the south of the Site may well be the discharge path conveying the surface runoff (generated by saturation of soil due to heavy rainstorm event) from upland catchment.
- (d) The applicant should note his detailed comments on the submitted drainage proposal at **Appendix VI**.

Environment

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

- (a) He has no objection to the proposed filling of land.
- (b) There is no substantiated environmental complaint pertaining the Site in the past three years.
- (c) The applicant should note his advisory comments in **Appendix VI**.

District Officer's Comments

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

He has consulted the locals regarding the application. Seven local comments from the Village Representative of Mong Tseng Wai, as well as villagers of Mong Tseng Wai and Mong Tseng Tsuen (Samples at **Appendix IV-1 and IV-2**) were received objecting to the application mainly on grounds that the proposed filling of land would impede stormwater discharge and bring serious flooding problem to the villages; it would adversely affect the roosting ground of birds and the natural environment in general; and it would impede villagers' access.

10.2 The following government departments have no objection to/no comment on the application:

- (a) Chief Heritage Executive (Antiquities and Monuments), Antiquities and Monuments Office, Development Bureau (CHE(AM), AMO, DEVB);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (e) Head of Geotechnical Engineering Office, CEDD (H(GEO)), CEDD;
- (f) Project Manager (West), CEDD (PM(W), CEDD);
- (g) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (h) Commissioner for Transport (C for T);
- (i) Commissioner of Police (C of P); and
- (j) Director of Fire Services (D of FS).

11. Public Comment Received During Statutory Publication Period

On 23.1.2024, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual (**Appendix V**) was received objecting to the application mainly on grounds that local villagers' drainage concern should be addressed in view of climate change.

12. Planning Considerations and Assessments

12.1 The application is for proposed filling of land (cultivation soil of about 0.6m in depth) for permitted agricultural use at the Site within the "V" zone (**Plan A-1**). Whilst 'Agricultural Use' is always permitted within the "V" zone, filling of land within the "V" zone is subject to planning permission as it may cause adverse drainage impacts on the adjacent area and adverse impacts on the environment. In this regard, CE/MN of DSD has no objection in principle to the application from drainage point of view.

- 12.2 Regarding the ecological aspect, the Site falls within the WBA under TPB PG-No. 12C, and is located at about 21m to the north of the fish ponds within the WCA and the “CA” zone of the OZP. According to TPB PG-No. 12C, the principle of no-net-loss in wetland function should be adopted. The intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the WCA and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds. Development/redevelopment which may have negative impacts on the ecological value of the WCA would not be supported by the Board, unless an EcoIA is submitted to demonstrate that the negative impacts could be mitigated through positive measures. In these regards, DAFC considers that the Site is a piece of wetland overgrown with common vegetation, and is close to the fish ponds/wetland within the WCA and the “CA” zone to the south with dense vegetation in between. However, no EcoIA or other information has been submitted to demonstrate that the proposed filling of land would not cause a net loss in wetland function and negative off-site disturbance impact to the wetland/fishponds at the WCA to the south of the Site. In view of the above, the applicant fails to demonstrate that the proposed filling of land would not have adverse ecological impact on the Site and its surrounding areas. Also, the proposed filling of land is considered not in line with TPB PG-No. 12C.
- 12.3 According to the applicant, the Site would be used for cultivation of grass, as well as permitted agricultural use in general. In support of his proposal, the applicant claims that the Site is inundated and crops could not be grown thereon. In this regard, CE/MN of DSD advises that the Site is not subject to any record of flooding. Moreover, based on his preliminary observation, although the Site is a local sag point, overland flow from upland catchment to the north would be absorbed by the soil on-site. Even in the event of heavy rainfall, surface run-off generated by saturation of soil would also be conveyed by the stream to the south of the Site. Meanwhile, DAFC advises that the Site is mainly wetland and currently covered with dense vegetation. He cannot identify any major physical factors that may affect the suitability of the soil at the Site for cultivation. As such, there is insufficient information in the submission to justify that the proposed land filling is necessary for the permitted agricultural use.
- 12.4 CTP/UD&L of PlanD considers that significant landscape impact on the existing wetland vegetation and water resource within the Site arising from the proposed filling of land is envisaged. Moreover, as there is a large area of existing ponds within the “CA” zone just to the south, she has grave concern that the proposed filling of land would further degrade the landscape resources and quality of the WBA and the adjacent “CA” zone. However, no information is provided in the submission to demonstrate that the proposed filling of land would not have adverse landscape impact on the Site and its surrounding areas. Hence, the applicant fails to demonstrate that the proposed land filling would not have significant adverse landscape impact on the surrounding areas.
- 12.5 Other concerned departments including DEP and C for T have no objection to or no adverse comment on the application from environmental planning and traffic perspectives.
- 12.6 The Site is the subject of two previous applications (No. A/YL-LFS/271 and 472) for the same proposed land filling works. Application No. A/YL-LFS/271 was approved with conditions by the Committee in 2015 mainly on considerations that

the Site at the time was fragmented from the fish ponds/wetland in the WCA by the unauthorized land filling works and hence had limited ecological value (**Plan A-3b**). However, following the reinstatement of the Site and its vicinity due to planning enforcement against the unauthorized land filling, there has been a change in site conditions at the time when application No. A/YL-LFS/472 was considered by the Committee in July 2023, in that thick vegetation has grown between the Site and the fish ponds/wetland in the WCA. The application was rejected by the Committee as there was no EcoIA to demonstrate no adverse ecological impact. For the current application, there has been no major change in planning circumstances of the Site since July 2023, and no EcoIA has been submitted. Regarding the similar applications, most of the approved applications (No. A/YL-LFS/371, 387 and 413) are located at the northern fringe of the subject “V” zone away from the ponds in “CA” zone and WCA, and relevant departments had no objection to/no adverse comment on these applications. In fact, the Committee rejected two similar applications (No. A/YL-LFS/488 and 489) located to the immediate west of the Site in October 2023 on similar considerations to those for rejecting application No. A/YL-LFS/472. As such, rejecting the current application is in line with the previous decisions of the Committee.

- 12.7 Regarding the local views conveyed by DO/YL of HAD and the public comment received objecting to the application as summarised in paragraphs 10.1.6 and 11 respectively, the planning considerations and assessments in paragraphs 12.1 to 12.7 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 local views and public comment mentioned in paragraphs 10.1.6 and 11 respectively, the Planning Department does not support the application for the following reasons:
- (a) the proposed filling of land, which falls within the Wetland Buffer Area, is not in line with the Town Planning Board Guidelines for ‘Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 12C) in that there is no ecological impact assessment in the submission to demonstrate that the proposed filling of land would not result in “net-loss in wetland” and negative off-site disturbance impact to the wetland/fishponds at the Wetland Conservation Area; and
 - (b) the applicant fails to justify the need for the proposed filling of land, and to demonstrate that the proposed filling of land would not have 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 **15.3.2028**, 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 waste, including construction waste, as defined in the Waste Disposal Ordinance, is allowed to be used to fill the Site;
- (b) the submission of an ecological impact assessment for the proposed filling of land, and implementation of the ecological mitigation measures identified therein before commencement of the proposed filling of land to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board;
- (c) the submission of a revised drainage proposal before commencement of the proposed filling of land 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 revised drainage proposal upon completion of the proposed filling of land to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (e) if any of the above planning condition (a), (b), (c) or (d) is not complied with, 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 VI**.

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 15.1.2024
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Deep Bay Area (TPB PG-No. 12C)
Appendix III	Previous and Similar Applications
Appendix IV-1 and IV-2	Sample of Local Views conveyed by District Officer/Yuen Long
Appendix V	Public Comment Received During Statutory Publication Period
Appendix VI	Recommended Advisory Clauses

Drawing A-1	Land Filling Plan
Drawing A-2 and A-3	Drainage Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plans A-3a and A-3b	Aerial Photos in 2022 and 2015
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2024**