

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-MP/307

<u>Applicant</u>	: Ka Long Consultant Engineering Limited
<u>Site</u>	: Lot 3010 S.A in D.D. 104, Mai Po, Yuen Long
<u>Site Area</u>	: About 800m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Mai Po and Fairview Park Outline Zoning Plan (OZP) No. S/YL-MP/6
<u>Zoning</u>	: “Recreation” (“REC”)
<u>Application</u>	: Temporary Access Road for a Period of 1 Year

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary access road for a period of 1 year. The Site falls within “REC” zone on the OZP (**Plan A-1**). According to the Notes of the OZP, the use is not provided for in terms of the OZP and temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). The Site is currently hard paved and used for the applied use.
- 1.2 The Site is accessible from its north via Geranium Path (**Plan A-2**). According to the applicant, the temporary access road under application is to facilitate the reinstatement work of various lots to its south and west which are subject to enforcement action for unauthorised pond/land filling (**Drawing A-2**). The filled materials have to be removed, and the temporary access road at the Site (about 6m wide and 78m* long) allows vehicles of not exceeding 24 tonnes to transport the removed materials to landfills between 8:00 a.m. and 5:00 p.m. on Monday to Saturday (no operation on Sunday and public holiday). Upon completion of the reinstatement works of the adjacent lots, the Site itself will be reinstated as

* By measurement on plan.

amenity area with grass cover and planting of 16 nos. of *Ficus microcarpa* (細葉榕).

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

- (a) Application Form and supplementary information received on 25.5.2021 and 3.6.2021 **Appendix I**
- (b) Further Information (FI) received on 14.7.2021 providing responses to comments from Transport Department (TD)[#] **Appendix Ia**
- (c) FI received on 19.7.2021 providing responses to comments from TD[#] **Appendix Ib**
- (d) FI received on 20.7.2021 providing responses to comments from TD[#] **Appendix Ic**

[#] *exempted from publication requirement*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Section 7 of the Application Form and supplementary information and FI at **Appendices I, Ia and Ib**. They can be summarised as follows:

- (a) The applicant is being employed to reinstate the pond/land areas that have been filled to the south and west of the Site to comply with the Reinstatement Notice served by the Planning Authority (No. E/YL-MP/226) (**Plan A-2**). It is necessary to use the Site as a temporary access road for vehicles to transport the removed materials to the landfills.
- (b) Vehicles of not exceeding 24 tonnes will be used to transport the removed materials and there will be 2 such vehicular trips per hour. There will be site staff at the ingress/egress of the Site at Geranium Path to direct the incoming and departing vehicles such that it will not cause sightline problem and adverse traffic impact on Geranium Path and Castle Peak Road.
- (c) Upon receipt of the Compliance Notice (CN) for the reinstatement works of the concerned ponds/land, the Site itself will be reinstated to amenity area with grass cover and trees within 6 months.

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

The applicant is not a “current land owner” of the private lot at the Site 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 sending notification to the registered lot owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Town Planning Board Guidelines**

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

The Site falls within the Wetland Conservation Area (WCA) under TPB PG-No. 12C (**Plan A-1**). The key assessment criteria are summarised as follows:

- (a) the WCA comprises the existing and contiguous, active or abandoned fish ponds in the Deep Bay Area, which should all be conserved. The intention of the WCA is to conserve the ecological value of the fish ponds which form an integral part of the wetland ecosystem in the Deep Bay Area. The Board may consider development with conservation objectives within the WCA under the “private-public partnership approach”;
- (b) new development within the WCA would not be allowed unless it is required to support the conservation of the ecological value of the area or the development is an essential infrastructural project with overriding public interest. Any such development should be supported by an Ecological Impact Assessment (EcoIA) to demonstrate that the development would not result in a net loss in wetland function and negative disturbance impact;
- (c) for any redevelopment which requires planning permission from the Board, an EcoIA would also be required. Wetland compensation is required for any development involving pond filling and mitigation measures against disturbance would be necessary. They would be imposed as part of the planning approval conditions; and
- (d) subject to submission of EcoIAs, the types of activities which may be considered within the WCA must be related to uses concerning (i) conservation of the wetland in Deep Bay Area, (ii) environmental education, or (iii) essential infrastructure projects needed for public purpose for which no suitable alternative locations outside the WCA could be identified; and should not add to the pollution loading of the Deep Bay Area.

5. **Background**

- 5.1 The Site is subject to an active planning enforcement case (No. E/YL-MP/227) (**Plan A-2**) for unauthorised development (UD) of storage use (including deposit of containers). Enforcement Notice (EN) was issued on 22.3.2019 and CN was issued on 27.9.2019 upon discontinuation of UD. The lot owner was informed on 27.9.2019 that Reinstatement Notice (RN) would be issued to him for compliance.
- 5.2 A number of lots to the south and west of the Site were originally ponds which had been filled. On 22.3.2019 and 25.3.2019, Stop Notice for the filling works and RN requiring the removal of the fill materials from the ponds and adjoining land were served on the concerned landowners (No. E/YL-MP/226). Prosecution

action was subsequently taken, and the concerned landowners were convicted on 20.5.2020 and fined. Reinstatement works for the ponds/land are currently in progress.

6. Previous Applications

There is no previous application covering the Site.

7. Similar Applications

There is no similar planning application for temporary access road use within the “REC” zone on the OZP.

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

8.1 The Site is:

- (a) elongated in shape, hard paved and fenced off with a temporary structure in the northern part and lock gates in its northern and southern ends;
- (b) accessible in the north from Geranium Path via the northern lock gate;
- (c) providing access to the area in the south; and
- (d) located within the WCA of Deep Bay.

8.2 The surrounding areas are a mix of residential dwellings, ponds, vacant/unused land with some farming and storage uses:

- (a) to its north are Geranium Path and further north and northwest is a residential development (Royal Palms) within the “Residential (Group C)” (“R(C)”) zone;
- (b) to its east are a storage, a fish farm and a few residential dwellings with vacant/unused land. Some farmland is located to the further southeast of the Site;
- (c) to its west is vacant land within the “REC” zone; and
- (d) areas to its south, southeast, southwest and further west were originally fish ponds that have been filled and subject to enforcement (No. E/YL-MP/226) where reinstatement works are underway. The filled ponds are mostly within WCA and some of them are zoned “Conservation Area” (“CA”) on the OZP.

9. Planning Intention

The planning intention of the “REC” zone is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

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, Lands Department (DLO/YL, LandsD):

- (a) 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.
- (b) He notes that no structure is proposed on the Site by the applicant.
- (c) He has no objection to the proposed temporary access road from the lease perspective.

Traffic

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

- (a) The Site is connected to Castle Peak Road – Mai Po via Geranium Path and a section of a local access which is not managed by TD. The land status of the local access should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) He has no adverse comment on the application from the traffic engineering perspective.
- (c) Should the application be approved, a condition should be incorporated that no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.

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

- (a) Geranium Path is not managed by HyD.
- (b) The proposed access arrangement of the Site from Castle Peak Road – Mai Po should be approved by TD.
- (c) HyD shall not be responsible for the maintenance for any access connecting the Site and Castle Peak Road – Mai Po.
- (d) Adequate drainage measures should be provided at the Site to prevent surface water running from the Site to the nearby public roads and drains.

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD):

He has no comment on the application from railway development point of view as the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems.

Environment

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

He understands that the proposed temporary access road at the Site is to facilitate pond reinstatement works in the adjoining sites and the Site will be reinstated as grassland when the reinstatement works are completed. Based on this consideration, he has no comment on the application.

Nature Conservation

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

- (a) It is noted that the Site is within “REC” zone on the OZP. The Site is currently a paved area with no wetland habitat found. The application is for temporary access road for a period of 1 year for reinstatement works in the area adjoining the Site. He has no comment on the application from nature conservation point of view.
- (b) As no earth works is proposed within the Site, the proposal per se is not anticipated to result in any adverse ecological impact. The temporary access road under application is of small scale and it is not expected to cause significant disturbance to the Deep Bay Area.

Landscape

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

- (a) Compared with the aerial photos taken in 2020, the Site is situated in an area of rural coastal plains landscape character comprising village houses, ponds, scattered tree groups and farmlands. According to the site photos taken on 1.6.2021, the Site is mainly hard paved with 1 existing tree at the western boundary of the Site. The temporary access road is considered not entirely incompatible with the surrounding landscape setting.
- (b) According to the submitted information, the Site will be reinstated as grassland upon completion of the reinstatement works of the adjacent area. Further significant impact on existing landscape arising from the applied use is not anticipated. As such, he has no objection to the application from the landscape planning perspective.
- (c) In view that significant adverse landscape impact arising from the applied use is not anticipated and the Site will be reinstated as grassland upon completion of the associated works, it is considered not necessary to impose a landscape condition should the Board approve the application.
- (d) There is one existing tree at western boundary of the Site. Proper tree preservation measures should be undertaken to avoid damage to the existing tree during the planning approval period. The applicant should refer to the guidelines promulgated by the Development Bureau on Tree Preservation during Construction.
- (e) His detailed comments are at **Appendix III**.

Building Matters

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

- (a) There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BA, they are unauthorised building works (UBW) under the Buildings Ordinance (BO).
- (c) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any

existing building works or UBW on the Site under BO.

- (d) His detailed comments are at **Appendix III**.

Drainage

10.1.9 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection in principle to the applied use from the public drainage point of view.
- (b) Should the Board consider the application is acceptable from planning point of view, approval conditions should be stipulated in the approval letter requiring the applicant (i) to submit a drainage proposal and (ii) to implement and maintain the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Water Supply

10.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing water mains will be affected (**Plan A-2**). The cost of any necessary diversion shall be borne by the proposed development.
- (c) In case it is not feasible to divert the affected water mains, a waterworks reserve within 1.5m from the center line of the water mains shall be provided to WSD. No structure shall be built or materials stored within this waterworks reserve. Free access shall be made available at all times for staff of WSD and their contractor to carry out construction, inspection, operation, maintenance and repair works.
- (d) No trees or shrubs with penetrating roots may be planted within the waterworks reserve or in the vicinity of the water main.
- (e) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

10.2 The following Government departments have no comment on or no objection to the application:

- (a) Director of Leisure and Cultural Services;
- (b) Commissioner of Police;
- (c) Director of Fire Services;

- (d) Project Manager (West), Civil Engineering and Development Department; and
- (e) District Officer (Yuen Long), Home Affairs Department.

11. Public Comments Received During Statutory Publication Period

On 4.6.2021, the application was published for public inspection. During the first 3 weeks of the statutory publication which ended on 25.6.2021, one public comment was received from an individual who indicates support for the application if the access is required to conduct the remedial works on the ponds, but expresses concern on the enforcement action against the open storage use in the area (**Appendix II**).

12. Planning Considerations and Assessments

- 12.1 The application is to use the Site as a temporary access road for a period of 1 year. The “REC” zone covering the Site is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission. While the applied use is not in line with the planning intention of the “REC” zone as it is not to serve or support any existing or planned developments within the “REC” zone, the applicant states that the temporary access road is required to facilitate reinstatement of the ponds/land to the south and west of the Site which have been filled (hatched areas on **Plan A-2**).
- 12.2 In terms of land use, the areas surrounding the Site comprise a mix of residential dwellings, ponds, vacant/unused land and farming uses. The temporary access road under application is not entirely incompatible with the surrounding uses. CTP/UD&L of PlanD also considers that the applied use is not entirely incompatible with the surrounding landscape setting.
- 12.3 On ecological aspect, the Site is within WCA under TPB Guidelines No. 12C. It is currently a paved road without wetland habitat. AFCD has no comment on the application from nature conservation point of view noting that it is to facilitate reinstatement work of the adjoining area, no earthworks is proposed within the Site and the temporary access road is not expected to cause significant disturbance impact on the Deep Bay Area. TD has no adverse comment on the application from traffic engineering perspective. Other relevant government departments including EPD, DSD, FSD and BD have no objection/adverse comments on the application.

Reinstatement Work

- 12.4 While the Site is the sole access to the filled ponds/land to its south and west (**PlanA-2 and A-3**), the Site itself is also the subject of an active enforcement case of unauthorised storage use. RN will be issued to the landowner of the subject Site for compliance in due course depending on the progress of the reinstatement of the ponds/land to the south and west. Approval of the current

application would unnecessarily delay the issuance of the RN for the subject Site by the Planning Authority.

- 12.5 As for the filled ponds/land in the south and west, RN was issued on 25.3.2019 and the concerned landowners were convicted on 20.5.2020. The reinstatement progress of the concerned ponds/land is being monitored by the Planning Authority. Reinstatement of these ponds/land is underway (**Plans A-4b to 4c**) and can proceed without the planning approval of a temporary access road.
- 12.6 Given the unique nature of the application relating to reinstatement work subject to enforcement action, approval of the application would set an undesirable precedent for similar applications which may be used for delaying reinstatement works for sites subject to RN.
- 12.7 There is one supporting public comment on the application as stated in paragraph 11. The planning considerations and assessment above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 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 applied use is not in line with the planning intention of the "Recreation" zone which is primarily for recreational developments for the use of the general public. There is no strong justification for a departure from the planning intention, even on a temporary basis; and
 - (b) approval of the application would delay the enforcement action against the application site and would set an undesirable precedent for similar applications on sites subject to reinstatement work.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 1 year until 23.7.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no heavy goods vehicles exceeding 24 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to enter/exit or be parked/stored on the Site, as proposed by the applicant, at any time during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the submission of drainage proposal within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services

or of the Town Planning Board by 23.10.2021;

- (d) in relation to (c) above, the implementation of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 23.1.2022;
- (e) if any of the above planning conditions (a) or (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (f) if any of the above planning conditions (c) or (d) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (g) upon the expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Appendix III**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant 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 period of which the permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application Form received on 25.5.2021 and Supplementary Information received on 3.6.2021
Appendix Ia	FI received on 14.7.2021
Appendix Ib	FI received on 19.7.2021
Appendix Ic	FI received on 20.7.2021
Appendix II	Public Comment
Appendix III	Recommended Advisory Clauses
Drawing A-1	Site Layout
Drawing A-2	Location of the Reinstatement Sites

Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
JULY 2021**