

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/365

- Applicant** : Mr. MOK Kam Fook
- Site** : Lots 2818, 2822 and 2823 in D.D. 129 and adjoining Government Land (GL),
Sha Kong Wai, Yuen Long, New Territories
- Site Area** : About 445.2 m² (including about 25.63 m² GL (about 5.8%))
- 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/9
- Zoning** : “Village Type Development” (“V”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land at the application site (the Site) for permitted agricultural use. The Site falls within an area zoned “V” on the Approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/9 (**Plan A-1**). According to the Notes of the OZP for “V” zone, ‘agricultural use’ is a Column 1 use which is always permitted. However, any filling of land/pond or excavation of land, including that to effect a change of use to any of those specified in Columns 1 and 2, requires permission from the Town Planning Board (the Board). The Site is currently vacant, partly hard-paved and partly covered by vegetation with a ruined structure.
- 1.2 According to the applicant, the Site will be filled with soil of about 1.5 m depth up to the same level of the adjacent area (**Drawing A-1**). The applicant committed that only the sunken portion of the Site will be filled and no other area within the Site (i.e. the hard-paved area) will be filled. No structures will be erected at the Site. There will be no vehicular access to the Site.

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

- (a) Application Form received on 4.6.2020 with proposed layout plan (**Appendix I**)
- (b) Further Information (FI) received on 15.7.2020 and 16.7.2020 providing details of land filling and responses to the comments of AFCD (**Appendix Ia**)
(accepted and exempted from publication and recounting requirements)

1.4 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 24.7.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 10 of the Application Form at **Appendix I** and FI at **Appendix Ia**. They are summarized as follows:

- (a) The Site is at a level lower than the surrounding area and subject to severe flooding especially during rainy seasons. Therefore, farming is adversely affected.
- (b) Waste water from the nearby public toilets to the Site creates hygiene problem.
- (c) The proposed filling of land with soil could help utilise the Site for farming purpose (i.e. growing crops for self-consumption) and mitigate the flooding and mosquito problems.

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 notifying the current land owners of Lots 2818, 2822 and 2823 in D.D. 129. Detailed information would be deposited at the meeting for Members’ inspection. For the GL, the requirements under TPB PG-No. 31A are not applicable.

4. Background

The Site is not subject to any active planning enforcement action. However, the Site was a subject of public complaint about suspected unauthorized filling of land. Recent inspection revealed that the Site was covered by vegetation and no unauthorized

development (UD) was found on site. Should there be sufficient evidence to prove UD on site, planning enforcement action will be taken.

5. Previous Application

The Site does not involve any previous planning application.

6. Similar Application

- 6.1 There is one similar application (No. A/YL-LFS/268), which is located to the immediate south of the Site within the same “V” zone for proposed filling of land (by about 1.5 m) for permitted agricultural use. It was approved by the Committee on 27.3.2015 mainly on the considerations of not incompatible with the planning intention of the “V” zone, not creating adverse drainage impact on the surrounding area and no objection from relevant departments including Environmental Protection Department (EPD) and Drainage Services Department (DSD). However, the permission was revoked on 20.8.2015 due to non-compliance with approval condition regarding the submission of drainage proposal before commencement of land filling works on the site.
- 6.2 Details of the above application are summarized at **Appendix II** and the location is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently vacant, partly hard-paved and partly covered by vegetation with a ruined structure;
- (b) at a level lower than the surrounding area (approximately over 1 m); and
- (c) within the Village Environs of Sha Kong Wai.

7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) to its south are public toilets, cultivated agricultural land and unused land. To its further south and south-west are residential dwellings and a temporary public vehicle park with a valid planning permission under Application No. A/YL-LFS/319;
- (b) to its immediate east are residential dwellings and vacant land. To its further south-east in “Residential (Group C)” zone is a temporary public vehicle park with a valid planning permission under Application No. A/YL-LFS/333;
- (c) to its immediate west and north-west are residential dwellings (the closest residential dwelling is about 3.8 m away), parking of vehicles and a pond; and

- (d) to its north is a site for recreational use with a valid planning permission under Application No. A/YL-LFS/39.

8. Planning Intention

The planning intention of “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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board. As filling of land/pond and 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 summarized as follows:

Land Administration

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

- (a) The Site comprises GL and Old Schedule Agricultural Lots (OSALs). The OSALs are 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) No permission is given for occupation of the GL included in the Site (about 25.63m² subject to verification). The act of occupation of GL without Government’s prior approval is not allowed.
- (c) Should planning approval be given to the application, the lot owner(s) of the lot(s) without Short Term Waiver (STW) will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on site, if any. Also, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Only application for regularization or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by 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 LandsD.

Landscaping

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

- (a) She has no objection to the application from landscape planning point of view.
- (b) With reference to the aerial photo of 2019 and the site inspection conducted on 18.6.2020, the Site is generally a marshland sunken approximately by over 1m as compared with the surrounding hard paved areas. Existing trees found on the Site are weedy species (i.e. *Leucaena leucocephala*) or common species (i.e. *Macaranga tanarius* and *Musa spp.*). Invasive climbers *Mikania micrantha* was also observed covering a significant area of the Site. The Site is situated in an area of village landscape character comprising of village houses, tree clusters, modified ponds and farmlands. The proposed development is considered not incompatible with the landscape character of the surrounding area. Similar application (No. A/YL-LFS/268) for filling of land (by about 1.5m) for permitted agricultural use in adjacent location in the same "V" zone was approved by the Committee on 27.3.2015. Significant adverse landscape impact due to the proposed development is not anticipated.

Traffic

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

He has no adverse comment on the application from traffic engineering point of view.

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

It is noted that no vehicular access is proposed or to be granted under the application. He has no comment on the application from highways maintenance point of view. If the application is approved, it is on the understanding that there is and will be no vehicular access to/from the Site.

Environment

9.1.5 Comment of the Director of Environmental Protection (DEP):

- (a) No substantiated environmental complaint pertaining to the Site has been received in the past three years.
- (b) He has no objection to the application. The applicant is reminded that the land should not be filled with construction waste and it is the applicant's responsibility to comply with all relevant environment legislations during construction and operation of the project. The applicant is also advised to follow the Recommended Pollution Control Clauses for Construction Contracts

(http://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/guide_ref/rpc_1.html) to minimize the environmental impacts during the construction stage.

Drainage

9.1.6 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 conditions should be stipulated in the approval letter requiring the applicant to submit a drainage proposal including drainage mitigation measures before commencement of the land filling works on the Site, and to implement the proposed drainage facilities to the satisfaction of his department. The applicant is also advised to maintain the proposed drainage facilities.

Building Matters

9.1.7 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 (BA) for the existing structures at the Site, BD is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing 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 the BO.
- (d) Before any new building works including filling of land are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

Fire Safety

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

- (a) He has no specific comment on the application.

- (b) However, in case of any erection of structure inside the Site in the future, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations to his department for approval. The applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Others

9.1.9 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) Sha Kong Wai Aqua Privy (YL91A&B) (**Plan A-2**) is all along being suffered from flooding problem resulted from land filling activities at surrounding land lots.
- (b) In regard to the significant disparity between the aforesaid aqua privy and surrounding land lots, influx of water from unknown sources surrounding the aqua privy is frequently witnessed, particularly in rainy seasons. He would take this opportunity to reflect his reservation on the land filling application, provided that remedial measures would be provided by the applicant to resolve the potential flooding issue.

District Officer's Comments

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

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

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Project Manager (West), CEDD (PM(W), CEDD);
- (d) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (e) Director of Electrical and Mechanical Services (DEMS);
- (f) Director of Leisure and Cultural Services (DLCS);
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (h) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 12.6.2020, the application was published for public inspection. During the statutory public inspection period, 4 public comments were received from villagers and an individual objecting to the application and the reasons are summarized below (**Appendices III-1 to III-4**):

- (a) the Site is originally an agricultural land, no filling is required;

- (b) the proposed development will generate possible adverse drainage, environmental, flooding and safety impacts to the surrounding residential dwellings;
- (c) there are precedent cases in the vicinity for unauthorized filling of land; and
- (d) approval of the application would set an undesirable precedent for similar applications within the same “V” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for filling of land for permitted agricultural use at the Site. The Site is zoned “V” on the OZP which is to designate both existing recognized villages and areas of land considered suitable for village expansion. Whilst agricultural use is always permitted within the “V” zone, filling of land within “V” zone is subject to planning permission as it may cause adverse drainage impact on the adjacent areas and adverse impact on the natural environment. The applicant is applying for filling of land with soil at the Site for permitted agricultural use.
- 11.2 The Site is situated in an area of village landscape character comprising village houses, tree clusters, ponds and farmlands. The proposed filling of land for agricultural use is considered not incompatible with the surrounding area.
- 11.3 The applicant states that the proposed filling of land is for farming purpose and mainly to address the flooding problem at the Site. DFEH pointed out that Sha Kong Wai Aqua Privy (YL91A&B) (**Plan A-2**) is all along being suffered from flooding problem resulted from land filling activities at surrounding land lots especially in rainy seasons and she has reservation on the application provided that remedial measures would be provided by the applicant to resolve the potential flooding issue. In this regard, CE/MN of DSD has no objection in principle to the application, provided that the applicant would submit a drainage proposal including drainage mitigation measures before commencement of land filling works on the Site, and to implement the proposed drainage facilities to the satisfaction of his department. As such, relevant approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions would result in revocation of the planning permission. Upon compliance with these recommended approval conditions, the proposed filling of land would not create adverse drainage impact on the surrounding areas.
- 11.4 Relevant departments including DAFC, DEP, C for T and D of FS have no adverse comment on the application on the agricultural, environmental, traffic and fire safety aspects.
- 11.5 The Committee has approved a similar application for the same use (Application No. A/YL-LFS/268) in 2015 to the immediate south of the Site within the same “V” zone. Approval of the current application is in line with the previous decision of the Committee.
- 11.6 There are 4 public comments received objecting to the application on the grounds as summarized 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 above and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.9.2024, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no part of the Site shall be filled other than soil to a depth exceeding 1.5 m, as proposed by the applicant;
- (b) no part of the Site shall be filled to a level higher than the adjoining area;
- (c) no land filling works shall be carried out on the hard-paved area within the Site;
- (d) the submission of a drainage proposal including drainage mitigation measures before commencement of land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (e) the implementation of the drainage proposal including drainage mitigation measures identified therein 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
- (f) if any of the above planning conditions (d) or (e) is not complied with before commencement or upon completion of the land filling works, respectively, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the applicant fails to demonstrate that the filling of land would not cause flooding problem to the surrounding areas.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 13.2 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.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application Form received on 4.6.2020 with proposed layout plan
Appendix Ia	FI received on 15.7.2020 and 16.7.2020 providing details of land filling and responses to the comments of AFCD
Appendix II	Similar Application within the Same “V” Zone on the Approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/9
Appendices III-1 to III-4	Public Comments Received During Statutory Publication Period
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2020**