

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-HTF/1095**

- Applicant** : Mr. TANG Lik Ki represented by Goldrich Planners and Surveyors Limited
- Site** : Lots 438 (Part) and 439 (Part) in D.D.128, Ha Tsuen Fringe, Yuen Long, New Territories
- Site Area** : 2,065 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Barbecue Area for a Period of 3 Years and Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary barbecue area for a period of 3 years and filling of land. The Site falls within an area zoned “Agriculture” (“AGR”) on the Approved Ha Tsuen Fringe Outline Zoning Plan (OZP) No. S/YL-HTF/12 (**Plan A-1a**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of 3 years within the zones requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. According to the Notes of the “AGR” zone, any filling of land, including that to effect a change of use to any of those specified in Columns 1 and 2 or uses/developments always permitted under the covering Notes, requires planning permission from the Board.
- 1.2 The Site involves 3 previous applications (No. A/YL-HT/414, A/YL-HTF/1083 and A/YL-HTF/1091) for various uses. The last application (No. A/YL-HTF/1091), submitted by a different applicant, covering a similar area for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years was approved with conditions by the Committee on 21.9.2018. The application was revoked on 21.3.2019 due to non-compliance with approval conditions on drainage, landscape and fire service installations aspects as the previous applicant did not

implement the development. The Site is currently vacant and unpaved with soiled ground with grass (**Plans A-2, A-4a and 4b**).

- 1.3 The Site consists of two separate parts, i.e. an eastern part (Site A) (803m<sup>2</sup>) and a western part (Site B) (1,262 m<sup>2</sup>) (**Drawings A-1 and A-2**). The Site is accessible via a local track from Deep Bay Road. Vehicle and pedestrian access points are located at the northern boundary of Site A while another pedestrian access point is also located at the north-eastern boundary of Site B (**Drawings A-1 and A-2**). As shown on the proposed layout plan at **Drawing A-3**, 7 temporary structures with a total floor area of about 672m<sup>2</sup> and building height of 3m to 5.4m are proposed at the Site. Site A includes 5 temporary structures including 1 guard room, 1 office, 1 function room, 1 counter and food area and 1 toilet with a septic tank. There are 2 open sheds for 6 barbecue grills at Site B. The applicant proposes to fill an area of 814m<sup>2</sup> (about 39.4% of the Site) with concrete to become a hard-paved area for erecting the temporary structures as shown in **Drawing A-4**. The applicant indicates that 5 private car parking spaces and 1 loading/unloading space will be provided at Site A.
- 1.4 According to the applicant, the operation hours are from 7:00 a.m. to 11:00 p.m. every day including Sundays and public holidays. There will be three sections each day (i.e. morning, afternoon and evening). A maximum of 40 visitors and 5 private cars will be allowed for each section. Plans showing the location, site access, layout and drainage proposal submitted by the applicant are at **Drawings A-1 to A-4**.
- 1.5 In support of the application, the applicant has submitted the following documents:
  - (a) Application Form received on 19.7.2019 with location plan, **Appendix I** layout plan and drainage plan
  - (b) Further Information of 26.7.2019 clarifying number of **Appendix Ia** visitors and barbecue grills

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Attachment of the application form (**Appendix I**). They can be summarized as follows:

- (a) The Committee approved a planning application for temporary place of recreation, sports or culture (hobby farm) for a period of 3 years at the Site.
- (b) The applicant claims that the proposed use would not have adverse visual and sewerage impacts.
- (c) The areas with structures are paved with concrete and surface water will be soaked into the soil on the unpaved portion.
- (d) Five private car parking spaces and one loading/unloading parking space will be provided for visitors and logistics purpose.
- (e) The proposed temporary barbecue area use provides a recreational outlet to the local community and tourists. It also provides valuable employment opportunities to the nearby residents.

- (f) The operation hours are from 7:00 a.m. to 11:00 p.m. every day including Sundays and public holidays.

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

The applicant is not the “current land owner” and 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 posting site notice and sending a registered mail to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

- 4.1 The Site is currently not subject to any planning enforcement action.
- 4.2 The Site was part of a previous enforcement action against unauthorized development (UD) in 2017 involving storage and workshop uses. Enforcement Notice (EN) was issued on 12.5.2017 to the concerned party. The UD was discontinued and Reinstatement Notice (RN) requiring the concerned party to remove the leftovers and debris, remove the hard paving and grass the area was issued on 21.12.2017. Compliance Notice (CN) was then issued on 15.5.2018.

### **5. Previous Applications**

- 5.1 The Site involves 3 previous applications (No. A/YL-HT/414, A/YL-HTF/1083 and A/YL-HTF/1091) for various uses. Details of the applications are summarised in **Appendix II** and their locations are shown on **Plans A-1a and A-1b**.
- 5.2 Application No. A/YL-HT/414 covering a much larger site of about 52 hectares for a temporary racing circuit for a period of 3 years was rejected by the Committee on 29.7.2005 on the grounds that the proposed development was not in line with the planning intention of the “AGR” and “Green Belt” (“GB”) zones; there was insufficient information in the submission to demonstrate that the proposed development would not have adverse environmental, ecological, traffic, drainage, geotechnical, landscape and visual impacts; and approval of the application would set an undesirable precedent for similar applications in the “GB” and “AGR” zones.
- 5.3 Application No. A/YL-HTF/1083 covering a similar area for temporary open storage of construction materials and equipment for a period of 3 years was rejected by the Committee on 25.8.2017 on the grounds that the proposed use was not in line with the planning intention of the “AGR” zone; not compatible with the surrounding areas; not in line with the TPB PG-No.13E that the applicant fails to demonstrate the applied development would not generate adverse landscape and environmental impacts; approval of the application would set an undesirable precedent for other developments within the “AGR” zone.
- 5.4 The last application (No. A/YL-HTF/1091), submitted by a different applicant, covering a similar area for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years was approved with conditions by the Committee on 21.9.2018. The proposed use involved majority of agriculture/farming use (about

91% of the site) and was considered in line with the planning intention of the “AGR” zone. The use was considered unlikely to result in significant adverse landscape, ecological, environmental, traffic and drainage impacts on the surrounding areas and there is no adverse comment from concerned Government Departments. The application was revoked on 21.3.2019 due to non-compliance with approval conditions on drainage, landscape and fire service installations aspects as the proposal has not been implemented.

## **6. Similar Application**

There is one similar application (No. A/YL-HT/491) for temporary open-air barbecue area for a period of 3 years within the same “AGR” zone on the OZP which was rejected by the Committee on 22.6.2007 mainly on grounds that the proposed development was not in line with the planning intention of “AGR” zone; there was insufficient information in the submission to demonstrate that the proposed use would not have adverse traffic impact on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the "AGR" zone. Details of the application is summarized at **Appendix III** and the location of the application site is shown on **Plan A-1a**.

## **7. The Site and Its Surrounding Areas (Plan A-2 to Plan A-4b)**

7.1 The Site is:

- (a) currently vacant and unpaved with soiled ground with grass; and
- (b) accessible via a local track from Deep Bay Road.

7.2 The surrounding areas have the following characteristics:

- (a) predominately occupied by fallow agricultural land, woodland, graves and scrubland;
- (b) to its further north-west are two open storage yards for construction materials, machinery and metal ware.

## **8. Planning Intention**

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

## **9. Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application and public comments are summarized as follows:

### **Land Administration**

9.1.1 Comments of the District Lands Officer/Yuen Long (DLO/YL):

- (a) The Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible from Deep Bay Road through Government Land (GL). His office does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within “Fu Tei Au Site of Archaeological Interest” (AM 98-0910).
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should the application be approved, 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. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. 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 premium or fee, as may be imposed by LandsD.

### **Traffic**

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

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under Transport Department's (TD) purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads/drains.

- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

### **Nature Conservation**

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

The Site falls within “AGR” zone and is currently fallow. Although agricultural activities are not active in the vicinity, agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open field cultivation, greenhouses, etc. As the Site possesses potential for agricultural rehabilitation, the application for the proposed use and land filling is not supported from agricultural point of view.

### **Environment**

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

- (a) There are no environmental complaints pertaining to the Site in the past three years.
- (b) Should the planning application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.

### **Landscape**

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

- (a) The Site, located to the west of Shenzhen Bay Bridge, lies at the fringe of “AGR” zone. To the east and southeast of the Site is an area zoned “GB” and an area zoned “CPA” is found to the further northwest. The Site is separated into western and eastern portions, and it is subject of previous Application No. A/YL-HT/1091 for temporary hobby farm which was revoked due to non-compliance with the planning approval conditions including the landscape condition. The current application seeks planning permission for temporary barbeque area for a period of 3 years and land filling by a different applicant on a slightly smaller site.
- (b) With reference to the Site photos dated 3.8.2018 and aerial photo of 2018, no major vegetation is observed on both portions of the Site. The western portion of the Site is mainly hard paved, while hard paved areas and land filling activities are observed at the eastern portion. Some existing large trees are found along the boundary outside both portions of the Site. A wooded knoll is observed to the south, and Shenzhen Bay Bridge is located to the further east of the Site. The Site is in an area of rural landscape character dominated by woodlands but disturbed by open storage yards and temporary structures.

- (c) The proposed development is considered not entirely compatible with the landscape character of the area. Approval of the application would set an undesirable precedent for other similar uses. The cumulative impact of which would degrade the landscape quality of the area.
- (d) It is also noted that the proposed development would involve substantial hard paving of the Site and compaction of soil for the construction of seven temporary structures. The extensive soil compaction would inevitably decline the soil fertility and which could lead to gradual degradation in the overall quality of the “AGR” zone.
- (e) Based on the above, he has reservations on the application from landscape planning perspective.

### **Drainage**

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

- (a) He has no objection in principle to the proposed application from a drainage point of view; and
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest a condition should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and to maintain the proposed drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.

### **Building Matters**

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the 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 application site under the BO.
- (c) The two portions of the Site shall be considered as two separate sites and provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively.

- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity of each individual site shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

### **Fire Safety**

#### 9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Others**

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

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding;
- (b) Proper licence / permit issued by FEHD is required if there is any catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public; and
- (c) For any waste generated from such activity / operation, the applicant should arrange disposal properly at their own expenses.

#### 9.1.11 Comments of the Antiquities and Monuments Office (AMO):

In view of the location and scope of the proposed temporary barbecue area and according to the findings of the previous archaeological work in the surrounding area, the AMO has no objection to the application from cultural heritage viewpoint. The applicant is required to inform AMO immediately if antiquities or supposed antiquities are discovered within the Site during the construction and operation of the proposed temporary barbecue area.



### **District Officer's Comments**

9.1.12 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/no objection to the application:

- (a) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD);
- (b) Head of Geo Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (c) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD)
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure, Cultural and Services (DLCS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

### **10. Public Comments Received During Statutory Publication Period**

On 26.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 16.8.2019, five public comments were received from Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong, Hong Kong Bird Watching Society and two individuals objecting to the application (**Appendices IV-1 to IV-5**). The main objecting reasons are summarized below:

- (a) the applied use is not in line with the planning intention of the “AGR” zone;
- (b) the last application no. A/YL-HTF/1091 was revoked within a short period;
- (c) there is potential pollution impacts of the proposed use on the Deep Bay area;
- (d) the Board should not encourage “destroy first, build later” developments;
- (e) approval of the application would set an undesirable precedent for similar applications and cumulative effect of which would result in general degradation of the environment of the area; and
- (f) the Committee should not approve commercial activities in the rural area.

### **11. Planning Considerations and Assessments**

11.1 The subject application is for proposed temporary barbecue area for a period of 3 years and filling of land at the Site zoned “AGR” on the OZP. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. The proposed temporary barbecue area for a period of 3 years and filling of land is not in line with the planning intention of the “AGR” zone. In this regard, DAFC does not support the application from the agricultural point of view as the Site is considered having high

potential for agricultural activities such as open field cultivation and greenhouses. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

- 11.2 The proposed use is not entirely compatible with the surrounding environment which is an area of rural landscape character dominated by scrublands and fallow farmland (**Plan A-3**).
- 11.3 The proposed use would involve substantial hard paving of the Site (about 39.4% of the Site) and compaction of soil for the construction of seven temporary structures. The extensive soil compaction would inevitably decline the soil fertility which could lead to gradual degradation in the overall quality of the “AGR” zone. In this regard, CTP/UD&L, PlanD has reservation on the application from the landscape planning perspective. The approval of the application would set an undesirable precedent attracting other incompatible uses to proliferate in the area. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area.
- 11.4 The Committee has not approved any application for temporary barbecue area at the Site or within the subject “AGR” zone. Although the Site involved a previous application (No. A/YL-HTF/1091) for proposed temporary place of recreation, sports or culture (hobby farm) approved with conditions by the Committee on 21.9.2018, it was approved mainly on the considerations inter alia, that majority of the site (about 91%) is for agriculture/farming area. The current application is different in nature which is applied for barbecue area and filling of land. Besides, a similar application (No. A/YL-HT/491) for temporary open-air barbecue area was rejected by the Committee on 22.6.2007 mainly on the grounds of not in line with the planning intention of “AGR” zone and setting an undesirable precedent. Rejecting this application is in line with the Committee’s previous decision.
- 11.5 Five public comments were received objecting to the application mainly on grounds stated in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.4 are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for proposed temporary barbecue area for a period of 3 years and filling of land for the following reasons.
  - (a) the applied development is not in line with the planning intention of the “AGR” zone. The planning intention of the “ARG” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
  - (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact on the surrounding areas; and

- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications for other developments within the “AGR” zone, the cumulative effect of which will result in a general degradation of the rural environment.

12.2 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 3 years until **6.9.2022**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 11:00 p.m. to 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicles are allowed to queue back to public roads or reverse onto/from public roads during the planning approval period;
- (c) the submission of a revised 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 **6.3.2020**;
- (d) in relation to (c) above, the implementation of the revised drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **6.6.2020**;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **6.3.2020**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **6.6.2020**;
- (h) provision of fencing of the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **6.3.2020**;
- (i) if any of the above planning conditions (a), (b) or (e) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (c), (d), (f), (g) or (h) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon expiry of the planning permission, the reinstatement of the 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 V**.

### **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 reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

### **14. Attachments**

<b>Appendix I</b>	Application Form received on 19.7.2019 with location plan, layout plan and drainage plan
<b>Appendix Ia</b>	Further Information of 26.7.2019 clarifying number of visitors and barbecue grills
<b>Appendix II</b>	Previous Applications covering the Site
<b>Appendix III</b>	Similar Application
<b>Appendices IV1-IV5</b>	Public Comments
<b>Appendix V</b>	Advisory Clauses
<b>Drawing A-1</b>	Location Plan
<b>Drawing A-2</b>	Site Access Plan
<b>Drawing A-3</b>	Proposed Layout Plan
<b>Drawing A-4</b>	Proposed Drainage Plan
<b>Plan A-1a to A-1b</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to 4b</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2019**