

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/382

- Applicant** : Mr. CHEUNG Wing-cheong represented by Goldrich Planners and Surveyors Limited
- Site** : Lots 711 (Part), 713 (Part), 714 S.A (Part), 714 S.B ss.1 (Part) and 714 S.B RP (Part) in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 583m²
- 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** : “Green Belt” (“GB”)
- Application** : Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within the “GB” zone on the OZP. According to the Notes of the OZP for “GB” zone, ‘Agricultural Use’ 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 planning permission from the Town Planning Board (the Board). The Site is currently vacant and mainly covered with soil/grass (**Plan A-4**). There is no previous planning application covering the Site.
- 1.2 The Site is accessible via a local track leading from Deep Bay Road (**Drawing A-1 and Plan A-2**). As shown on the drainage plan and site plan at **Drawings A-2 and A-3** respectively and indicated in the submission, the whole site (about 583m²) is proposed to be filled with soil of about 1m depth to a site level of about 5.7 to 5.9mPD. The purpose of land filling is to avoid flooding and make the land suitable for farming (planting for fruit trees). According to the applicant, the Site has been filled with soil of less than 1m in depth. The applicant states that he will remove the current leftover soil and refill the Site with suitable soil for farming. Meanwhile, the applicant has installed an earth ditch about 1 m wide to direct the water flow from south-east to north where an existing stream is located in order to prevent flooding during rainy seasons (**Drawing A-2**). The location plan with access road, drainage

plan and site plan are at **Drawings A-1 to A-3** respectively.

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

- (a) Application Form with attachments received on 18.11.2020 (**Appendix I**)
- (b) Further Information (FI) received on 14.12.2020 with responses to Transport Department (TD)'s comments (**Appendix Ia**)
(*exempted from publication requirements*)
- (c) FI received on 23.12.2020 with clarification of the current situation of the Site and the details of the proposed land filling work (**Appendix Ib**)
(*exempted from publication requirements*)

2. Justifications from the Applicant

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

- (a) The Site is a small piece of agricultural land of about 583m². The Site, which is located at a lower level than the surroundings, is enclosed by a local road at the south, a local track at the east and two brick houses at the north-west. Flooding always occurs during rainy seasons and hence cultivation was impossible. The Indigenous Inhabitant Representative of Mong Tseng Village, Mr. CHEUNG Kam-chiu, had lodged the complaint to the Drainage Services Department (DSD) in 2019 about the flooding issue. Unfortunately, there is no help or assistance. Therefore, the applicant filled the Site with soil with a depth of less than 1m to improve the situation.
- (b) The applicant proposes to remove the leftover soil on the Site and refill with suitable soil for farming. All gravels and other materials which are not suitable for cultivation, such as non-inert materials, have been removed. The applicant will ensure that no construction material or the like will remain on-site. It is estimated that about 1m depth of soil will be filled to smoothen the surface for cultivation. With the proposed filling of land, the level of the Site will range from +5.7mPD to +5.9mPD.
- (c) The applicant claims that there will be about 5 round trips of dump trucks for transportation of land filling material each day with a total of 10 round trips in 2 days. The site formation will take one day with one bulldozer working on the Site. A total of 3 working days are expected during the construction period. There will also be one or two goods vehicles to bring young fruit trees to the Site for planting which is most likely in spring time. No other vehicle is expected afterwards.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is one of the "current land owners" 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 publishing notices in local newspaper, posting notice outside the Site and sending notice to the Ping Shan Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is subject to an active planning enforcement case (No. E/YL-LFS/512) and the alleged unauthorized development (UD) is filling of land (**Plan A-2**). The Enforcement Notice (EN) was issued to the registered land owners on 14.7.2020 requiring the UD to be discontinued by 28.7.2020. The Reinstatement Notice (RN) was issued on 14.8.2020 requiring to remove the leftovers, debris and fill materials and to grass the land by 14.11.2020. The RN had not been complied with upon the expiry. The Site would be under close monitoring and prosecution action would be taken.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines for “Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance” (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are summarized as follows and detailed at **Appendix II**.

- (a) there is a general presumption against development (other than redevelopment) in “GB” zone. In general, the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) an application for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) passive recreational uses which are compatible with the character of surrounding areas may be given sympathetic consideration;
- (d) the design and layout of any proposed development should be compatible with the surrounding area. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

6. Previous Application

The Site does not involve any previous planning application.

7. Similar Applications

7.1 Within the same “GB” zone, there are 9 similar applications (Applications No. A/YL-LFS/9, 10, 101, 132, 133, 136, 201, 202 and 359) for filling of pond / land for various

agricultural uses. Details of these applications are summarized at **Appendix IV** and the locations of these application sites are shown on **Plan A-1**.

Approved Applications

- 7.2 Applications No. A/YL-LFS/9 and 10 for pond filling for agricultural use (fruit tree plantation) were approved by the Rural and New Town Planning Committee (the Committee) on 23.8.1996 on the considerations that the proposed development was in line with the planning intention of the “GB” zone, compatible with the surrounding area, not within the Deep Bay Buffer Zone and the study area of the “Study on the Ecological Value of Fish Ponds in the Deep Bay Area”, and not objected by relevant departments including Environmental Protection Department (EPD) and DSD. Application No. A/YL-LFS/132 for land filling for plant nursery use was approved by the Board upon review on 19.8.2005 on the considerations that the applicant was a genuine farmer, the proposed extent of land filling was acceptable, and the proposed Dragon Fruit orchard could be regarded as a planning gain.

Rejected Applications

- 7.3 6 applications (No. A/YL-LFS/101, 133, 136, 201, 202 and 359, in which the first three involved the same site) covering four sites for pond and/or land filling/ excavation for agricultural use were rejected by the Committee/ the Board upon review between 2003 and 2020. Except Application No. A/YL-LFS/202, the others fell within the Wetland Buffer Area (WBA). The rejection reasons mainly included not complying with the TPB-PG No. 10 and/or the then TPB-PG No. 12B for “Application for Developments within Deep Bay Area”, not in line with the planning intention of the “GB” zone, failing to demonstrate a need for filling and/or excavation of land and/or pond, failing to demonstrate no adverse environmental/ drainage/ flooding/ landscape impacts on the surrounding areas and setting an undesirable precedent for similar applications.

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

8.1 The Site is:

- (a) currently vacant and covered with soil/grass; and
- (b) accessible via a local track from Deep Bay Road.

8.2 The surrounding areas have the following characteristics (Plans A-1 to A-4):

- (a) to the immediate north and north-east are agricultural land and to the further north are open storage yards which are suspected unauthorized developments (UDs);
- (b) to the immediate west are residential dwellings and vacant land and to the north-west are unused land and an open storage of construction materials;
- (c) to the further south-west across the local track are orchards and burial ground; and

- (d) to its immediate east is a hobby farm with valid planning permission (Application No. A/YL-LFS/366) and to the south-east is fallow agricultural land.

9. Planning Intention

The planning intention of “GB” is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. However, limited development may be permitted if they are justified on strong planning grounds. As filling of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the applications are summarized as follows:

Land Administration

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

- (a) The Site comprises Old Schedule Agricultural Lots (OSALs) 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) It is noted that the proposed filling of land is to allow smooth surface runoff, avoid flooding and make the Site suitable for farming. His office has no objection to the proposed filling of land from the lease perspective.
- (c) It is noted that no structure is proposed on the Site by the applicant.

Traffic

- 10.1.2 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 or reverse onto/from public roads.
- (c) The local track leading to the Site is not under Transport Department (TD)’s 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.

10.1.3 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 nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Environment

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

- (a) He has no objection to the application.
- (b) No environmental complaint pertaining to the Site has been received in the past three years.
- (c) The applicant should be reminded of the detailed comments at **Appendix V**.

Landscaping

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

- (a) As the proposed filling mainly intended for agricultural use and is small in scale, it is unlikely to generate adverse visual impact to the surrounding areas.
- (b) The Site, located adjacent to a local road leading to Deep Bay Road, falls within an area zoned “Green Belt” (“GB”) on the approved Lau Fau Shan & Tsim Bei Tsui OZP No. S/YL-LFS/9. The Site is not the subject of any previous application. A similar planning application No. A/YL-LFS/202 for the proposed land filling by 1.2m for agricultural use was rejected by the Board in 2010 near the Site in the same GB zone. The applicant seeks planning permission for the proposed filling of land with soil of about 1m depth with an area about 583m² for permitted agricultural use.
- (c) With reference to the aerial photo of 2020 and the site photos taken on 24.11.2020, the Site is a farmland and the proposed filling of land has been completed. There are two houses to the northwest of the Site, a local road to the south and a stream to the north. No existing tree is observed within the Site. The Site is located in an area of rural coastal plain landscape character predominated by farmlands with some open storage yards in the proximity. The proposed filling of land for agricultural use is considered not entirely incompatible to the landscape character of the surrounding area.

- (d) Referring to the aerial photos from 2018-2020, vegetation clearance and filling of land have been observed on the Site. Adverse landscape impact has taken place. Approval of the planning application would encourage similar site alteration prior to obtaining planning approval within the area. The cumulative impact of which would result in further degradation of the landscape quality of the surrounding environment in the “GB” zone. Hence, she has reservations to the application from landscape planning perspective.
- (e) In view that the Site is not adjacent to any prominent public frontage, a landscape condition is considered not required should the application be approved by the Board.

Nature Conservation

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

- (a) The Site falls within the “GB” zone and possesses potential for agricultural rehabilitation. On the basis of the available information, he has no particular comment on the application from agricultural point of view.
- (b) However, during the inspection on 22.12.2020, it was found that a large portion of the Site had been filled.

Drainage

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

- (a) He has no objection in principle to the application from drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest that a condition should be stipulated requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his department.
- (c) The applicant should be reminded of the detailed comments at **Appendix V**.

Building Matters

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

As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application. The applicant should be

reminded of the detailed comments at **Appendix V**.

Geotechnical

10.1.9 Comment of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) He has no adverse comment on the application.
- (b) It is noted that land filling is proposed as part of the application. GEO is not responsible for the control of land filling activities.

District Officer's Comments

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

His office has received one comment from the locals objecting to the application on the following grounds (**Appendix IV-1**):

- (a) The Site is located next to the access road for the villagers in Mong Tseng Tsuen and Mong Tseng Wai. The land filling work will create traffic congestion during the peak hours.
- (b) It is not necessary to fill the land for agricultural use.
- (c) The Site is located at the lower course of the stream. The proposed filling of land will cause flooding at the upper stream and affect the fish ponds and land owners at the upper stream.

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

- (a) Project Manager (West), CEDD(PM(W), CEDD);
- (b) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Fire Services (D of FS);
- (e) Director of Leisure and Cultural Services (DLCS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comment Received During Statutory Publication Period

On 27.11.2020, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received (**Appendix IV-2**) objecting to the application on the grounds that the proposed filling of land will create a trend to develop the hinterland in "GB" zone and affect the nearby watercourse.

12. Planning Considerations and Assessments

12.1 The application is for proposed filling of land for permitted agricultural use at the Site zoned "GB" on the OZP. The planning intention of "GB" zone is to define the

limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. Whilst agricultural use is always permitted within the "GB" zone, filling of land within "GB" 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.

- 12.2 The Site is located in an area of rural coastal plain landscape character predominated by farmland with open storage yards in the proximity. The proposed filling of land (involving about 583m²) for agricultural use is considered not incompatible with the surrounding areas.
- 12.3 The applicant states that the proposed filling of land is for farming purpose (planting for fruit trees). According to the TPB PG-No.10, any proposed development should be compatible with the surrounding areas and should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape and cause any adverse visual impact on the surrounding environment. While CTP/UD&L, PlanD has reservation to the application from landscape planning perspective as vegetation clearance and land filling have been observed on the Site and approval of the planning application may encourage similar site alteration prior to obtaining planning approval, it is noted that the applicant proposes to remove the leftover soil on the Site and refill the whole site (about 583 m²) with soil suitable for farming. CTP/UD&L, PlanD also indicates that as the proposed land filling is intended for agricultural use and small in scale, it is unlikely to generate adverse visual impact to the surrounding areas. As such, the proposed filling of land is generally in line with the TPB PG-No.10.
- 12.4 There is no adverse comment from concerned Government departments, including DAFC, DEP, C for T and CE/MN of DSD. The proposed filling of land will unlikely create significant adverse agricultural, environmental, traffic and drainage impacts to the surrounding areas. In particular, the applicant states that the proposed filling of land can also help address the flooding problem. In this regard, CE/MN of DSD has no objection in principle to the application, provided that the applicant would submit a revised drainage proposal, and to implement and maintain the drainage facilities on the Site to the satisfaction of his department. As such, relevant approval conditions are recommended in paragraph 13.2 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.
- 12.5 Three similar applications (No. A/YL-LFS/9, 10 and 132) for filling of pond/land for fruit tree plantation/plant nursery use have been granted in the vicinity. Although nine similar applications for filling of pond/land and/or excavation of land for various agricultural uses were rejected, they were rejected mainly on grounds of failing to demonstrate the need for the land/pond filling and/or land excavation and adverse comments from concerned Government departments. For the current application, it is different in that the applicant has demonstrated the need for land filling and there were no adverse departmental comments. As such, approval of the current application is considered in line with the Committee's previous decisions.

12.6 There are 2 public comments received objecting to the application on the grounds as summarized in paragraphs 10.1.10 and 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 are relevant.

13. Planning Department's Views

13.1 Based on the assessment made in paragraph 12 and having taken into the public comment in paragraphs 10.1.10 and 11 above, the Planning Department has no objection to the application.

13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 8.1.2025, 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 m, as proposed by the applicant;
- (b) no vehicles are allowed to queue back or reverse onto/from public roads;
- (c) the submission of a revised drainage proposal before commencement of the land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) in relation to (c) above, the implementation of the revised drainage proposal upon completion of the land filling works on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (e) if any of the above planning conditions (c) or (d) is not complied with before commencement or upon completion of the land filling works, respectively, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory Clauses

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

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

the proposed filling of land is not in line with the planning intention of the "Green Belt" zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse the planning permission.
- 14.2 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.
- 14.3 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.

15. Attachments

Appendix I	Application Form received on 18.11.2020
Appendix Ia	Further Information received on 14.12.2020
Appendix Ib	Further Information received on 23.12.2020
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Application for Development within the Green Belt Zone (TPB PG-No. 10)
Appendix III	Similar Applications within the same "GB" Zone
Appendix IV-1	Public Comment Relayed by DO/YL
Appendix IV-2	Public Comment Received During Statutory Publication Periods
Appendix V	Advisory Clauses
Drawing A-1	Location Plan with Vehicular Access
Drawing A-2	Proposed Drainage Plan
Drawing A-3	Site Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photo

**PLANNING DEPARTMENT
JANUARY 2021**