

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/386

<u>Applicant</u>	: Mr. LAM Kuen
<u>Site</u>	: Lots 1945 S.B RP and 1945 S.C in D.D.129, Lau Fau Shan, Yuen Long, New Territories
<u>Site Area</u>	: About 2,800 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/9
<u>Zoning</u>	: “Coastal Protection Area” (“CPA”)
<u>Application</u>	: Proposed Filling of Land and Pond

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land and pond at the application site (the Site) to avoid mosquito breeding (**Plan A-1**). The Site falls within an area zoned “CPA” on the OZP. According to the Notes of the OZP for the “CPA” zone, any filling of land/pond or excavation of land requires permission from the Town Planning Board (the Board). The Site comprises two separate portions (i.e. the northern and southern portions). For the northern portion, it is mainly occupied by a pond with overgrown weed and some temporary structures are observed at its northern and western boundaries. For the southern portion, it is a filled vacant land covered with loose soil and grass (**Plans A-4a to A-4d**).
- 1.2 According to the applicant, the northern portion (about 1,500 m²) is not filled while the southern portion (about 1,300 m²) has been filled with soil (**Drawing A-2**). The applicant proposes to fill the northern portion with soil of about 1 m depth and no additional filling will be carried out at the southern portion. The proposed final site formation level will be at the same level of the adjacent roads. The Site is accessible via a local track leading from Deep Bay Road (**Drawing A-1**). The lot index plan with vehicular access and proposed land/pond filling plan are at **Drawings A-1** and **A-2** respectively.

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

- (a) Application Form received on 23.11.2020 with **(Appendix I)** supplementary information
- (b) Further Information (FI) received on 5.1.2021 responding **(Appendix Ia)** to the comments of the Commissioner for Transport (C for T) with the vehicular access plan
(exempted from publication and recounting requirements)
- (c) FI received on 8.1.2021 clarifying the proposed use **(Appendix Ib)** (filling of land and pond) and the filling condition of the Site
(exempted from publication and recounting requirements)

2. Justifications from the Applicant

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

- (a) the Site is located in Fu Cho Village with the two largest pig farms in Hong Kong, where is the breeding ground of dengue fever with severe mosquito infestation;
- (b) the mosquito problem has not been resolved even with the mosquito control provided by the Food and Environmental Hygiene Department (FEHD). The proposed land/pond filling is to remove stagnant water next to the pig farm to eliminate mosquito breeding;
- (c) the Site is not a pond/fish pond per se and there is only the accumulation of stagnant water on vacant field. The villagers only built the bund so it looks like a pond; and
- (d) no construction material or waste has been/will be used to fill the Site.

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 obtaining the consent of the current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

Part of the Site is subject to an active enforcement case (No. E/YL-LFS/513) (**Plan A-2**) and the alleged unauthorized development (UD) is filling of pond. The Enforcement Notice was posted on 9.10.2020 and the UD discontinued. The Reinstatement Notice (RN) was posted on 21.10.2020 requiring to remove the fill materials from the pond by 21.1.2021. The Site will be kept under close monitoring for further action.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

Within the same “CPA” zone, there is no similar application for filling of land. However, 1 similar application (No. A/YL-LFS/30) for proposed pond filling and agricultural use (planting of fruit tree) was rejected by the Rural and New Town Planning Committee (the Committee) on 28.8.1998 on the reasons that the proposed development did not comply with the then TPB-PG No. 12A for “Application for Developments within Deep Bay Buffer Zone”; insufficient information to demonstrate that the proposed development would not have significant adverse ecological and drainage impacts on the surrounding areas; and undesirable precedent for similar applications. Details of the application are summarized at **Appendix II** and its location is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) comprised of two separate portions, i.e. the northern and southern portions. For the northern portion, it is mainly occupied by a pond with overgrown weed and some temporary structures are observed at its northern and western boundaries. For the southern portion, it is a filled vacant land covered with loose soil and grass; and
- (b) accessible via a local track leading from Deep Bay Road (**Drawing A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) to its east across Deep Bay Road is the “Recreation” (“REC”) zone with presence of parking of vehicles and open storage of construction materials which are suspected UDs, residential dwelling and vacant land;
- (b) to its south is the “REC” zone with the presence of open storage yards of construction and recycling materials which are suspected UDs, vacant land and unused land;
- (c) to its west is a pigsty; and
- (d) to its north are unused land, vacant land, a pond, some residential dwellings and a fish farm.

8. Planning Intention

The planning intention of “CPA” zone is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development. It may also cover areas which serve as natural protection areas sheltering nearby developments against the effects of coastal erosion. There is a

general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted. As filling of land/pond 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 summarised as follows:

Land Administration

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

- (a) The Site is 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) It is noted that the proposed filling of land/pond is to avoid the breeding of mosquitos. So he has no objection to the filling of land/pond from the lease perspective.
- (c) It is noted that no structure is proposed on the Site by the applicant.

Traffic

9.1.2 Comments of the 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 nearby public roads/drains.

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

Environment

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

- (a) He has no objection to the application.
- (b) The applicant should be reminded that the land should not be filled with construction waste and it is the applicant's responsibility to comply with all relevant environmental 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.html) to minimize the environmental impacts during the construction stage.
- (c) No substantiated environmental complaint pertaining to the Site has been received in the past three years.

Visual & Landscape

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

- (a) According to the aerial photo of 2020 and the site photos taken on 1.12.2020, the northern portion of the Site is a marshland/pond and the southern portion is a filled vacant land. To the northwest of the Site are temporary structures and to the south is a local road. No existing tree is observed within the Site. The Site is located in an area of rural coastal plain landscape character predominated by ponds, vacant lands and woodlands with temporary structures and warehouses in the proximity. The proposed filling of land/pond is considered not entirely incompatible to the landscape character of the surrounding area.
- (b) According to the aerial photos of 2019 and 2020, vegetation clearance including tree removal and filling of land has been observed at southern portion of the Site. While the proposed development would not cause significant adverse landscape impact, approval of the planning application would encourage similar site alteration and tree removal 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 "CPA" zone. Hence, she has reservation on the application from landscape planning perspective.
- (c) As the proposed filling mainly intends to avoid the breeding of mosquito and involves a depth of filling of about 1m with the same

level of existing roads, it is unlikely to generate any adverse visual impact on the surrounding areas.

- (d) In view that no significant visual impact arising from the proposed filling of land/pond is anticipated, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

Nature Conservation

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

- (a) The Site comprising two segments falls within an area zoned “CPA” on the OZP. According to the aerial photos from LandsD, the Site was partly filled in 2019 – 2020. Her site inspection dated 22.12.2020 revealed that the northern segment was currently a wet grassland while the entire southern segment had been filled. The southern segment was noted to be adjacent to a watercourse leading to a nearby coastal mudflat habitat to the northwest of the Site. In view that part of the Site remains a wetland and the application did not indicate measures to avoid causing disturbance to the nearby watercourse, she has concern on the proposed filling of land and pond from nature conservation perspective.
- (b) As the subject ponds are seen with potential for fish culture, she does not support the application for pond filling from fish culture 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 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 flood mitigation measures, to implement and maintain the proposed flood mitigation measures/drainage facilities to the satisfaction of his department. The flood mitigation measures shall be completed upon the completion of filling works. The applicant is required to demonstrate in the drainage proposal that the proposed filling works will not obstruct the overland flow nor cause any adverse drainage impact to the adjacent areas.

Building Matters

9.1.8 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, he is not in a position to offer comments on the suitability for the use proposed in the Site.
- (b) The applicant should be reminded of his detailed comments at **Appendix IV**.

Others

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

- (a) No FEHD's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surroundings.
- (b) For any waste generated from the activity/ operation, the applicant should arrange disposal properly at their own expenses.
- (c) It shall be the due diligence of the applicant to make every effort to take precautionary measures within the private lots and on related activities to prevent mosquito breeding and rodent infestation. Authority conferred by relevant legislation would be executed by his Department where situation warrants.
- (d) The mosquito prevention and control work at public place would be conducted by FEHD regularly including the vicinities of the mentioned pig farms. These included but not limited to conducting fogging operations, spraying larvicide and distributing anti-mosquito promotional leaflets to villagers.
- (e) The applicant should be reminded of his detailed comments at **Appendix IV**.

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) Head (Geotechnical Engineering Office), Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Project Manager (West), CEDD (PM(W), CEDD);
- (c) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (d) Principal Project Coordinator/Special Duty, DSD (PPC/SD, DSD);
- (e) Director of Electrical and Mechanical Services (DEMS);

- (f) Director of Fire Services (D of FS);
- (g) Director of Leisure and Cultural Services (DLCS);
- (h) Commissioner of Police (C of P); and
- (i) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During the Statutory Publication Period

- 10.1 On 1.12.2020, the application was published for public inspection. During the statutory public inspection period, 5 public comments were received from the Kadoorie Farm and Botanic Garden Corporation, the World Wide Fund for Nature Hong Kong, Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual raising concern or objecting to the application and the reasons are summarized below (**Appendices III-1 to III-5**).
- 10.2 Four commenters objected to the application on the grounds that the proposed development is not in line with the planning intention of the “CPA” zone; the proposed use will lead to degradation of the natural environment; the Board should not encourage “destroy first, build later” attitude; the applicant should remove all unnecessary water collection and eliminate the sources of mosquito breeding; and approval of the application would set an undesirable precedent for similar applications. The remaining one raised concerns that the proposed development may associate with pond filling and undesirable precedent so the history of the Site should be examined.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed filling of land and pond to avoid mosquito breeding. The Site is zoned “CPA” on the OZP which intends to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. In general, only developments that are needed to support the conservation of the existing natural landscape or scenic quality of the area or are essential infrastructure projects with overriding public interest may be permitted. The Site comprises the northern and southern portions. The northern portion is currently a pond with overgrown weed while the southern portion has been filled and covered with loose soil and grass (**Plans A-4a to A-4d**). DAFC pointed out that the northern portion was currently a wet grassland while the entire southern portion had been filled. The southern portion was adjacent to a watercourse leading to a nearby coastal mudflat habitat to the northwest of the Site (**Plan A-2**). In view that part of the Site remains a wetland and the application did not indicate measures to avoid causing disturbance to the nearby watercourse, she has concern on the proposed filling of land and pond from nature conservation perspective. Besides, the subject ponds are seen with potential for fish culture, she does not support the application for pond filling from fish culture perspective. The proposed filling of land and pond is not in line with the planning intention of the “CPA” zone. Nevertheless, the applicant did not provide any justifications for the genuine need of filling of land and pond and whether there are other alternatives for the applicant to combat the mosquito breeding issue. As such, there is no strong planning justification in the submission for a departure from the planning intention of the “CPA” zone.

- 11.2 The Site is situated in an area of rural coastal plains landscape character predominated by ponds, vacant lands and woodlands with temporary structures and warehouses in the proximity. The proposed filling of land and pond is considered not entirely incompatible with the landscape character of the surrounding area.
- 11.3 CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. It is noted that from the aerial photos taken in 2019 and 2020 (**Plans A-3a and A-3b**), vegetation clearance including tree removal and filling of land have been observed at southern portion of the Site. While the proposed development would not cause significant adverse landscape impact, approval of the planning application would encourage similar site alteration and tree removal 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 “CPA” zone.
- 11.4 Other relevant Government departments, including DEP, C for T, CE/MN of DSD and D of FS have no objection to or no adverse comment on the application. The proposed use will unlikely create significant environmental, traffic, drainage and fire safety impacts to the surrounding areas.
- 11.5 No previous approval has been granted for the Site but there is 1 similar application (No. A/YL-LFS/30) for pond filling and agricultural use (planting of fruit tree) within the same “CPA” zone, which was rejected by the Committee in 1998 on the grounds of not complying with the then TPB-PG No. 12A; insufficient information to demonstrate that the proposed development would not have significant adverse ecological and drainage impacts on the surrounding areas; and undesirable precedent for similar applications. Rejection of the current application is considered in line with the Committee’s previous decision.
- 11.6 There are 5 public comments in which 1 raising concerns and 4 objecting to the application on the grounds summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 above 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 does not support the application for the following reasons:
 - (a) the proposed filling of land and pond is not in line with the planning intention of the “CPA” zone which is to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment with a minimum of built development. There is a general presumption against development in this zone. There is no strong planning justification in the submission for a departure from the planning intention; and
 - (b) approval of the application would set an undesirable precedent for similar applications for filling of land/pond within the “CPA” zone and the cumulative effect of approving such applications would result in a general degradation of the natural environment and landscape of the area.

- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until **22.1.2025**, 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 drainage proposal before commencement of the 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 drainage proposal upon completion of the 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 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**.

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 reason(s) 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 date when the validity of the permission should expire.

14. Attachments

Appendix I	Application Form received on 23.11.2020 with supplementary information
Appendix Ia	Further Information (FI) received on 5.1.2021 responding to the comments of the C for T with vehicular access plan
Appendix Ib	FI received on 8.1.2021 clarifying the proposed use (filling

Appendix II	of land and pond) and the filling condition of the Site
Appendices III-1 to III-5	Similar Application with the same “CPA” Zone
Appendix IV	Public Comments
Drawing A-1	Advisory Clauses
Drawing A-2	Lot Index Plan with Vehicular Access
Plan A-1	Proposed Land Filling Plan
Plan A-2	Location Plan with Similar Application
Plans A-3a to A-3c	Site Plan
Plans A-4a to A-4d	Aerial Photos
	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**