

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PN/52

<u>Applicant</u>	:	Mr. Ng Shu
<u>Site</u>	:	Lots 73 (Part), 74 (Part), 75, 76 (Part), 77 (Part) and 78 (Part) in D.D.135 and adjoining Government Land, Ha Pak Nai, Yuen Long, New Territories
<u>Site Area</u>	:	14,842m ² (including Government Land of about 394m ²)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
<u>Zoning</u>	:	“Coastal Protection Area” (“CPA”) (99%) and “Road” (1%)
<u>Application</u>	:	Temporary Recreation Use (Fishing Ground) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary recreation use (fishing ground) for a period of 3 years (**Plan A-1**). The Site is currently being used for the applied use under planning permission (No. A/YL-PN/42) valid until 8.5.2018.
- 1.2 According to the covering Notes of the OZP, subject to temporary uses for open storage and port back-up purposes which are prohibited in areas zoned “CPA”, temporary use or development of any land or buildings not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for in terms of the OZP.
- 1.3 The site is related to 4 previous Applications No. A/YL-PN/18, 34, 40 and 42 for the same use. The last Application No. A/YL-PN/42 for the same use was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 8.5.2015.
- 1.4 The layout plan, landscape plan, drainage plan and fire service installations plan

submitted by the applicant are at **Drawings A-1 to A-4** respectively.

1.5 The major development parameters of the previous approved application and the current application are as follows:

Major Development Parameters	Last Approved Application No. A/YL-PN/42 (a)	Current Application No. A/YL-PN/52 (b)	Difference (b) – (a)
Development/Use	Temporary Recreation Use (Fishing Ground) for a Period of 3 Years	Temporary Recreation Use (Fishing Ground) for a Period of 3 Years	No change
Site Area	About 14,994m ² (including Government Land of about 394m ²)	About 14,842m ² (including Government Land of about 394m ²)	-152m ²
Total Floor Area (Non-domestic)	Not more than 370m ²	Not more than 279m ²	-91m ²
No. of Structures	6 in total <ul style="list-style-type: none"> • 2 shelters for resting and/or storage of fishing tools • 1 shelter and toilet • 1 temporary structure for resting and storage of fishing tools • 1 container for storage of fishing tools • 1 temporary electricity room 	4 in total <ul style="list-style-type: none"> • 1 shelter for storage of fishing tools • 1 shelter for resting • 1 temporary structure for resting and storage of fishing tools • 1 temporary electricity room 	-2 structures
Height of Structures	1 storey, 1.5 to 3.5m	1 storey, 1.5 to 3.5m	No change
Parking Spaces	<ul style="list-style-type: none"> • 12 numbers for private car • 3 numbers for light van (not exceeding 2 tonnes) 	<ul style="list-style-type: none"> • 6 numbers for private car • 2 numbers for light van (not exceeding 2 tonnes) 	-6 private cars -1 light vans
Operation Hours	9:00 a.m. to 9:00 p.m. from Mondays to Sundays	9:00 a.m. to 9:00 p.m. from Mondays to Sundays	No change

1.6 Compared with the last approved Application (No. A/YL-PN/42), the current application is submitted by the same applicant for the same use on the same site, with a smaller site area (-152m²), smaller floor area (-91m²), fewer structures (-2) and parking spaces (-7) provided.

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

- (a) Application Form received on 23.2.2018 (Appendix I)
- (b) Email dated 11.3.2018 confirming that no construction works will be carried out at the Site (Appendix Ia)
- (c) Email dated 25.3.2018 providing information of the estimated trip generation and attraction (Appendix Ib)
- (d) Email dated 29.3.2018 providing further information of the estimated trip generation and attraction (Appendix Ic)
- (e) Email dated 3.4.2018 clarifying that no toilet will be provided (Appendix Id)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed at Appendix I. They can be summarised as follows:

- (a) The applicant has continued complying with approval conditions. There has been no objection to the fishing ground.
- (b) The applicant has completed annual maintenance for the implemented fire service installations. Drainage facilities have been repaired and maintained accordingly. The applicant has continued improving the environment of the fishing ground to provide comfortable, quiet and nice environment for the visitors.
- (c) No major modification or alternation works that may cause nuisance to nearby residents or damage to the environment was carried out.
- (d) For number of visitors, it would be about 10 persons each day from Mondays to Saturdays, and 30-40 persons on Sundays. The opening hours would be from 9:00 a.m. to 9:00 p.m. daily.

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

4. **Background**

As the Site is still covered by a valid planning approval (No. A/YL-PN/42), it is not subject to any active enforcement case.

5. Previous Applications

- 5.1 The Site was involved in 4 previous applications (No. A/YL-PN/18, 34, 40 and 42). Details of the previous applications are at **Appendix II**. Their locations are shown on **Plan A-1**.
- 5.2 Application No. A/YL-PN/18 for the same use by a different applicant with slightly smaller site area was approved with conditions by the Committee on 1.8.2008 for 3 years on grounds that passive recreational facilities in “CPA” zone could be favourably considered; conversion of an existing fish pond to fishing ground would not undermine the long-term planning intention; it would unlikely cause significant adverse environmental and drainage impacts. All the approval conditions were complied with. The planning permission lapsed on 2.8.2011.
- 5.3 Application No. A/YL-PN/34 for the same use by a different applicant was approved on 6.1.2012 for 3 years on similar grounds of Application No. A/YL-PN/18. All the approval conditions were complied with. The planning permission was valid until 6.1.2015. Application No. A/YL-PN/40 for the renewal of Application No. A/YL-PN/34 by the same applicant was approved on 2.1.2015 for 3 years and revoked due to non-compliance of approval condition.
- 5.4 The last Application No. A/YL-PN/42 for the same use by the same applicant was approved on 8.5.2015 for 3 years. The planning permission is valid until 8.5.2018. All the time-limited approval conditions were complied with.

6. Similar Applications

- 6.1 There are 2 similar applications (Nos. A/YL-PN/9 and 21) for temporary fishing ground for a period of 3 years. Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-PN/9 for fishing ground and barbecue spot was approved on review in 18.6.2004 on sympathetic considerations as it would unlikely cause significant adverse impacts. As allowing the barbecue activity in the area was not appropriate, an approval condition prohibiting barbecue activity was imposed.
- 6.3 Application No. A/YL-PN/21 for temporary fishing ground on the same site as Application No. A/YL-PN/9 was approved by the Committee with conditions for a period of 3 years on 15.8.2008. The major consideration was that conversion of existing fish ponds to fishing ground would not undermine the long-term planning intention.

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

- 7.1 The site is:
 - (a) occupied mainly by 3 fish ponds and is currently used as a recreational

fishing ground with valid planning permission under Application No. A/YL-PN/42; and

- (b) accessible via Nim Wan Road which is a single lane rural road connecting Deep Bay Road and the Lau Fau Shan Roundabout to the north-east.

7.2 The surrounding areas have the following characteristics:

- (a) to the north-east are pond, public toilet, residential dwellings and open storage of miscellaneous items. To the east across Nim Wan Road is a fishing ground with valid planning permission (Application No. A/YL-PN/43) within the “Agriculture” zone;
- (b) to the south are scattered residential structures and unused land;
- (c) to the south-west is a fish pond. To the west is the mangrove area of Ha Pak Nai; and
- (d) to the immediate north is a structure under construction. To the further north are a Thai Buddhist Monastery, restaurant and parking of vehicles.

8. Planning Intention

The “CPA” zone is intended 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 the development is an essential infrastructure project with overriding public interest may be permitted.

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) Lots Nos. 73 and 78 both in D.D.135 are New Grant Agricultural Lots which contain the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The remaining lots in the Site are Old Schedule Agricultural Lots

held under the Block Government Lease which contain the restriction that no structures are allowed to be erected without the prior approval of the Government.

- (c) No permission is given for occupation of government land (GL) (about 394 m² subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (d) The private land of Lot No. 77 in D.D. 135 is covered by a Short Term Waiver (STW) No. 3691 to permit structures for the purpose of "Temporary Recreation Use (Fishing Ground)".
- (e) The Site is accessible to Nim Wan Road direct. His Office does not guarantee any right-of-way.
- (f) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (g) Should planning approval be given to the planning application, the STW holder will need to apply to his Office for modification of the STW conditions if there are any irregularities on Site and the lot owner(s) of the lots without STW will need to apply to his office for permit the structures to be erected or regularize any irregularities on site. Furthermore, 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. Such application(s) 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.

Building Matters

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

- (a) 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.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the Buildings Department (BD), they are unauthorised 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 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 Site under the BO.

- (d) Before any new Building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be 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.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.

Environment

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

- (a) He notes that the Site is the subject of 4 previous applications. The last Application No. A/YL-PN/42 for the same use was approved with conditions by the RNTPC on 8.5.2015 and the planning permission is valid until 8.5.2018. The current application is to seek planning permission for continuing the existing fishing ground operation at the Site for a period of 3 years. As requested, the applicant has confirmed that no construction works will be carried out at the Site under the current application.
- (b) There was no environmental complaint pertaining to the Site received in the past 3 years.
- (c) The applicant's further information states that there will be no toilet facility provided within the Site and the visitors are required to use the public toilet located at about 150m away. In view of the small amount of visitors, he has no objection to the application.

Conservation

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

- (a) He has no strong view on the application for continuation of the existing recreational fishing ground which was previously approved by the Board.
- (b) Should the application be approved, the applicant is advised to adopt appropriate measures to prevent any disturbance or environmental hygiene problems that may affect the nearby fishponds and fish culture activities as well as the mudflat/mangroves during the operation of the proposed fishing ground.
- (c) Relevant authorities should be consulted for advice on the potential water pollution, hygiene and nuisance matters owing to the proposed recreational use and the control measures required.

Landscape

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

- (a) He has no objection to the application from the landscape planning point of view.
- (b) The Site, located between Sheung Pai Nai and Ha Pai Nai and to the west of Nim Wan Road, falls within an area mainly of "CPA" zone and partly in an area shown as 'Road' on the approved OZP No. S/YL-PN/9. The Site is subject to previous approved Application No. A/YL-PN/42 for temporary fishing ground use to which he had no objection from the landscape planning perspective. The current application seeks planning permission for the same use by the same applicant for a period of 3 years.
- (c) With reference to the site photos dated 2.3.2018 and the aerial photo of 2017, it is observed that the Site comprises of three fishponds with existing trees along the site boundary. The proposed use appears to be already in operation. The Site is situated in an area of rural landscape character dominated by fishpond, wooded areas and active farms. The proposed use is not incompatible with the surrounding environment. Significant change to the landscape character arising from the application is not anticipated. Hence, he has no objection from the landscape planning perspective.
- (d) Should the Board approve the application, in view of the above, he would recommend the following approval condition:

- i. The applicant shall maintain all screen planting including trees and shrubs in good condition at all times for the duration of the approval period.

Traffic

9.1.6 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment to the application from traffic engineering point of view.
- (b) Sufficient manoeuvring spaces shall be provided within the Site. No vehicles are allowed to queue back to public road or reverse onto/from public road.

9.1.7 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 road/drains.

Drainage

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

- (a) He has no objection in principle to the proposed development from a drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to maintain the existing drainage facilities and submit condition record of the existing drainage facilities to the satisfaction of his Division.

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) The fire service installations proposal attached is considered

acceptable to his Department. The applicant is advised that the installation/maintenance/modification/repair work of the fire service installation (FSI) shall be undertaken by a Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/maintenance/modification/repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to the Director of Fire Services.

- (c) 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.

Other Aspects

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/operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from such activities and operation, the applicant should arrange disposal properly at her own expenses.
- (c) Proper licence/permit issued by his Department is required if there is any catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

District Officer's Comments

9.1.11 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 subject application.

9.2 The following departments have no comment on the application:

- (a) Commissioner of Police (C of P);
- (b) Chief Engineer/ Construction, Water Supplies Department(CE/C, WSD);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (d) Chief Engineer (Special Tasks), Civil Engineering and Development Department (CE/ST), CEDD);
- (e) Director of Electrical and Mechanical Services (DEMS);

- (f) Antiquities and Monuments Office, Leisure and Cultural Services Department(AMO, LCSD); and
- (g) Director of Leisure and Cultural Services(DLCS).

10. Public Comments Received During the Statutory Publication Period

On 2.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 23.3.2018, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The “CPA” zone is intended 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. The development is not entirely in line with the planning intention of the “CPA” zone. However, the existing fish pond at the Site will not be adversely affected by the development. Further, DAFC has no objection to the application and CTP/UD&L of PlanD also has no objection as significant change to the landscape character arising from the development is not anticipated. Temporary approval of the application for a period of 3 years would not frustrate the long term planning intention of the “CPA” zone.
- 11.2 The development is in an area of rural landscape character dominated by fishpond, farmland, residential dwellings, unused land and tree groups. The applied use is not incompatible with the surrounding land uses.
- 11.3 Relevant government departments including DEP, CTP/UD&L of PlanD, AC for T/NT of TD and CE/MN of DSD have no objection to or adverse comment on the application. The development would unlikely cause significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas. To address the technical concerns of concerned government departments and to minimize any potential nuisance, appropriate approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on the Site will be subject to enforcement action by the Planning Authority.
- 11.4 Within the same “CPA” zone, there are 2 approved applications (Nos. A/YL-PN/9 and 21) for similar use as temporary fishing ground, and there are 4 previous applications (No. A/YL-PN/18, 34, 40 and 42) covering the Site for the same use and were all approved by the Committee. The last application was for the same use and submitted by the same applicant. All the time-specific approval conditions were complied with. Approval of the current application is in line with previous decisions of the Committee.
- 11.5 There is no public comment on the application.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 above, the Planning Department considers that the temporary recreation use (fishing ground) could be tolerated for a period of 3 years.
- 12.2 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 20.4.2021. The following conditions of approval and advisory clauses are also suggested for Member's reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the existing screen planting including trees and shrubs on the Site shall be maintained at all times during the approval period;
- (d) the existing drainage facilities on Site shall be maintained at all times during the planning approval period;
- (e) the submission of condition record of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.7.2018**;
- (f) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **20.10.2018**;
- (g) in relation to (f) above, the implementation of fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **20.1.2019**;
- (h) if any of the above planning conditions (a), (b), (c) or (d) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (i) if any of the above planning conditions (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are 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 "CPA" zoning is intended 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. There is a general presumption against development in this zone. The proposed development is not in line with the planning intention of the "CPA" zone where there is a general presumption against development.

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 period of which the permission should be valid on a temporary basis.

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 23.2.2018
Appendix Ia	Email dated 11.3.2018 confirming that no construction works will be carried out at the Site
Appendix Ib	Email dated 25.3.2018 providing information of the estimated trip generation and attraction
Appendix Ic	Email dated 29.3.2018 providing further information of the estimated trip generation and attraction
Appendix Id	Email dated 3.4.2018 clarifying that no toilet will be provided
Appendix II	Previous Applications covering the Site
Appendix III	Similar Application within Same "CPA" zone on the approved Sheung Pak Nai and Ha Pak Nai OZP No. S/YL-PN/9
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Plan
Drawing A-4	Fire Service Installations Plan

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

**PLANNING DEPARTMENT
APRIL 2018**