

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

**APPLICATION NO. A/YL-PN/57**

<b><u>Applicant</u></b>	: Ms. Kong Wai Heung
<b><u>Site</u></b>	: Lot 93 (Part) in D.D.135, Sheung Pak Nai, Yuen Long, New Territories
<b><u>Site Area</u></b>	: About 8,860m <sup>2</sup>
<b><u>Lease</u></b>	: New Grant Agricultural Lot held under Tai Po New Grant No. 2725
<b><u>Plan</u></b>	: Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
<b><u>Zoning</u></b>	: “Coastal Protection Area” (“CPA”)
<b><u>Application</u></b>	: 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. The location of the Site is shown on **Plan A-1** and **Plan A-2**. The Site is currently used for the applied use without planning permission.
- 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 building 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 3 previous approved applications (No. A/YL-PN/22, 36 and 44) for the same use submitted by the same applicant on a slightly larger site. The last application (No. A/YL-PN/44) was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 20.11.2015. All approval conditions have been complied with. The permission was lapsed on 20.11.2018.
- 1.4 According to the applicant, the operation hours of the temporary fishing ground are from 8:00 a.m. to 9:00 p.m. from Mondays to Sundays including public holidays. There are about 1 to 2 visitors per day on weekdays and about 15 to 20 at weekends and during public holidays. 3 private car parking spaces are provided

(Drawing A-1). A comparison of major development parameters of the last approved application and the current application is as follows:

Major Development Parameters	Approved Application No. A/YL-PN/44 (a)	Current Application No. A/YL-PN/57 (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 (m <sup>2</sup> )	10,832 (including Government Land (GL) of about 817m <sup>2</sup> )	8,860 (No GL is involved)	- 1,972
No. of structures	3	0	-3
Maximum floor area (m <sup>2</sup> )	82.5	0	-82.5
Maximum height of structures	2.6 m, 1 storey	n/a	-
Vehicle parking spaces	10 for private cars	3 for private cars	-7
Operation hours	8:00 a.m. to 9:00 p.m. on Mondays to Sundays including public holidays	8:00 a.m. to 9:00 p.m. on Mondays to Sundays including public holidays	No change

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

- (a) Application form and attachments received on 18.1.2019 (Appendix I)
- (b) Further information (FI) received on 25.2.2019 clarifying the car parking space (*accepted and exempted from publication and recounting requirements*) (Appendix Ia)

1.6 The layout plan submitted by the applicant is at **Drawing A-1**.

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

The justifications put forth by the applicant in support of the application are detailed in section 9 of the Application Form in **Appendix I**. They can be summarized as follows:

- (a) Operation of the fishing ground has complied with the requirements of the Agriculture, Fisheries and Conservation Department and concerned departments on the landscape and tree preservation aspects in the past 3 years.
- (b) The fishing ground is a small business. There are 1-2 visitors on weekdays and 15-20 visitors at weekends and during public holidays. No tour services are provided at the Site. Visitors usually take public transport to the Site. Only 5-7 private cars or taxis come in on Sundays. There has been no nuisance or inconvenience to the surrounding residents.
- (c) There are different fruit trees within the Site. The development will not

adversely affect the visual quality.

- (d) The Site is at a distance from the surrounding residential dwellings. The fishing ground will not cause noise nuisance to the residents.
- (e) The applicant claims that she has 5 fish ponds. Since she is getting old and finds it difficult to manage the 5 fish ponds, she would like to convert one of the fish ponds (the Site) to a fishing ground to earn a living.

### **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 consents from the four current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

The fishing ground use on the Site would be subject to planning enforcement action.

### **5. Previous Applications**

- 5.1 The Site is subject to three previous approved applications (No. A/YL-PN/22, 36 and 44) for the same use submitted by the same applicant on a slightly larger site. They were approved with conditions by the Committee for a period of 3 years on 23.1.2009, 1.6.2012 and 20.11.2015 respectively. The major considerations were not undermining the planning intention of the “CPA” zone; no significant adverse environmental, drainage and landscape impact; and similar approved applications in the area. All approval conditions have been complied with under each application. For the last approved application (A/YL-PN/44), the applicant has also complied with all approval conditions and the planning permission was lapsed on 20.11.2018.
- 5.2 Details of the previous applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

### **6. Similar Applications**

- 6.1 There are 5 similar applications within the same “CPA” zone on the OZP.

#### Approved Applications

- 6.2 Applications No. A/YL-PN/28, 39 and 50 were for temporary fishing ground for a period of 3 years. They were approved by the Committee on 2.9.2011, 22.8.2014 and 8.9.2017 respectively. The major considerations were no significant change in character of fish pond; not jeopardizing the planning intention of the “CPA” zone; and not incompatible with the surrounding land uses.

#### Rejected Applications

- 6.3 Applications No. A/YL-PN/48 and 53 were for temporary fishing ground for a period of 3 years. Application No. A/YL-PN/48 involved illegal pond filling activities and was a “Destroy First, Build Later” case. Application No. A/YL-PN/53 involved construction of a fish pond and 5 temporary structures. They were rejected by the Committee on 28.7.2017 and 18.5.2018 respectively. The rejection reasons were not in line with the planning intention of the “CPA” zone; failure to demonstrate no adverse environmental, ecological, landscape and traffic impacts; and setting an undesirable precedent.
- 6.4 Details of the similar applications are summarized at **Appendix III**. Their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) currently used for the applied use without planning permission; and
  - (b) accessible through a local track connecting to Nim Wan Road (**Plan A-2**);
- 7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):
- (a) to the immediate east and south-east are fish ponds; to the further east are some residential dwellings and orchards;
  - (b) to the immediate south is a hobby farm; to the further south are residential dwellings and a fishing ground (approved Application No. A/YL-PN/50);
  - (c) to the immediate west is a pond; and
  - (d) to the immediate north is the coastal area of Deep Bay.

## **8. Planning Intention**

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. 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) Lot 93 in D.D. 135 is a New Grant Agricultural Lot held under Tai Po New Grant No. 2725. The New Grant contains the restriction that no building of any description shall be erected on the lot (without the prior approval of the Government);
- (b) The Site is accessible from Nim Wan Road through Government Land (GL) and a private lot. His office provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site;
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area; and
- (d) Should planning approval be given to the application, the lot owner(s) of the lot without any Short Term Waiver (STW) will need to apply to his office for permitting the structures to be erected or to regularize any irregularities on the 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 the 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 the 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; and
- (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; and
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Nim Wan Road.

### **Environment**

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

- (a) The applicant is advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP to minimize potential environmental nuisance to the surrounding area.
- (b) No environmental complaint related to the Site was received in the past 3 years.

### **Natural Conservation and Agriculture**

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

- (a) As the current proposal involves continuation of the same uses in the Site as previously approved in planning application No. A/YL-PN/44, he has no strong view on the application from both nature conservation and fisheries points of view. Should the application be approved, the applicant is advised to adopt appropriate measures to prevent disturbance or environmental hygiene problems that may affect the nearby fishponds and fish culture activities, intertidal mudflat/mangrove as well as the Pak Nai Site of Special Scientific Interest (SSSI) during the operation of the proposed fishing ground, for example fencing the Site for clear demarcation to prevent visitors’ intrusion into the nearby fishponds and mudflat/mangrove habitats; and
- (b) On the other hand, relevant authorities should be consulted on the potential water pollution and environmental matters due to the proposed recreational use and the control measures required.

### **Landscape**

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

- (a) The Site lies in an area zoned “CPA”. The Site is subject of last approved application A/YL-PN/44 for temporary fishing ground use to which he had no objection from landscape planning perspective. The landscape proposal was acceptable and implemented. The current application seeks planning approval for the same use at a smaller site.

- (b) With reference to the site visit by his office on 21.2.2019, it is observed that the majority of the Site is currently a pond with two narrow footpaths at the eastern and western extent of the Site. Two existing clusters of bamboo are found within the Site. Other existing vegetation including trees and marsh are found near the Site. In consideration of previous application A/YL-PN/44, significant change to the landscape character is not envisaged. Hence, he has no objection to the application from landscape planning perspective.
- (c) Should the application be approved by the Board, the condition to maintain all vegetation within the Site in good condition for the duration of the planning approval period is considered adequate and appropriate.

### **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 a drainage point of view.
- (b) The applicant is reminded to ensure that the applied use would neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas.

### **Fire Safety**

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

He has no objection to the application subject to no structure being erected/to be erected on the Site.

### **Building Matters**

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

He notes that there is no proposed building works on the Site, he is not in a position to comment under the Buildings Ordinance.

### **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/operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding;
- (b) For any waste generated from such activity/operation, the applicant should arrange disposal properly at her own expenses; and

- (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 application and he has no comment from departmental point of view.

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

- (a) Antiquities and Monuments Office (AMO);
- (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/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (e) Director of Leisure and Cultural Services (DLCS); and
- (f) Commissioner of Police (C of P).

## **10. Public Comment Received During the Statutory Publication Period**

On 25.1.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period, which ended on 15.2.2019, no public comment was received.

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

11.1 The Site falls within "CPA" zone. 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. 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 applied use (fishing ground) and there is no significant change in character of the existing fish pond. The last permission under Application No. A/YL-PN/44 was valid up to 20.11.2018. As the previous permission was lapsed and there are some revisions to the site boundary (i.e. the current application site is smaller mainly to exclude GL), the applicant submitted the current application afresh. DAFC has no objection to the application from nature conservation and fisheries points of view. CTP/UD&L, PlanD has no objection to the application as significant change to the landscape character is not envisaged. As such, approving the application for passive recreational use on a temporary basis would not undermine the long-term planning intention of the "CPA" zoning.

11.2 The development is not incompatible with the fish ponds in the immediate surrounding area.



- 11.3 The development would not cause significant adverse traffic, environmental and drainage impacts on the surrounding areas. Relevant Government departments including C for T, DEP and CE/MN, DSD have no adverse comment on/ objection to the planning application. There is no environmental complaint pertaining to the Site received in the past 3 years. 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 unauthorized development on the Site will be subject to enforcement action by the Planning Authority.
- 11.4 There are 3 previous approved applications (Nos. A/YL-PN/22, 36 and 44) for the same use submitted by the same applicant on a slightly larger site. All time-specific approval conditions of these approved applications were complied with. Within the same “CPA” zone, there are also 3 similar approved applications (Nos. A/YL-PN/28, 39 and 50). Approval of the current application is in line with the previous decisions of the Committee.
- 11.5 No public comment was received during the statutory public inspection period.

## 12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, 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 8.3.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval conditions

- (a) no operation between 9:00 p.m. and 8:00 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 roads at any time during the planning approval period;
- (c) all vegetation within the Site shall be maintained at all times during the planning approval period; and
- (d) if any of the above planning conditions (a), (b) or (c) 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.

### 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 development is not in line with the planning intention of the “CPA” zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

**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**

<b>Appendix I</b>	Application Form with attachments received on 18.1.2019
<b>Appendix Ia</b>	FI received on 26.2.2019 clarifying car parking spaces
<b>Appendix II</b>	Previous Applications
<b>Appendix III</b>	Similar Applications
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4a and 4b</b>	Site Photos

**PLANNING DEPARTMENT  
MARCH 2019**