

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/198

- Applicant** : Mr. CHENG Yee Yan represented by Mr. KWOK Chi Man
- Site** : Lots 481 S.A RP (Part), 558 RP (Part), 559 RP (Part), 561 RP (Part), 562 S.F (Part), 563 (Part) and 564 S.B (Part) in D.D. 89 and Adjoining Government Land, Sha Ling, Sheung Shui, New Territories
- Site Area** : About 6,100 m² (including about 550 m² of Government land)
- Lease** : (i) Block Government lease (demised for agricultural use) (about 91% of the Site)
(ii) Government land (about 9% of the Site)
- Plan** : Approved Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/16
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary place of recreation, sports or culture (hobby farm) for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/16. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Hobby Farm)’ is a Column 2 use in “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, majority of the Site (about 3,775 m² (i.e. about 62%)) will be used as cultivation/ farm area. The outdoor cultivation area of about 2,100 m² would have 24 patches of farming areas for growing vegetables. One 1-storey temporary structure with a total floor area of about 1,675 m² and building height of about 5 m will be erected on Site as greenhouse for growing fruits. An existing plant nursery of about 1,200 m² (i.e. about 20%) would remain in the southwestern part of the Site. The rest of the Site in the north (about 1,125 m² (i.e. about 18%)) will be used for car park and manoeuvring space (**Drawing A-1**). Three staff private car parking spaces (measuring 5 m x 2.5 m each) and one light goods vehicle parking space (measuring 7 m x 3.5 m each) will be provided at the northern part of the Site. There would be no visitor parking on Site. The Site is accessible via a local road leading to Man Kam To Road with the

entrance located at the northern boundary of the Site (**Drawing A-1**).

- 1.3 The proposed operation hours are from 10:00 a.m. to 5:00 p.m. daily including public holidays. The proposed hobby farm will be for its members by appointment only. The agricultural products would only be for members' own consumption purpose. The estimated number of visitors during weekdays and weekends are no more than 60 per hour respectively. There will be around 2 to 6 staff working at the Site. Visitors are required to pay entrance fee to use the facilities in the proposed development. No public announcement system and loud speaker would be used at site. The Site is currently largely vacant. The site layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 20.7.2020 (**Appendix I**)
 - (b) Further Information (FI) received on 28.8.2020 ^ (**Appendix Ia**)
 - (c) Letter received on 4.9.2020 requesting for deferment of consideration of the application (**Appendix Ib**)
 - (d) FI received on 20.10.2020 ^ (**Appendix Ic**)
 - (e) FI received on 3.12.2020 ^ (**Appendix Id**)
^accepted and exempted from publication
- 1.5 At the request of the applicant (**Appendix Ib**), the Committee decided on 18.9.2020 to defer making a decision on the application for two months pending the preparation of FI to address the departmental comments. The applicant submitted the FI (**Appendices Ic and Id**) on 20.10.2020 and 3.12.2020 respectively and the application is re-scheduled for consideration by the Committee on 18.12.2020.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary information attached to the Application Form and FI at **Appendices I, Ic and Id**. They can be summarised as follows:

- (a) the Site is currently vacant and covered by soil. No site formation works including tree felling, pond filling or excavation/filling of land would be involved. The proposed development is temporary in nature and compatible with the surrounding land uses. It would not jeopardize the planning intention of "AGR" zone;
- (b) the Site is accessible via Man Kam To Road. Three staff parking spaces for private cars and a light good vehicle will be provided at the Site. Visitors would have to arrive at the hobby farm by public transport and hence no adverse traffic impact on surrounding area is anticipated;
- (c) no public announcement system or loud speaker will be installed at the Site and no workshop use is proposed to minimise the impact of noise on the surrounding area; and
- (d) to avoid pollution to the surrounding area, no pesticide will be used in the proposed hobby farm while portable toilets are proposed and sewerage will be collected regularly.

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

The applicant is not the “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 taking reasonable steps to obtain the consent of or give notification to the owner including sending a notice to the Sheung Shui District Rural Committee and posting site notice. For the adjoining Government land, TPB PG-No.31A is not applicable to the application. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advises that the Site is not subject to any active enforcement case.

5. Previous Applications

- 5.1 The Site is the subject of three previous applications for proposed temporary parking of container tractors and trailers for sale with ancillary office (No. A/NE-FTA/159), proposed temporary vehicle repair workshop for medium goods vehicle, heavy goods vehicle, coach and container tractor (No. A/NE-FTA/174) and proposed temporary public vehicle park (No. A/NE-FTA/184) submitted by different applicants from the current application. These applications were rejected by the Committee or the Board between October 2016 and January 2019 respectively mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone; the applications did not comply with the then TPB PG-No. 13E in that the proposed developments were not compatible with the surrounding land uses; there was no previous planning approval; there were adverse departmental comments; and the applicants failed to demonstrate that the proposed developments would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and the approval of the applications would set an undesirable precedent for similar applications within the same “AGR” zone.
- 5.2 Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6. Similar Application

- 6.1 There is a similar application for proposed temporary hobby farm use (No. A/NE-FTA/193) which falls within the “AGR” zone in the vicinity of the Site in the Fu Tei Au and Sha Ling area (**Plan A-1**). It was approved with conditions by the Committee in December 2019 mainly on the considerations that the proposed development was in line with the planning intention of “AGR” zone; the proposed development was considered not incompatible with the surrounding land uses; and relevant Government departments had no adverse comment on / no objection to the application.
- 6.2 Details of the similar application are at **Appendix III** and its location is shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plan A-4)

7.1 The Site is:

- (a) flat, formed, partly fenced off and covered with wild grass and trees along its boundary;
- (b) largely vacant and occupied by a plant nursery at the southwestern part of the Site (**Plan A-4**); and
- (c) accessible via a local road leading to Man Kam To Road (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north and northwest is a public toilet and Man Kam To Road across which are some water pipelines and some temporary domestic structures;
- (b) to its northeast and east are some temporary domestic structures, parking of vehicles and a warehouse respectively;
- (c) to its immediate southeast is a site approved for temporary hobby farm use (No. A/NE-FTA/193); and
- (d) to the further southeast, south, southwest and west are vacant/ unused land and some temporary domestic structures.

8. Planning Intention

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

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the application lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make its own arrangement for acquiring access, and there no guarantee that any adjoining Government land (GL) will be allowed for the vehicular access of the proposed use;

- (b) the Site includes a piece of GL (**Plan A-2**). The applicant should not occupy the GL concerned without approval from his office;
- (c) the proposed vehicular access to the Site involves a few private lots of which the applicant is not the owner. The applicant should seek consent to use the concerned lots for access purpose from the concerned owners; and
- (d) should the application be approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) and/or Letter of Approval (LoA) covering all the actual occupation area. The applications for STW, STT and/or LoA will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW, STT and/or LoA are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his office.

Agriculture and Nature Conservation

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

- (a) the Site falls within "AGR" zone and possesses potential for agricultural rehabilitation. Taking into account the proposed agricultural activities provided in the submission and the proposed temporary hobby farm will not affect the normal operation of the existing plant nursery within the Site (**Appendices I and Ic**), she has no strong view against the application from agriculture point of view; and
- (b) should there be any pavement proposed on Site, reinstatement of the Site upon the expiry of the planning permission is recommended.

Traffic

9.1.3 Comments of the Commissioner for Transport (C for T):

- (a) upon reviewed the FI (**Appendix Ic**), he has no in-principle objection to the application from traffic engineering point of view;
- (b) it is noted that the proposed vehicular access to the Site is via a local track connecting with Man Kam To Road (**Plan A-2**). Based on the traffic information provided by the applicant, he considers that the application is tolerable from traffic engineering point of view on a 3-year temporary basis; and
- (c) the applicant should be reminded that the local track leading to the Site is not managed by TD. The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

9.1.4 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) he has no adverse comment on the application;
- (b) the section of Man Kam To Road adjacent to the Site is under HyD's maintenance purview. However, the vehicular access leading from Man Kam To Road to the Site falls on unallocated Government land (**Plan A-2**) which is outside HyD's maintenance purview. The applicant is required to sort out the maintenance responsibility of the affected unallocated Government land with DLO/N; and
- (c) adequate drainage measures should be provided to prevent surface water running from the Site to the adjacent public road.

Environment

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

- (a) he has no objection to the application;
- (b) as the application is temporary in nature, the applicant is advised to follow EPD's latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)";
- (c) the applicant is advised to strictly observe all relevant pollution control ordinances, particularly on waste management and disposal and water pollution, follow relevant measures given in the EPD's latest CoP, and put in place necessary precautionary/ pollution control measures to prevent any pollution to the nearby sensitive receivers as a result of the operational and construction activities. Best management practice should be adopted to avoid refuse and other pollution, including pesticides to be used in the hobby farming, from entering the surface runoff and any watercourse/nullah. Particular attention should be paid on measures to prevent fly-tipping/unauthorized landfilling activities during construction and operation stages; and
- (d) there is no existing public sewer in the vicinity of the Site. The applicant shall have to provide his own effective sewage treatment and disposal measures to cater for any sewage arising from the operation of the application. If septic tank and soakaway is proposed, its design and construction should follow the requirements of ProPECC 5/93. The Percolation Test and Minimum Clearance requirements stated in ProPECC PN5/93 should be fully complied with and duly certified by consulting engineer / Authorised Person (AP). There is no substantiated environmental complaints against the Site in the past three years.

Landscape

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

- (a) she has no objection to the application from the landscape planning perspective;
- (b) based on aerial photo of 2019, the Site is situated in an area of rural landscape character comprising of mainly agricultural land, tree groups and temporary structures. The Site is mostly bare surfaced area with few grassy patches. Significant landscape impact arising from the proposed use of hobby farm within the Site is not anticipated. Furthermore, the current proposed use of hobby farm is considered not entirely incompatible with the surrounding environment. A similar application (No. A/NE-FTA/193) of the same use in the vicinity of the site was approved by the Committee in December 2019 (**Plan A-2**);
- (c) it is noted that there is a strip of existing trees between the Site and Man Kam To Road (**Plan A-3**); and
- (d) should the application be approved, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) he has no objection to the application from public drainage viewpoint; and
- (b) should the application be approved, an approval condition to request the applicant to submit and implement a drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent area.

Building Matters

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

- (a) he has no objection to the application;
- (b) there is no record of approval by the Building Authority (BA) for the existing buildings/ structures at the Site and he is not in a position to offer comments on their suitability for the proposed use;
- (c) there is also no record of submission of the proposed building/ structure to the BA for approval. For proposed new buildings, his advisory comments are at **Appendix V**.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) being provided to the satisfaction of his department;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. In addition, the applicant should be also advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (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.

District Officer's Comments

9.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) he has consulted the locals regarding the application. The 1st Vice-Chairman of Ta Kwu Ling District Rural Committee, the Chairman of 打鼓嶺沙嶺村居民福利會 (with signatures from 76 locals), the Indigenous Inhabitant Representative (IIR) of San Uk Ling, the Resident Representative (RR) of San Uk Ling and the RR of Lo Wu object to the application mainly on the grounds that there is no detailed design in the submission regarding the proposed structure on Site; previous planning applications at the Site were not acknowledged by respective lot owners; it is a “destroy first, build later” case; there was unauthorized filling of land on Site; and the road infrastructure does not support such development; and
- (b) the incumbent North District Council (NDC) member of subject constituency has no comment on the application and expressed that the potential traffic impact arising from the proposed development should be assessed.

9.2 The following Government departments have no comment on / no objection to the application:

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (c) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 28.7.2020, the application was published for public inspection. During the statutory public inspection period, four public comments were received from the Chairman of 打鼓嶺沙嶺村居民福利會 (with 76 signatures from the villagers), WWF-HK, Designing Hong Kong Limited and an individual (**Appendix IV**). They object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; it is not a genuine application for hobby farm; there is no detailed design in the submission regarding the proposed structures on Site; previously planning applications at the Site were not acknowledged by respective lot owners; it is a “destroy first, build later” case; and there was unauthorized filling of land on Site.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary hobby farm at the Site for a period of 3 years zoned “AGR” on the OZP (**Plan A-1**). According to the applicant, about 3,775 m² (about 62% of the Site) will be used for cultivation and greenhouse growing vegetables and fruits. An existing planting nursery of about 1,200 m² (about 20% of the Site) would remain at the southwestern part of the Site while the northern part of the Site of about 1,125 m² (about 18% of the Site) will be used for car park and manoeuvring space (**Drawing A-1**). The proposed development is considered generally in line with the planning intention of “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Having reviewed the proposed layout of the Site (**Drawing A-1 and Appendix Ic**), DAFC has no strong view against the application from agriculture point of view. The approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “AGR” zone.
- 11.2 The Site is situated in an area of rural landscape character comprising of mainly agricultural land, tree groups and temporary structures. The proposed development is considered not incompatible with the surrounding environment. No significant landscape resource is observed within the Site and significant adverse impact on existing landscape resources arising from the proposed development is not anticipated. In this regard, CTP/UD&L of PlanD has no objection on the application from landscape planning point of view.
- 11.3 The Site is accessible via a local road leading to Man Kam To Road (**Plan A-2**). Having reviewed the traffic information submitted by the applicant (**Appendix Ic**), C for T considers that the proposed development is tolerable from traffic engineering point of view on a 3-year temporary basis. DEP has no objection to the application, and the applicant should be reminded to adopt the environmental mitigation measures and requirements as set out in ProPECC PN5/93, the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” and all relevant environmental protection/ pollution control ordinances. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on / no objection to the application.
- 11.4 The Site is involved in three previous planning applications (No. A/NE-FTA/159, 174 and 184) submitted by different applicants for temporary parking of vehicles/ vehicle repair

workshops/ public car park uses. These applications were rejected by the Committee or the Board between October 2016 and January 2019 respectively mainly on the considerations that the proposed developments were not in line with the planning intention of the “AGR” zone; the applications did not comply with the then TPB PG-No. 13E in that the proposed developments were not compatible with the surrounding land uses; there was no previous planning approval; there were adverse departmental comments; and the applicants failed to demonstrate that the proposed developments would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and the approval of the applications would set an undesirable precedent for similar applications within the same “AGR” zone. The planning circumstances of the previous rejected applications are different from the current application for a temporary hobby farm.

11.5 There is a similar application for proposed temporary hobby farm use (No. A/NE-FTA/193) which falls within “AGR” zone adjoining the Site (**Plan A-2**) which was approved with conditions by the Committee in December 2019 mainly on the considerations that the proposed development was in line with the planning intention of “AGR” zone; the proposed development was considered not incompatible with the surrounding land uses; and relevant Government departments had no adverse comment on / no objection to the application. The circumstance of the current application is similar to that approved application.

11.6 Regarding the local objection conveyed from DO(N) of HAD and adverse public comments as mentioned in paragraphs 9.1.10 and 10 above, the relevant Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

12.1 Based on the assessments made in paragraph 11 and having taken into account local comments conveyed by DO(N) of HAD and the public comments in paragraphs 9.1.10 and 10 above, the Planning Department has no objection to the application.

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 **18.12.2023**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no public announcement system and loud speaker, as proposed by the applicant, is allowed to be used on the Site during the planning approval period;
- (c) the submission of a drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 18.6.2021;
- (d) in relation to (c) above, the provision of drainage facilities within 9 months from the date of planning approval to the satisfaction of the Director of Drainage

Services or of the Town Planning Board by 18.9.2021;

- (e) the submission of proposals for fire service installations and water supplies for firefighting 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 18.6.2021;
- (f) in relation to (e) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 18.9.2021;
- (g) if planning conditions (a) or (b) 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;
- (h) if any of the above planning conditions (c), (d), (e) or (f) 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; and
- (i) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's reference:

- the proposed development is not in line with the planning intention of the "AGR" zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

13. Decision Sought

13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 with Attachments received on 20.7.2020
Appendix Ia	Further Information received on 28.8.2020
Appendix Ib	Letter received on 4.9.2020 requesting for deferment of consideration of the application
Appendix Ic	Further Information received on 20.10.2020
Appendix Id	Further Information received on 3.12.2020
Appendix II	Previous Applications
Appendix III	Similar s.16 Application within “AGR” Zone in the vicinity of the Application Site on the Fu Tei Au and Sha Ling Outline Zoning Plan
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**