

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/5

- Applicant** : 余松福先生
- Site** : Lot 586 in D.D. 90, Muk Wu Village, Man Kam To, Sheung Shui, New Territories
- Site Area** : 389m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zoning** : “Agriculture” (“AGR”)
- Application** : Filling of Land for Permitted Agricultural Use

1. The Proposal

- 1.1 The applicant seeks planning permission to regularize the filling of land (about 0.6m in thickness) for permitted agricultural use at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Man Kam To OZP No. S/NE-MKT/4. According to the Notes of the OZP, ‘agricultural use’ is a Column 1 use which is always permitted. However, any filling of land (except for (i) laying of soil not exceeding 1.2m in thickness for cultivation; or (ii) construction of any agricultural structure with prior written approval issued by Lands Department) necessary to effect a change of use to those always permitted under Column 1 within “AGR” zone requires permission from the Town Planning Board (the Board). The Site has been filled up without obtaining planning permission.
- 1.2 The Site is accessible from Lin Ma Hang Road through a local road and the proposed ingress/egress is at the northeastern corner of the Site (**Plan A-2** and **Drawing A-1**). According to the applicant, the land filling is to facilitate using the Site for the permitted agricultural use (pot planting). As part of the development, there are two containers (measuring 6m x 2.44m) for storage of agricultural tools and fertilizers at the southern and western part of the Site and two parking spaces and/or loading/unloading spaces for private car (measuring 5m x 2.5m) at the eastern part of the Site (**Drawing A-1**). The application also involves deepening and widening of existing ditch along the southern and western portion of the Site (**Drawing A-1**). The operation hours of the Site are between 6 a.m. and 6 p.m. on Mondays to Sundays including public holidays.

1.3 In support of the application, the applicant has submitted the Application Form with attachments received on 18.7.2018 (**Appendix I**).

2. Justifications from the Applicant

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

- (a) the applicant has obtained consent from the owners of the Site and other lots in the vicinity for the operation of a certified organic farm at Lots 535, 557, 559 S.C and 587 in D.D.90 (**Plan A-2**). An Enforcement Notice issued by the Planning Department was received during the preparation of the organic farm;
- (b) the Site once was not suitable for cultivation as it was prone to flooding. Filling of land could allow erection of structures for storage of agricultural tools and fertilizers and the provision of loading/unloading area at the Site;
- (c) confirmations had been obtained from the Ta Kwu Ling Rural Committee, Vegetable Marketing Organization and Agriculture, Fisheries and Conservation Department (AFCD) for cultivation and land filling at the Site;
- (d) no adverse drainage impact will be expected as no toilet facilities will be provided on the Site;
- (e) the Site is not for rent and only for the private use by the applicant only; and
- (f) parking of two private cars at the Site is required due to business and operation need.

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 from the current land owner on 16.7.2018. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department, the Site is subject to an on-going enforcement action (No. E/NE-MKT/011) against an unauthorized development involving filling of land (**Plan A-2**). Enforcement Notice was issued on 26.10.2017 to the concerned parties requiring the discontinuance of the unauthorized development by 9.11.2017. Reinstatement Notice was issued on 29.3.2018 requiring reinstatement of the Site by removing the leftovers, debris and all fill materials (including hard paving) and grassing the area by 29.6.2018. As the Site has not been reinstated upon expiry of the notice, prosecution action may be taken.

5. Previous Application

There is no previous application for the Site.

6. Similar Application

There is no similar application for filling of land in the “AGR” zone in the vicinity of the Site in the Man Kam To area.

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

7.1 The Site is:

- (a) mainly flat and land-filled with some potted plants and two containers deposited on it (**Plans A-4a** and **A-4b**); and
- (b) accessible from Lin Ma Hang Road via a local road (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) rural in landscape character predominated by active/fallow agricultural land, vacant/unused land and temporary domestic structures;
- (b) to the north are active/fallow agricultural land;
- (c) to the immediate east is the local track leading to Lin Ma Hang Road, beyond which are temporary domestic structures, active/fallow agricultural land and vacant land;
- (d) to the southeast is a fallow agricultural land, vacant land, a container trailer parts park and the Lin Ma Hang Road, and to the south are active/fallow agricultural land with a temporary domestic structure; and
- (e) to the west is a vegetated “Green Belt” zone (**Plans A-2** and **3b**).

8. Planning Intention

The planning intention of the “AGR” zone in the Man Kam To area is intended primarily to 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 summarized as follows:

Land Administration

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

- (a) the Site comprises private lot which is Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access;
- (b) it is noted that structures were erected on the Site without approval from his office. The aforesaid structures are not acceptable under the Lease concerned. His office reserves the right to take necessary lease enforcement actions against the above irregularities; and
- (c) if the application is approved, the applicant shall apply to his office for a Short Term Waiver (STW) to regularize the unauthorized structures erected on the Site. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, the commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by his office.

Agriculture

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

- (a) the applicant claimed that confirmation had been obtained from his Department and Vegetable Marketing Organization for cultivation and land filling at the Site. He would like to clarify that this is not the case;
- (b) he noted that the applicant operates an organic farm certified by the Hong Kong Organic Resource Centre. The Site is part of the farm though it is not included in the certified production area. The applicant decided to pave the Site for setting up an experimental farm of dragon fruit, storage of agricultural tools and fertilizers, as well as loading/unloading area of vegetables;
- (c) in his recent inspection, it is noted that the Site has been paved. A substantial portion of the Site was used for cultivation of dragon fruit. Two temporary structures were placed in the remaining part of the Site for storage of agricultural tools and fertilizers. A small part of the Site was left vacant for loading/unloading of vegetables. The last two uses are important to support farm operation;
- (d) since a substantial part of the Site has been allocated for agricultural purpose and the rest for ancillary uses related to farm operation, he has no strong view against the application from agriculture point of view; and
- (e) he noted that there are ditches running along the site boundary. They are not

considered to have much ecological value.

Traffic

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

- (a) he noted that the application states that the two proposed car parking spaces are for agricultural use (i.e. loading and unloading) and also understood that the proposed filling of land has been completed. As such, it is anticipated that no future construction traffic will be generated under the application. In view of the above, he has no comment on the application for filling of land from traffic view point; and
- (b) the village track connecting Lin Ma Hang Road and the Site is not managed by Transport Department. The management and maintenance responsibilities of the village track should be clarified with the relevant lands and maintenance authorizes accordingly.

Environment

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

- (a) he has no comment on the application;
- (b) while there is a watercourse running in close proximity of the Site, the applicant stated that no toilet facilities will be provided and there will be no discharge of wastewater. Hence, impact to the adjacent watercourse is not anticipated;
- (c) in construction phase, construction waste water and site runoff are possible sources of water pollution. The applicant is advised to make reference to ProPECC PN 1/94 as a guideline for measures on proper handling of construction site drainage;
- (d) since there is no information on whether the fertilizers are in solid and liquid form, proper storage arrangement against spillage should be implemented. Drainage should also be designed within the area that chemicals are protected from possible dissolving in rain water/runoff within the Site. Moreover, works on the ditches, if any, should be arranged such that appropriate mitigation measures against adverse water quality is implemented;
- (e) there is no existing public sewer in the vicinity of the Site. The applicant shall have to provide his own sewage treatment and disposal measures to cater for any sewage arising from the application, in compliance with the requirements of ProPECC PN 5/93 where appropriate;
- (f) the applicant is advised to strictly observe all relevant pollution control ordinance, particularly on waste management and disposal, and put in place necessary precautionary/pollution control measures to prevent any pollution of nearby the watercourse as a result of the construction activities and when

carrying out the agricultural activities; and

- (g) during the past three years, there was one non-substantiated environmental complaint relating to land filling received in 2017.

Landscaping

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

- (a) she has reservation on the application from landscape planning perspective;
- (b) according to the latest aerial photo of 2017, the Site is situated in an area of rural landscape character comprising of farmlands (both active and fallow), temporary structures with paved areas. Wooded areas can be found adjacent to the west and further east of the Site. The proposed filling of land is not entirely incompatible with the existing site context;
- (c) her site record reveals that the Site, once was vegetated in 2015 (**Plan A-3a**), is filled and hard paved with temporary structures. There is no significant vegetation and only some young potted plants are found on the Site. Shallow ditches are running along the northern, western and southern boundary connecting to adjoining areas. Adverse landscape impact arising from the proposed filling of land is not anticipated; and
- (d) however, the approval of the application would set an undesirable precedent to encourage filling of land in the “AGR” zone before application. Should the application be approved by the Board, an approval condition on the submission and implementation of landscape proposal is recommended.

Drainage

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

- (a) he has no objection to the application;
- (b) the Site is in an area where no public sewer connection is available. EPD should be consulted regarding the sewage treatment/disposal facilities for the proposed development;
- (c) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (d) the general requirements in the drainage proposal are appended at **Appendix II**.

Building Matters

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

- (a) the subject lot is zoned as "AGR". Certificate of exemption may be issued under Building Ordinance (Application to the New Territories) Ordinance, Cap. 121 by the Director of Lands to the buildings for agricultural uses; and
- (b) otherwise section 14 of the Building Ordinance (BO), Cap. 123 shall apply to the application, in which the applicant's attention is drawn to the following points:
 - (i) if any existing structures are erected on leased land without approval of the Buildings Department (BD), they are unauthorized under the BO and should not be designated for any approved use under the application;
 - (ii) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized buildings works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
 - (iii) 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 application site under the BO;
 - (iv) in connection with (ii) above, 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;
 - (v) if the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage; and
 - (vi) detailed comments under the BO will be provided at the building plan submission stage.

Water Supply

9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and

- (b) for provision of water supply to the development, the applicant may need to extend the inside services to nearest suitable Government water mains for connection. The applicant should resolve any land matter (such as private lots) associated with the provision of water supply and should be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

District Officer's Views

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

he has consulted the locals regarding the application. The Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of San Uk Ling, and the IIR of Muk Wu support the application. The IIR of Muk Wu also provides additional views that rehabilitation for agricultural use is good. The incumbent North District Council (NDC) member of the subject constituency, RR of Muk Wu and RR of Nga Yiu have no comment to the application.

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

- (a) Director of Fire Services (D of FS);
- (b) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (d) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (e) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 27.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received (**Appendix III**). A NDC member indicates no comment on the application. The remaining five public comments submitted by the World Wide Fund For Nature Hong Kong, Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual object to the application mainly on the grounds that filling of land would increase the potential flooding risks and bring adverse drainage impacts to the surrounding areas; 'destroy first, build later' and/or unauthorized development should not be legitimated through planning application; adverse landscape impact had already been taken place; insufficient information to demonstrate the need of land-filling for agricultural use; and the setting of undesirable precedents for similar applications within the "AGR" zone.

11. Planning Considerations and Assessments

- 11.1 The application is to regularize the filling of land (about 0.6m in thickness) for

permitted agricultural use at the Site zoned “AGR” (**Plan A-1**). The planning intention of the “AGR” zone is primarily to 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. Although agricultural use in the “AGR” zone is always permitted, land filling (except laying of soil not exceeding 1.2m in thickness for cultivation or construction of any agricultural structure with prior written approval issued by LandsD) will require planning permission from the Board. The requirement for planning permission for land filling operation is to ensure that it would not cause adverse landscape and drainage impacts on the adjacent areas. From agriculture point of view, DAFC has no strong view against the application as a substantial part of the Site has been allocated for agricultural purpose and its ancillary uses including storage of agricultural tools and fertilizers as well as the loading/unloading of vegetables are important to support farm operation. According to DAFC, the Site is part of a certified organic farm operated by the applicant, though it is not included in the certified production area (**Plan A-2**). In this regard, the filling of land to effect an agricultural use is considered in line with the planning intention of the “AGR” zone.

- 11.2 The filling of land, involving an area of about 389m², is relatively small in scale and involves only about 0.6m in thickness for leveling the Site to a similar level as the local road at the eastern boundary of the Site (**Plans A-2 and A-4a**). The development is considered not entirely incompatible with the rural landscape character which comprises active and fallow agricultural land and temporary structures. Although adverse landscape impact arising from the land filling is not anticipated, CTP/UD&L, PlanD has reservation on the application from landscape planning point of view as approval of the application may set an undesirable precedent to encourage similar filling of land in the “AGR” zone prior to permission. To address the CTP/UD&L, PlanD’s concern, if the application is approved, approval conditions are recommended to require the applicant to submit and implement a landscape proposal. As for drainage impact, CE/MN, DSD has no objection to the application and advised that the applicant should be required to submit and implement drainage proposal to his satisfaction to ensure that the development will not cause adverse drainage impact to the surrounding areas. Relevant departments consulted, including C for T, CHE/NTE, HyD, CE/C, WSD, DEP, and H(GEO), CEDD, have no comment on or no objection to the application.
- 11.3 Regarding the adverse public comments as detailed in paragraph 10, the Government departments’ comments and planning assessments above are relevant. As for the unauthorized development on-site, it will be subject to enforcement action by the Planning Authority.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, no time clause for commencement for the development is proposed as the filling of land has been completed. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 7.3.2019;
- (b) in relation to (a) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 7.6.2019;
- (c) the submission of 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 7.3.2019;
- (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 7.6.2019; and
- (e) if any of the above planning conditions (a), (b), (c) or (d) 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 Member's reference:

- (a) the applicant fails to demonstrate that the filling of land would not cause adverse drainage impact on the surrounding area; and
- (b) the approval of the application would set an undesirable precedent for other similar applications within the "AGR" zone. The cumulative impact of approving such applications would result in a general degradation of the environment of the area.

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 18.7.2018
Appendix II	Detail Comments of Chief Engineer/Mainland North, Drainage Services Department
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and 3b	Aerial Photos taken in 2015 and 2017
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**