

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

APPLICATION NO. A/YL-TT/441

<u>Applicants</u>	:	詹麗云女士 and 何旋章先生
<u>Site</u>	:	Lot 739 (Part) in D.D. 118, Tai Tong, Yuen Long, New Territories
<u>Site Area</u>	:	181m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Filling of Land for Permitted Agricultural Use and Ancillary Footpath and Drain

1. The Proposal

- 1.1 The applicants seek planning permission for filling of land (about 0.07m in thickness) for permitted agricultural use and ancillary footpath and drain at the application site (the Site) which falls within the “AGR” zone on the OZP (**Plan A-1**). According to the Notes for the “AGR” zone on the OZP, ‘Agricultural Use’ is a Column 1 use which is always permitted. Any filling of land, including that to effect a change of use to any of those specified in Columns 1 and 2 or uses/developments always permitted under the covering Notes, requires planning permission from the Town Planning Board (the Board)¹. The Site has been land-filled with cement. A temporary structure and storage of construction materials are found on site. The Site is currently fenced off by about 3m-high corrugated metal sheets (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is accessible from Tai Shu Ha Road West via a local track (**Plan A-3**). According to the applicants, the filling of land is to facilitate the construction of two greenhouses (each measuring 40ft. (l) x 20ft. (w) x 4.57m (h)) for

¹ This restriction, however, does not apply to filling of land specifically required under prior written instructions of Government department(s) or for the purposes of (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 the Lands Department.

conducting hydroponics, as well as provision of a footpath for access and a drain for prevention of flooding (**Drawing A-1**). The site layout plan submitted by the applicants is at **Drawing A-1**.

1.3 In support of the application, the applicants have submitted the following documents:

- (a) Application Form received on 27.7.2018 (Appendix I)
- (b) Further Information received on 16.8.2018 (Appendix Ia) providing details of the proposed greenhouses
[accepted and exempted from publication and recounting requirements]

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the application are detailed at **Appendices I and Ia**. They can be summarized as follows:

- (a) The applicants seek to regularize filling of a layer of cement at the Site for construction of greenhouses, which is to facilitate conducting hydroponics.
- (b) A footpath has been laid for the convenience of accessing the Site. A drain has also been constructed for prevention of flooding of the farmland.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

4.1 Based on the aerial photo taken on 30.6.2013 (**Plan A-3c**), vegetation was found on Site. Subsequently, vegetation clearance has taken place as revealed in the aerial photo taken on 2.4.2017 (**Plan A-3b**). The Site is currently paved and land-filled with cement and occupied by a temporary structure (**Plans A-2, A-3a, A-4a and A-4b**).

4.2 The Site is subject to planning enforcement action against unauthorized development (UD) involving filling of land. Enforcement Notice (EN) was issued on 17.5.2018 requiring discontinuation of the UD. If the EN is not complied with, prosecution action may be taken.

5. **Previous Application**

The Site was not involved in any previous application.

6. **Similar Applications**

- 6.1 There are a total of 3 similar applications (No. A/YL-TT/38, 65 and 75) for pond filling within the same “AGR” zone on the OZP. Detailed information of the applications is at **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-TT/38 for pond filling and site formation for tree plantation, Application No. A/YL-TT/65 for pond filling for farming, and Application No. A/YL-TT/75 for pond filling for grass growing and tree plantations were approved with conditions by the Committee on 11.9.1998, 17.12.1999 and 2.6.2000 respectively on similar considerations that, inter alia, the proposed uses are in line with the planning intention of the “AGR” zone, compatible with the surrounding areas, and relevant government departments have no adverse comments on the application.

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

- 7.1 The Site is:
- (a) accessible from Tai Shu Ha Road West to its east via a local track;
 - (b) flat and land-filled with cement;
 - (c) occupied by a temporary structure and storage of construction materials is found;
 - (d) equipped with a drain running along its western periphery; and
 - (e) bounded by corrugated metal fence and abutting an unpaved area in the same lot.
- 7.2 The surrounding areas have the following characteristics:
- (a) predominantly rural in character comprising cultivated and fallow farmland, ponds, residential structures, orchard, graves and unused land disturbed by storage yards;
 - (b) graves and burial grounds are mainly found to its northeast and southwest;
 - (c) ponds are found to its southeast, south, southwest and northwest;
 - (d) a temple is found to its west;
 - (e) to its northwest are some storage yards;
 - (f) the site levels to the east of the Site (28.5 - 30.5 mPD) are generally higher than those to the west of the Site (23.8 - 24.1 mPD);

- (g) the unpaved area within the same lot is unused and overgrown; and
- (h) except the storage yard to the northwest of the Site that may be tolerated under the Town Planning Ordinance, other storage yards in the vicinity are suspected unauthorized development subject to enforcement action taken by the Planning Authority.

8. Planning Intention

- 8.1 The planning intention of the “AGR” zone is intended 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.
- 8.2 According to the Explanatory Statement of the OZP, permission from the Board is required for filling of land/pond within the “AGR” zone as these activities may cause adverse drainage and environmental impacts on the adjacent areas.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views on the application and public comments are summarized as follows:

Land Administration

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

- (a) The Site is accessible to Tai Sha Ha Road West via both unleased Government Land (GL) and adjoining private land. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site. The applicants must accordingly make their own arrangements for acquiring such right-of-way.
- (b) Should planning approval be given to the planning application, the applicants should submit application to Agriculture, Fisheries and Conservation Department (AFCD) for a Letter of Approval (LoA) for Agricultural Structures prior to the actual occupation. Such application will be considered by both AFCD and DLO/YL, LandsD and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions as may be imposed by AFCD and her Department.

Agriculture

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

- (a) Regarding the application of land-filling for setting up greenhouses and other ancillary footpath and drain, it is considered that the depth of land-filling has little to do with crop cultivation. Therefore, his Department is not in a position to render expert advice on the depth of land-filling required for erection of greenhouses and the ancillary footpath and drain.
- (b) Although the applicants claimed that the land-filling is to facilitate construction of greenhouses and conducting hydroponics on site, no application of LoA for erecting agricultural structure was received by his office so far. In addition to the above, the applicants did not provide detailed information of farming proposal.
- (c) From agricultural perspective, he always supports agricultural activities. Having said that, the applicants did not provide sufficient information to support the proposed use. In view of this, he has reservation on the application from agricultural point of view.

Drainage

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

- (a) As land filling works is involved in the application, the applicants should provide more information to clarify how the runoff within the Site can be properly collected and whether overland flow would be blocked by the development.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a drainage proposal and the implementation and maintenance of the drainage proposal for the development to his satisfaction or of the Board should be stipulated.

Environment

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

- (a) He notes that the applicants seek permission for filling of land for permitted agricultural use and ancillary footpath and

drain within the “AGR” zone on the OZP. He has no objection to this application in view of the small scale and nature of the filling of land.

- (b) The applicants are reminded to comply with all relevant environmental pollution control ordinances during construction and to implement appropriate mitigation measures/practices as set out in the Recommended Pollution Control Clauses for Construction Contracts.

Landscape

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

- (a) The Site is located in Nam Hang Tsuen, which lies in an area zoned “AGR” on the OZP. The current application seeks planning permission for filling of land to facilitate construction of greenhouses and ancillary footpath and drain. The Site is not subject to any previous planning application.
- (b) With reference to the site photos dated 23.8.2018 and aerial photo of 2018, the Site is currently hard paved and vacant. The Site is situated in an area of rural landscape character with scattered trees, active farms and fish ponds. Significant change to the landscape character arising from the application is not anticipated. Hence, she has no objection to the application from the landscape planning perspective.
- (c) In consideration of the limited space within the application boundary, it is considered impractical to impose a landscape condition.

Traffic

9.1.6 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) It is noted that no vehicular access is proposed or to be granted under the subject application. He has no comment from highways maintenance point of view.
- (b) If the application is approved, it is recommended to highlight to the applicants that the application is approved on the understanding that there is and will be no vehicular access to/from the Site.

Building Matters

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

- (a) Before any new building works (including container/open sheds as temporary buildings and pond filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of his Department, they are UBW under the BO and should not be designated for any proposed use under the application.
- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulation respectively.
- (d) 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) Regulation at the building plan submission stage.

Others

9.1.8 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply

lines.

District Officer's Comments

9.1.9 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

The local consultation was completed and his office has not received any comments from the village representatives in the vicinity regarding the application.

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

- (a) Commissioner for Transport (C for T);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Fire Services (D of FS);
- (d) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (e) H(GEO), CEDD; and
- (f) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

10.1 On 7.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 28.8.2018, five public comments were received (**Appendices II-1 to II-5**).

10.2 The village representatives of Shui Chiu Lo Wai, Hung Tso Tin and Nam Hang Tsuen object to the application as it is suspected that the Site is not for genuine agricultural use (**Appendix II-1**).

10.3 The other public comments, submitted by Kadoorie Farm and Botanic Garden Corporation, World Wild Fund for Nature Hong Kong, Designing Hong Kong and the Hong Kong Bird Watching Society object to the application mainly for the following reasons:

- (a) encouraging “destroy first and develop/apply later” (**Appendices II-2 to II-5**);
- (b) hydroponic farm should be encouraged in industrial buildings/zone only (**Appendix II-2**);
- (c) adverse landscape impact (**Appendix II-3**);
- (d) not in line with the planning intention of the “AGR” zone (**Appendices II-4 and II-5**); and
- (e) setting an undesirable precedent (**Appendices II-3 to II-5**).

11. Planning Considerations and Assessments

- 11.1 The application is for filling of land (about 0.07m) in thickness for permitted agricultural use at the Site zoned “AGR” on the OZP. The planning intention of the “AGR” zone 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. Although agricultural use in the “AGR” zone is always permitted, filling of land requires planning permission from the Board. Such requirement is to ensure that the land filling activity would not cause adverse drainage and environmental impacts on the adjacent areas. DEP has no objection to the application. However, CE/MN, DSD advises that the applicants should provide more information in relation to the drainage aspect of the applied development. In this regard, the applicants fail to demonstrate that the filling of land would not cause adverse drainage impact on the area.
- 11.2 The filling of land, involving an area of 181m² and thickness of 0.07m, is relatively small in scale. The development is considered not entirely incompatible with the surrounding area comprising cultivated and fallow farmland, ponds, residential structures, orchard, graves and unused land disturbed by storage yards. CTP/UD&L, PlanD has no objection to the application and significant landscape impact arising from the filling of land is not anticipated. Relevant government departments consulted, including C for T, CHE/NTW, HyD, CE/C, WSD, D of FS and H(GEO), CEDD have no comment on or no objection to the application.
- 11.3 Notwithstanding the above, DAFC has reservation on the application from agricultural perspective as the applicants did not provide sufficient information of the farming proposal and no application of LoA for erecting agricultural structure was received. Moreover, the Site is fenced off by corrugated metal sheets and a temporary structure and storage of construction materials are found on site. The genuine intention of the applicants to use the Site for agricultural activities is in doubt.
- 11.4 There are five public comments received during the statutory publication period as summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
- (a) the planning intention of the “Agriculture” (“AGR”) zone 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 rehabilitation for cultivation and other agricultural purposes. There is no strong justification to demonstrate the need for land filling

for the proposed agricultural purpose; and

- (b) the applicant fails to demonstrate that the filling of land would not cause adverse drainage impact on the surrounding area.

12.2 Alternatively, 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 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 21.3.2019;
- (b) in relation to (a) above, the implementation of the drainage proposal 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 21.6.2019; and
- (c) if any of the above planning conditions (a) or (b) is not complied with, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Appendix IV**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission.
- 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 27.7.2018
- Appendix Ia** Further Information received on 16.8.2018 providing details of the proposed greenhouses

Appendix II	Similar Applications within the Same “AGR” Zone on the OZP
Appendices III-1 to III-5	Public Comments Received During Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site layout plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3c	Aerial Photos
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**