

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/835

<u>Applicant</u>	:	Mr. CHUNG To Yan represented by LCH Planning & Development Consultants Limited
<u>Site</u>	:	Lot 1522 in D.D. 76, Fanling, New Territories
<u>Site Area</u>	:	About 834m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Proposed Filling of Land for Permitted Agricultural Use with Ancillary Solar Panels

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed filling of land for permitted agricultural use with ancillary solar panels at the application site (the Site), which falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, ‘Agricultural Use’ is a Column 1 use within the “AGR” zone which is always permitted, whilst filling of land requires planning permission from the Town Planning Board (the Board)¹. The Site is currently mostly occupied by active farmland (**Plans A-4a** and **4b**).
- 1.2 The Site is accessible from Sha Tau Kok Road – Ma Mei Ha via a local access (**Plans A-1** and **A-2**). According to the applicant, the application involves filling of land of about 422m² (51% of the total site area) by concrete of not more than 0.2m in depth (from +14.0mPD to +14.2mPD) for permitted agricultural use (i.e. greenhouse with ancillary solar panels) at the Site (**Drawing A-1**). The proposed works could provide a foundation for erection of a single-storey greenhouse with a building height (BH) of about 2.5m and a total floor area of 422m² for mushroom cultivation. The proposed greenhouse will be powered by the ancillary solar

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.

panels (not more than 42 solar panels) at its rooftop and operated 24 hours daily. The applicant, who lives in the nearby village, will operate the greenhouse by himself and no other staff will be involved. The crops will be mainly consumed by the applicant himself and local villagers. No private car parking space nor loading/unloading area will be provided within the Site. Existing tree groups within the Site will be preserved to maintain the landscape environment. The layout and section plans submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application Form with Attachments received on 27.9.2024² (**Appendix I**)
- (b) Supplementary Information (SI) received on 2.10.2024[^] (**Appendix Ia**)
- (c) Further Information (FI) received on 4.11.2024^{^2} (**Appendix Ib**)
- (d) FI received on 14.11.2024[^] (**Appendix Ic**)

[^] accepted and exempted from the publication and recounting requirements

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form, SI and FIs at **Appendices I to Ic** as summarised below:

- (a) the application is for proposed filling of land for the permitted agricultural use (i.e. erection of a greenhouse with solar panels for mushroom cultivation), which is in line with the long-term planning intention of the “AGR” zone;
- (b) the applicant, being the sole owner of the Site, intends to make use of his farmland for mushroom cultivation. Noting that mushroom is highly sensitive to its growing environment, a greenhouse structure is required for creating a controlled-environment for the relevant cultivation activities;
- (c) the proposed works are considered necessary for the permitted agricultural use as the concrete paved area could provide (i) a foundation for erection of the greenhouse structure; and (ii) an insulation layer for the enclosed greenhouse to create a controlled-environment for mushroom cultivation activities within the Site;
- (d) the proposal, which will be in small-scale serving the applicant himself and the local community, is compatible with the surrounding environment and would not induce adverse traffic, landscape and drainage impacts on the surroundings; and
- (e) the applicant has undertaken to apply for Letter of Approval for Agricultural Structures (LoA) and Certificate of Exemption (CoE) from the Lands Department (LandsD) and Agriculture, Fisheries and Conservation Department (AFCD) for erection of the greenhouse at the Site at the subsequent stage.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

² Revised planning statement and layout plan were submitted by the applicant on 4.11.2024 (**Appendix Ib**), thus the original planning statement and layout plan are not attached in the paper.

4. Background

The Site is currently not subject to any active planning enforcement action.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application within the same “AGR” zone.

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

7.1 The Site is:

- (a) currently mostly occupied by active farmland; and
- (b) accessible from Sha Tau Kok Road – Ma Mei Ha via the local access to the east.

7.2 The surroundings areas are of rural inland plain landscape character mainly comprising village houses/domestic structures, active/fallow farmlands and vacant/unused lands with tree groups/vegetation. To the immediate southwest of the Site is Tan Shan River.

8. Planning Intention

8.1 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.

8.2 According to the Explanatory Statement of the OZP, planning permission from the Board is required for filling of land within the “AGR” zone, as it 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 are summarised as follows:

Land Administration

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

- (a) no objection to the application;

- (b) the Site comprises Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via Government land is granted to the Site;
- (c) her office has not received any LoA application nor referral from AFCD; and
- (d) her advisory comments are provided at **Appendix II**.

Agriculture and Nature Conservation

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

- (a) no comment on the application from agricultural perspective, considering that the application is for proposed filling of land for permitted agricultural use (i.e. greenhouse with ancillary solar panels) at the Site;
- (b) his office has not received an application for a LoA to erect agricultural structure on the Site;
- (c) no comment on the application from nature conservation perspective; and
- (d) his advisory comments are provided at **Appendix II**.

Traffic

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

having reviewed the FI submitted by the applicant, she has no comment on the application from traffic engineering perspective.

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

- (a) no comment from the highways maintenance perspective; and
- (b) his advisory comments are provided at **Appendix II**.

Environment

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

- (a) no objection to the application;
- (b) there was no environmental complaint related to the Site in the past three years; and
- (c) his advisory comments are provided at **Appendix II**.

Drainage

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

- (a) no objection to the application from public drainage perspective;
- (b) should the application be approved, conditions should be imposed 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
- (c) her advisory comments are provided at **Appendix II**.

Fire Safety

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

- (a) no objection in principle to the application; and
- (b) his advisory comments are provided at **Appendix II**.

Landscape

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

- (a) no objection to the application from landscape planning perspective;
- (b) the Site is located in an area of rural inland plain landscape character mainly comprising village houses/domestic structures, active/fallow farmlands, vacant/unused lands with tree groups/vegetation and a section of Tan Shan River. The proposed filling of land is considered not incompatible with its surrounding environment;
- (c) the Site is currently mostly occupied by active farmland. Few mature trees are observed at the southeastern periphery of Site. According to the applicant's submissions (**Appendices I to Ic**), the existing tree group within the Site will be preserved and maintained. Significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated; and
- (d) her advisory comments are provided at **Appendix II**.

Building Matters

9.1.9 Chief Building Surveyor/New Territories West, Building Department (CBS/NTW, BD)

- (a) no objection to the application; and
- (b) his advisory comments under the Buildings Ordinance are provided at **Appendix II**.

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

- (a) District Officer (North), Home Affairs Department (DO(N), HAD);
- (b) Director of Food and Environmental Hygiene (DFEH);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (e) Director of Electrical & Mechanical Services (DEMS); and
- (f) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 4.10.2024, the application was published for public inspection. During the statutory public inspection period, four public comments were received (**Appendix III**). One comment from an individual objects to the application mainly on the grounds that the proposed filling of land at the Site along a watercourse is considered undesirable; and there is insufficient information on the details of the ancillary solar panels. One comment from the Kadoorie Farm and Botanic Garden expresses views on the application that the proposed filling of land shall be with reasonable justification. The remaining two comments from a member of North District Council and the Chairman of Lung Shan Area Committee respectively indicate no comment on the application.

11. Planning Considerations and Assessments

11.1 The application is for proposed filling of land for permitted agricultural use (greenhouse) with ancillary solar panels at the Site zoned “AGR” on the OZP (**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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Whilst ‘Agricultural Use’ in “AGR” zone is always permitted, filling of land requires planning permission from the Board, as it may cause adverse drainage and environmental impacts on the adjacent areas. According to the applicant, the proposed filling of land involving area of about 422m² (or 51% of the Site) with concrete of not more than 0.2m in depth is necessary in that it could provide (i) a foundation for erection of the greenhouse with ancillary solar panels at its rooftop and (ii) insulation layer to create a suitable environment for mushrooms cultivation within the greenhouse. In this regard, DAFC has no comment on the proposed filling of land for permitted greenhouse with ancillary solar panels, and has no comment on the application from agricultural perspective. Besides, CE/MN, DSD and DEP have no objection to the proposed filling of land from drainage and environmental aspects respectively.

11.2 The Site, being accessible from Sha Tau Kok Road – Ma Mei Ha via the local access to the east, is mostly occupied by active farmlands. The proposed development involving filling of land for erection of a single-storey greenhouse with a BH of about 2.5m at the Site is considered not incompatible with surrounding areas of rural landscape character mainly comprising village houses/domestic structures, active/fallow farmlands, vacant/unused lands with

tree groups/vegetation and a section of Tan Shan River. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective as significant adverse impact on the existing landscape resources is not anticipated. DAFC has no comment on the application from natural conservation perspective, and advises the applicant should adopt good site practice to avoid adverse impact to the Tan Shan River during construction and operation of the proposed greenhouse.

- 11.3 Concerned government departments consulted, including C for T, DEP, CE/MN, DSD and D of FS have no objection to or no comment on the application from traffic, environmental, drainage and fire safety aspects respectively. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. Should the planning application be approved, the applicant will also be advised to observe/follow (i) the Recommended Pollution Clauses for Construction Contracts; (ii) the Water Pollution Control Ordinance (Cap. 358); and (iii) the mitigation measures as required under the Environment, Transport and Works Bureau Technical Circular (Works) (ETWB TC (Works)) No. 5/2005 “Protection of natural streams/rivers from adverse impacts arising from construction works” in order to minimise the possible environmental nuisance on the surroundings.
- 11.4 Regarding the adverse public comment as detailed in paragraph 10 above, the government departments’ comments and the 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 the public comments mentioned in paragraph 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 until 22.11.2028, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the submission of a drainage proposal before commencement of the filling works on the site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (b) in relation to (a) above, the implementation of the drainage proposal upon completion of the filling works on the site to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (c) if any of the above planning condition (a) or (b) is not complied with before commencement or upon completion of the filling works respectively, 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 II**.

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

the proposed filling of land is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good 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. There is no strong planning justifications for land filling of the area for agricultural purpose.

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.
- 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 27.9.2024
Appendix Ia	SI received on 2.10.2024
Appendix Ib	FI received on 4.11.2024
Appendix Ic	FI received on 14.11.2024
Appendix II	Recommended Advisory Clauses
Appendix III	Public Comments
Drawing A-1	Site Layout Plan
Drawing A-2	Section Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a & A-4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2024**