

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/949

<u>Applicants</u>	: Messrs. TANG Chi Kwan and TANG Chi Kit represented by A-Tech Engineering Consultants Limited
<u>Site</u>	: Lots 342 S.A ss.1, 342 S.A ss.2 and 342 S.A ss.3 in D.D. 111, Chuk Hang, Pat Heung, Yuen Long
<u>Site Area</u>	: About 409.5m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Proposed Filling of Land for Permitted Agricultural Use

1. The Proposal

1.1 The applicants seek planning permission for proposed filling of land for permitted agricultural use at the application site (the Site) which falls within an area zoned “V” on the Pat Heung OZP. According to the Notes of the OZP for “V” zone, ‘agricultural use’ is a Column 1 use which is always permitted. However, any filling of land within the “V” zone, including that to effect a change of use to any of those specified in Columns 1 and 2, requires permission from the Town Planning Board (the Board). The Site is currently vacant and partly covered with weeds. It is accessible from Fan Kam Road via a footpath. According to the applicants, the Site will be filled with soil of about 1m in depth (from +24.1mPD to +25.1mPD) for plant nursery and cultivation of fruit trees (**Drawing A-1**).

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

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|-----|---|---------------|
| (a) | Application form received on 18.4.2023 | (Appendix I) |
| (b) | Further Information (FI) received on 25.5.2023* | (Appendix Ia) |
| (c) | FI received on 12.6.2023* | (Appendix Ib) |
| (d) | FI received on 3.8.2023* | (Appendix Ic) |

**accepted and exempted from publication and recounting requirements*

- 1.3 On 9.6.2023, the Rural and New Town Planning Committee (the Committee) agreed to defer making a decision on the application for two months as requested by the applicants.

2. **Justifications from the Applicants**

The justifications put forth by the applicants in support of the application are detailed in the application form and FIs in **Appendices I to Ic**, which could be summarised as follows:

- (a) The terrain of the Site is lower than the surrounding areas. Considerable soil depth is conducive to cultivation of the intended plant species such as various fruit trees. Soil suitable for agricultural purpose will be used as fill materials.
- (b) Mitigation measures including use of tarpaulins at the site boundaries and regular water spraying will be adopted during the land filling works to control dust emission and avoid any pollution to the nearby watercourse. The Site is separated by other adjacent lots from the watercourse located about 30m away. The proposed filling of land will not induce adverse environmental impacts on the surrounding areas.

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**

Part of the Site is the subject of a planning enforcement case No. E/YL-PH/897 involving unauthorised filling of land in Lots 342 s.A ss.1 and 342 s.A ss.3 (part) in D.D. 111 and adjoining Government Land (the land) (**Plan A-2**). Reinstatement Notice (RN) was issued to the concerned lot owner on 16.1.2023 requiring removal of fill materials on the land. The lot owner under the RN was aggrieved by the Planning Authority (PA)’s decision and wrote to the Secretary for Development (SDEV) on 2.2.2023 seeking for a review of PA’s decision. On 19.7.2023, SDEV confirmed PA’s decision on issuing the RN and requested the lot owner to reinstate the land as set out in Schedule 2 of the RN (i.e. to remove fill materials on the land) within 90 days from the date of his decision. The RN will expire on 17.10.2023.

5. **Previous Application**

There is no previous application covering the Site.

6. **Similar Application**

There is no similar application within the same “V” zone in the past 5 years.

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

7.1 The Site is:

- (a) vacant and partly covered with weeds; and
- (b) accessible from Fan Kam Road via a footpath.

7.2 The surrounding areas have the following characteristics:

- (a) to its west, north and east are residential structures/dwellings of the village settlement of Chuk Hang (竹坑), grasslands and vacant lands; and
- (b) to its immediate south is farmland. To its further south is a watercourse across which are residential structures/dwellings, grasslands and farmlands.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground level of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

9.1 Apart from the government department as set out in paragraph 9.1.1 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices II** and **III** respectively:

Environment

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

- (a) no objection to the application in view of the nature and scale of the proposed filling of land; and
- (b) there were a total of 9 complaints in 2022, including 3 substantiated complaints on waste and miscellaneous aspects; and 2 substantiated complaints on waste aspects between January and March 2023, received relating to the Site.

10. Public Comments Received During Statutory Publication Period (Appendix IV)

The application was published for public inspection. During the statutory publication period, 17 public comments from villagers of Chuk Hang and individuals were received objecting to the application mainly on the grounds summarised below:

- (a) there has been no agricultural activity at the Site for a long time. The Site is suitable for agricultural use and no filling of land is required. The applicants' intention is for building Small House(s) at the Site;
- (b) the Site is the subject of a planning enforcement action against unauthorised development. There are related illegal excavation works at the nearby watercourse and slopes, and tree felling in the surrounding areas;
- (c) it would adversely affect the nearby watercourse where the protected species of *Paramesotriton hongkongensis* (香港瘰螈) have been recorded; and
- (d) there would be adverse drainage and environmental impacts on the surrounding areas.

11. Planning Considerations and Assessments

11.1 The application is for proposed filling of land for permitted agricultural use at the Site zoned "V". The planning intention of the "V" zone is to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. The District Lands Officer/Yuen Long of the Lands Department (DLO/YL of LandsD) advises that there is no Small House application approved or under processing within the Site. The applicants intend to fill the Site with soil suitable for agriculture purpose for plant nursery and cultivation of fruit trees. While agricultural use is always permitted within the "V" zone, filling of land within the "V" zone requires planning permission. In this regard, the Director of Agriculture, Fisheries and Conservation (DAFC) in considering that the depth of fill materials for cultivation is subject to the farmers' decision, has no comment on the application from agricultural perspective. The Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and DEP have no objection to the application from drainage and environmental perspectives.

11.2 The proposed filling of land for permitted agricultural use is considered not incompatible with the surrounding land uses predominantly comprising village settlement, grasslands, vacant lands and farmlands. The Chief Town Planner/Urban Design and Landscape of the Planning Department (CTP/UD&L of PlanD) considers that the Site falls within "V" zone which is non-landscape sensitive zoning and no significant landscape impact is anticipated.

- 11.3 With respect to the watercourse to the south of the Site, the applicants will adopt mitigation measures including use of tarpaulins and regular water spraying to control dust emission and avoid pollution. DAFC has no comment from nature conservation perspective. The applicants will be advised to minimise potential disturbances to the watercourse during land filling and operation should the application be approved. Relevant departments consulted, including the Commissioner for Transport, CE/MN of DSD and DEP have no objection to or no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicants will also be advised to comply with the relevant pollution control ordinances including Waste Disposal Ordinance and Water Pollution Ordinance and to follow the Recommended Pollution Control Clauses for Construction Contracts to minimise environmental impacts during the works.
- 11.4 Regarding the public comments objecting to the application as stated in paragraph 10 above, the departmental comments and planning assessments above are relevant. As for the objection ground that the applicants' intention is for Small House development, it should be noted that 'House (New Territories Exempted House only)' is a Column 1 use within the "V" zone which does not require planning permission from the Board. Nonetheless, filling of land including that to effect a change of use to any Column 1 uses requires planning permission.

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, it is suggested that the permission shall be valid until 11.8.2027, 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 also suggested for Members' reference:

Approval conditions

- (a) no part of the site shall be filled other than soil to a depth exceeding 1m, as proposed by the applicant;
- (b) the submission of a drainage proposal before commencement of the land filling works on the site to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) in relation to (b) above, the implementation of the drainage proposal upon completion of the land filling works to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and

- (d) if any of the above planning condition (b) or (c) is not complied with before commencement or upon completion of the land filling works respectively, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

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

the applicants fail to demonstrate that the proposed filling of land is justifiable for the potential agricultural use.

Advisory clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 18.4.2023
Appendix Ia	FI received on 25.5.2023
Appendix Ib	FI received on 12.6.2023
Appendix Ic	FI received on 3.8.2023
Appendix II	Government departments' general comments
Appendix III	Recommended advisory clauses
Appendix IV	Public comments
Drawing A-1	Land filling plan
Plan A-1	Location plan
Plan A-2	Site plan

Plan A-3 Aerial photo

Plan A-4 Site photos

**PLANNING DEPARTMENT
AUGUST 2023**