

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/235

<u>Applicant</u>	: Mr. Cheung Chi Wah represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 84 RP (Part) in D.D. 112, Kam Tin, Yuen Long
<u>Site Area</u>	: 675.2 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: 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 temporary place of recreation, sports or culture (hobby farm) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Horse Riding School, Hobby Farm, Fishing Ground only)’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is vacant and mostly covered by vegetation (**Plans A-2 and A-4**). The Site is not subject to any previous application.
- 1.2 According to the applicant, about 54% of the Site (365m²) will be used as farmland. Three 1 to 2-storey temporary structures of not more than 7m in height with a total floor area of 177.25 m² are proposed for agricultural learning center, reception, lounge, storage of farm tools and seed; farmer lounge/ staff pantry and site office; and water storage tank for fire services installations, fire services pump room and electric meter room. The operation hours are 9 a.m. to 6 p.m.

daily (including public holidays). The applicant estimated that there will be not more than 10 and 15 visitors on weekdays and weekends respectively. The applicant proposes that no public announcement system will be used on-site. The Site is accessible via a pedestrian walkway from Nam Hing West Road. The Site has 1 ingress/egress and no parking spaces will be provided. The layout plan and location plan showing pedestrian access 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 supplementary information received on 6.3.2018 **(Appendix I)**
- (b) Further Information (FI) received on 19.3.2018 in response to departmental comments **(Appendix Ia)**
(accepted and exempted from publication and recounting requirements)
- (c) FI received on 10.4.2018 in response to departmental comments **(Appendix Ib)**
(accepted and exempted from publication and recounting requirements)
- (d) FI received on 17.4.2018 in response to departmental comments **(Appendix Ic)**
(accepted and exempted from 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 supporting planning statement in **Appendix I**. They are summarized as follows:

- (a) The proposed use is compatible with the surrounding area. No filling or excavation of land will be carried out.
- (b) No public announcement system will be installed and no parking space will be provided on-site to minimize the noise and traffic impact on the surrounding area.

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

The applicant is not a “current land owner” but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s

Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) by posting site notice and sending notification letter to Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not a subject of any active enforcement case and there is currently no enforcement action against it. The use of the Site for place of recreation, sports or culture use without a valid planning permission constitutes an unauthorized development (UD) under the Town Planning Ordinance (the Ordinance). Should there be sufficient evidence to prove that the use on site is an UD under the Ordinance, appropriate enforcement action will be taken.

5. Previous Application

The Site is not the subject of any planning application.

6. Similar Application

There is no similar application in the same “AGR” zone on the OZP.

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

7.1 The Site is:

- (a) vacant and covered by vegetation; and
- (b) accessible via a footpath connecting to Nam Hing West Road.

7.2 The surrounding areas are rural in character, mainly occupied by residential structures/dwellings, cultivated and fallow agricultural land and vacant/unused land:

- (a) to its immediate north is Nam Hing West Road, to its further north across the road are cultivated and fallow agricultural land and residential structures/dwellings; and
- (b) to its east, south and west are unused land, residential structures/dwellings, cultivated and fallow agricultural land.

8. Planning Intention

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.

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, Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an 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.
- (b) The Site is accessible to Nam Hing West Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within the SKAHRA.
- (d) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Such application (s) will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

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

Noting that there is no vehicular access to the Site and the induced traffic is minimal, he has no comment on the application.

9.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

It is noted that there is no vehicular access to the Site. He has no comment on the application from the highways maintenance point of view.

Environment

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

- (a) Provided that the applicant would minimize any noise from the proposed use such as prohibiting the use of public announcement system, portable loudspeakers or any form of audio amplification system so that it would not cause any environmental nuisance to nearby sensitive receivers, he has no objection to the application from environmental planning perspective.
- (b) The applicant is also advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisance.
- (c) As there is no information regarding the sewage disposal arrangement, the applicant should be reminded that it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide adequate supporting infrastructure including waste / wastewater collection and disposal facilities for the proper collection, treatment and disposal of waste / wastewater generated from the proposed use. If septic tank and soakaway system will be used, its design and construction shall follow the requirements of Environmental Protection Department (EPD)’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the EPD”.

Food and Environmental Hygiene

9.1.5 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department (FEHD)’s facilities will be affected and operation or activities shall not cause any environmental nuisance and obstruction to the surrounding.

- (b) For any waste generated from the commercial / trading activities, the applicant should arrange disposal properly at her own expenses.
- (c) His detailed comment is in **Appendix II**.

Landscape

- 9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) He has no objection to the application from the landscape planning point of view.
 - (b) The Site is adjacent to Nam Hing West Road, surrounded by active and fallow farmlands with Small Houses concentrated within “V” zone at the further east and south. The Site is not the subject of any previous planning application.
 - (c) Based on the aerial photo on 16.4.2017, the Site is situated in an area of rural landscape character comprising of scattered tree groups, small houses, active and fallow farmlands. The proposed use is not incompatible to the surrounding environment.
 - (d) Referring to the site visit dated 16.3.2018, the Site is vacant and covers with weeds and grasses. Six existing trees of *Litchi chinensis* (荔枝) including one dead tree are spotted within the Site. As indicated in the application documents that no tree will be felled within the Site, adverse impact on landscape resources arising from the proposed development is not anticipated.
 - (e) Should the application be approved, the submission and implementation of tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Board should be included in the planning approval.
 - (f) His detailed comment is at **Appendix II**.

Agriculture

- 9.1.7 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- (a) It is noted that no pavement is proposed in the application, and a major proportion of the Site is retained for agricultural activities. As such, he has no strong view against the application from

agriculture point of view.

- (b) There is a strip of government land between the Site and Nam Hing West Road, part of which is narrow strip of mitigation planting area maintained by his Department. Should the application be approved, the applicant shall be advised to avoid damages to the trees and plants at the subject strip of government land.

Drainage

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

- (a) He has no in principle objection to the proposed development.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Building Matters

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

- (a) If the existing structures are erected on leased land without approval of his department (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application.
- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the 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 BO.
- (c) 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 Site under the BO.

- (d) 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 B(P)R respectively.
- (e) 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 B(P)R at the building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (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. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with BO (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Electricity

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

He has no particular comment on the application from electricity supply safety aspect. However, 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.

Water Supply

9.1.12 Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) His detailed comment is at **Appendix II**.

District Officer's Comments

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

His office has not received any comment from the locals upon close of consultation and he has no particular comment on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Leisure and Cultural Services (DLCS); and
- (c) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 13.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.4.2018, one comment from a member of the public (**Appendix III**) was received stating the Board should reject the application as 50% of the Site would be built on and this is not farming but an excuse to cement over arable land.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years at a site zoned "AGR" on the OZP. The planning intention of the "AGR" zone is 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. According to the applicant, about 54% of the Site will be farmland. The proposed use is generally not in conflict with the planning intention of the "AGR" zone and DAFC has no strong view to the application

from the agricultural point of view. It is considered that 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 proposed hobby farm is considered not incompatible with the surrounding areas which are rural in character, mainly occupied by residential structures/dwellings, cultivated and fallow agricultural land and vacant/unused land.
- 11.3 According to the applicant, there will be not more than 15 visitors and no public announcement system will be used at the Site. In view of the nature of the proposed hobby farm, it would unlikely cause significant adverse environmental, traffic or drainage impacts and relevant departments consulted including C for T, CE/MN of DSD, CTP/UD&L of PlanD , CE/C of WSD and D of FS have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and restriction on the use of public announcement system, portable loudspeaker or audio amplification system at the Site are recommended in paragraph 12.2(a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP in order to minimize any potential environmental impact. Technical requests of CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (i).
- 11.4 One objecting comment was received mainly on the grounds as mentioned in paragraph 10 above. The planning considerations and assessments as stated above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taking into account the public comment in paragraph 10, the Planning Department considers that proposed temporary place of recreation, sports or culture (hobby farm) could be tolerated for a period of 3 years.
- 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 4.5.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site during the planning approval period;
- (c) the submission of tree preservation and 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 4.11.2018;
- (d) in relation to (c) above, the implementation of tree preservation and 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 4.2.2019;
- (e) 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 4.11.2018;
- (f) in relation to (e) above, the implementation of 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 4.2.2019;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of fire service installation proposal 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 4.11.2018;
- (i) in relation to (h) above, the provision of fire service installations 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 4.2.2019;
- (j) if any of the above planning conditions (a), (b) or (g) 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;
- (k) if any of the above planning conditions (c), (d), (e), (f), (h) or (i) 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

- (l) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (a) 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) approving the application would set an undesirable precedent for similar applications within the "AGR" zone, and the cumulative effect of which would result in a general degradation of the rural 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 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

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| Appendix I | Application form with supplementary information received on 6.3.2018 |
| Appendix Ia | FI received on 19.3.2018 in response to departmental comments |

Appendix Ib	FI received on 10.4.2018 in response to departmental comments
Appendix Ic	FI received on 17.4.2018 in response to departmental comments
Appendix II	Detailed comments of DFEH, CTP/UD&L, PlanD and CE/C, WSD
Appendix III	Public comment received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Location Plan showing pedestrian access
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2018**