

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

**APPLICATION NO. A/KTN/71**

<b><u>Applicant</u></b>	Mr. Hau Wai Yan represented by M&D Planning and Surveyors Consultant Ltd.
<b><u>Site</u></b>	Lot 1348RP in D.D. 95, Kwu Tung North, New Territories
<b><u>Site Area</u></b>	1007.73 m <sup>2</sup>
<b><u>Lease</u></b>	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<b><u>Zoning</u></b>	“Agriculture (1)” (“AGR(1)”)
<b><u>Application</u></b>	Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm) for a Period of 3 Years and Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary place of recreation, sports or culture (hobby farm) at the site (the Site) for a period of 3 years and filling of land. The proposed use is neither a Column 1 nor Column 2 use within the “ARG(1)” on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP for “AGR(1)” zone, any filling of land or temporary use not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for in terms of the OZP. The Site is currently mostly paved and used for storage and parking of vehicles with some temporary structures without planning permission and partly vacant (**Plan A-3**).
- 1.2 According to the applicant’s submission, the proposed development comprises 3 temporary single-storey (not more than 3m in height) structures with a total floor area of about 307.73 m<sup>2</sup> for storage of crops and tools (66.92m<sup>2</sup>), goat keeping (130.07m<sup>2</sup>) and reception/office (including toilet) (110.74m<sup>2</sup>). The total agricultural related area is 787.43m<sup>2</sup> (78% of the site area) (i.e. 557.36m<sup>2</sup> for open field cultivation (55%), 100m<sup>2</sup> for hydroponics on existing hard paved area (10%) and 130.07m<sup>2</sup> (13%) for goat keeping). The proposed development will involve land filling works for an area of 687.43m<sup>2</sup> which covers the areas for open field cultivation (557.36m<sup>2</sup>) and goat keeping (130.07m<sup>2</sup>). The existing hard-paving of these areas will be removed and be refilled with soil of not more than 1m in depth. The resultant site formation level will be about the same as the current site level. There will remain a total hard paved

area of about 320.3m<sup>2</sup> (32% of the site area) for hydroponics, storage, reception/office and entrance areas. There will be 33 trees on site along the boundary. The operation hours are from 9:00am to 6:00pm daily, including Sundays and public holidays. No parking space will be provided on site. The Site is accessible via a local track leading to Ho Sheung Heung Pai Fung Road. The applicant estimates that the shipment of goods to the proposed hobby farm will be once a week. There is a mini-bus stop to the southwest of the Site in the nearby village providing public transport service to Sheung Shui. No public announcement system will be used at the Site. Septic tank will be used for wastewater collection, and its design and construction will follow the Environmental Protection Department's requirement. The estimated maximum number of visitors per day is 20 and there will be 4-5 staff working at the Site. The submitted layout plan is at **Drawing A-1**.

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

- |     |                                                                                                 |                      |
|-----|-------------------------------------------------------------------------------------------------|----------------------|
| (a) | Application form and supplementary information received on 11.6.2020 and 16.6.2020 respectively | <b>(Appendix Ia)</b> |
| (b) | Further Information (FI) received on 9.7.2020*                                                  | <b>(Appendix Ib)</b> |
| (c) | FI dated 14.10.2020                                                                             | <b>(Appendix Ic)</b> |
| (d) | FI dated 11.11.2020*                                                                            | <b>(Appendix Id)</b> |
| (e) | FI dated 19.11.2020*                                                                            | <b>(Appendix Ie)</b> |
| (f) | FI dated 26.11.2020*                                                                            | <b>(Appendix If)</b> |

*\*exempted from publication requirement*

1.4 The application was originally scheduled for consideration by the Committee on 7.8.2020. In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting has been rescheduled. On 15.9.2020, the Committee agreed to defer a decision on the application as requested by the applicant to allow time for the applicant to prepare FI to address departmental comments. On 14.10.2020, the applicant submitted FI.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendix Ia** and FI at **Appendix Ib and Ic**. They are summarized as follows:

- (a) The proposed hobby farm will provide agriculture information and organize agricultural activities for visitors. Exhibition of goat on site for visitors is not fee-paying.
- (b) The proposed use is temporary in nature which will not jeopardise the long term planning intention of the "AGR (1)" zone. Being a Column 2 use, the proposed use does not contravene the planning intention of the zone.
- (c) The proposed use will not cause adverse traffic impact to the surroundings as no car parking space will be provided on site. The visitors could reach the Site by public transport.
- (d) The proposed use will not cause adverse noise impact to the surroundings as no public announcement system will be used on site.

- (e) The proposed use is compatible with the surrounding environment.
- (f) The Site will have greening, landscaping and provision of drainage facilities. The proposed development therefore will not have adverse landscape and drainage impacts on the surroundings.
- (g) The Board has approved similar application for temporary hobby farm in the district with consideration of similar justifications.

**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.

**4. Background**

The Site is currently subject to planning enforcement action (**Plan A-2**) against an unauthorized development (UD) involving storage use (including deposit of containers). An Enforcement Notice was issued on 27.4.2020 requiring discontinuation of the UD by 27.7.2020. As revealed by recent site inspection, the UD has not been discontinued upon expiry of the notice. The concerned party may be subject to prosecution action.

**5. Previous Application**

The Site does not involve any previous application.

**6. Similar Application**

There is a similar application No. A/KTN/9 (**Plan A-1** and **Appendix III**) within the same “AGR(1)” zone for proposed temporary hobby farm (mainly for farming/cultivation activities and without land filling) for a period of 3 years. The application was approved by the Rural and New Town Planning Committee (the Committee) with conditions on 19.6.2015 for a period of 3 years mainly on the grounds that the proposed temporary hobby farm would not frustrate the long-term planning intention of the “AGR(1)” zone, it would not be incompatible with the surrounding areas and would not have significant adverse drainage, ecological, sewerage and environmental impacts on the surroundings, and relevant government departments had no adverse comment on the application. The similar application was revoked on 19.3.2016 due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) mostly paved, fenced off for storage and parking of vehicles (including container vehicles) with some temporary structures without planning permission and partly vacant;
- (b) located at the southern part of the “AGR(1)” zone near Ho Sheung Heung village and Sheung Yue River; and
- (c) accessible from Ho Sheung Heung Pai Fung Road via local track.

7.2 The surrounding areas are rural in character predominated by mainly fallow agricultural land, vegetation, ponds and some domestic structures. The surrounding areas have the following characteristics:

- (a) to the north and south of the Site within the same “AGR(1)” zone are mainly ponds, fallow agricultural land, vegetation and scattered domestic structures;
- (b) to the immediate west of the Site is vacant land, to the further west are the village houses in the “Village Type Development” (“V”) zone of Ho Sheung Heung; and
- (c) to its east and southeast are mainly vegetation, cycling track, bicycle parking and Sheung Yue River; and across Sheung Yue River is the proposed Long Valley Nature Park.

## **8. Planning Intention**

8.1 The planning intention of the “AGR(1)” is primarily to retain and safeguard the agricultural land/farm/fish ponds for agricultural purposes and to serve as a buffer to give added protection to the Long Valley Nature Park.

8.2 As stated in the Explanatory Statement (ES) of the OZP, in order to minimise adverse impacts on fauna in the Long Valley and fragmentation impacts on the flight-lines between Ho Sheung Heung Egretty and Long Valley, appropriate planning control would be exercised in the “AGR(1)” zone. In considering the planning application, due consideration should be paid to the ecological resources within the area. Land use proposals that would have adverse drainage, environmental and ecological impacts to the area should not be permitted. Any filling of land may cause adverse drainage and environmental impacts on the areas. Permission from the Board is required for such activity.

## **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 is an Old Schedule Lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make its own arrangement, and there is no guarantee that any adjoining Government Land (GL) will be allowed for the vehicular access of the proposed use;
- (b) the existing structures on the Site were erected without approval from his office. They are not acceptable under the Lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
- (c) according to the proposed use, 2 toilets would be erected on the Site. The applicant should note that any proposed toilet facilities should meet current health requirements;
- (d) temporary structures would be erected for rearing sheep. The applicant should comply with all health requirements on the treatment of animal waste and environmental hygiene laid down by the relevant Government departments; and
- (e) if the planning application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) and/or Letter of Approval (LoA) to cover all the actual occupation area. The application for STW and/or LoA 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, its 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.

### **Traffic**

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

- (a) according to the applicant, there will only have one shipment of goods per week for the proposed hobby farm. Thus, he considers that the application can be tolerated from traffic engineering viewpoint; and
- (b) the local track leading to the Site is not managed by his department. The applicant should check the land status, management and maintenance responsibilities of the local track with the relevant lands and maintenance authorities accordingly.

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

he has no comment on the application. The vehicular access leading from Ho Sheung Heung Road to the Site is not maintained by HyD.

## **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) adequate supporting infrastructure/facilities should be provided for proper collection, treatment and disposal of waste/ wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department"; and
- (c) the applicant is 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" (COP) to minimize any potential environmental nuisance.

### 9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);

the Site is in an area where no public sewerage connection is available.

## **Nature Conservation and Agriculture**

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

- (a) hobby farms are mainly used for recreational purposes instead of commercial crop production, and are not subject to any direct controls or regulations under AFCD. He has no strong views against the application for hobby farms on a temporary basis within the "AGR" zone from agricultural point of view on the understanding that agricultural activities are involved in the proposed use. If pavement is involved, it is advisable for the applicant to reinstate the Site to its original state upon the expiry of the planning permission in order not to impose any limitations of the land for agricultural purpose;
- (b) the Site is about 100m from the boundary of Long Valley Nature Park (LVNP) and it is located on another side of Sheung Yue River, he has no comment on the proposed use from the perspective of LVNP; and
- (c) no license is needed to keep goats in the New Territories. To combat nuisance, it is advised that the applicant should tend the goats at all times if the goats are roaming and free grazing.

- (d) their recent site inspection reveals that the Site was largely paved. The northern part of the Site was occupied by containers. Two paved tracks to the Site were observed. According to the aerial photos taken by the Lands Department in October 2016, the Site and the paved tracks were covered with trees and vegetation. The areas concerned had already been paved in the aerial photo taken in March 2017. It may be considered as “destroy first, develop later” case which should not be encouraged from nature conservation point of view;

### **Landscape**

#### 9.1.7 Comments of the Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD):

- (a) he has no objection to the application from the landscape perspective;
- (b) based on the aerial photos of 2016, 2017 and 2019, the Site is situated in an area of rural landscape character. The surrounding area of the Site is comprised of clustered tree groups, farmlands to the north and the south, car parks and open storage and small houses to the west within “V” zone. The proposed use is considered not entirely incompatible with the existing landscape setting; and
- (c) according to site visit conducted on 26.6.2020, the Site was hard paved and part of the area is covered by wild weeds. Some temporary structures as well as storages are currently placed within the Site. 3 number of existing trees are found at the northeast of the Site on which they are common species. According to the applicant’s submission, the proposed temporary structures are not in conflict with the existing trees. Significant impact on the landscape character and resources arising from the proposed use is not envisaged.

### **Drainage**

#### 9.1.8 Comments of CE/MN, DSD:

- (a) he has no objection to the application from the public drainage point of view; and
- (b) should the application be approved, a condition requiring the submission and implementation of drainage proposal for the Site should be included to ensure that it will not cause adverse drainage impact to the adjacent areas.

### **Building Matters**

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

- (a) he has no objection to the application. There is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the proposed use; and
- (b) for proposed new buildings, the advisory comments under the Buildings Ordinance are at **Appendix IV**.

### **Fire Safety**

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

- (a) he has no in-principle objection to the application subject to fire service installations being provided to the satisfaction of his department. The submission requirements are at **Appendix IV**; and
- (b) if the proposed structures are required to comply with the Building Ordinance (BO) (Cap.123), detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

### **District Officer's Comments**

#### 9.1.11 Comments of the District Officer/North, Home Affairs Department (DO/N, HAD):

he consulted the locals on the application and the published FI. A total of 10 local comments were received. The North District Council (NDC) member of the subject Constituency objects to the application mainly on the grounds of possible traffic congestion caused by more visitors from other districts, causing nuisance to local villagers and having no assessments on traffic, drainage, environmental impacts, but he subsequently supports the FI submitted by the applicant. The Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Ho Sheung Heung support the application and the FI. The Chairman of Sheung Shui District Rural Committee, the RR and IIR of Yin Kong have no comment on the application and/or the FI.

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

- (a) Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD);
- (b) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Commissioner of Police (C of P); and
- (e) Director of Electrical and Mechanical Services (DEMS).

## **10. Public Comments Received During Statutory Publication Period [to be update]**

The application and FI were published for public inspection. During publication periods, 6 public comments from Kadoorie Farm and Botanic Garden (two comments), Designing Hong



Kong Limited and individuals were received (**Appendices III-1 to III-6**). Two (by the same commenters) objected to the applications mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR(1)” zone and not compatible with surrounding environment, the existing public transport may not be able to support the increase in passengers, no drainage and sewerage impact assessments are provided by the applicant, it may cause pollution to the nearby ponds, and it may set an undesirable precedent and encourage ‘destroy first, develop later’ practice. Two commented that the Enforcement Notice has not been complied with and urged the Board to investigate the site history before considering the application. The remaining two indicated no comment on the application.

## **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 and filling of land. The Site falls within an area zoned “AGR(1)” on the approved KTN OZP No. S/KTN/2. The planning intention of the “AGR(1)” zone is primarily to retain and safeguard the agricultural land/farm/fish ponds for agricultural purposes and to serve as a buffer to give added protection to the LVNP. The total agricultural related area is 787.43m<sup>2</sup> (78% of the site area). The proposed development will involve removal of part of the existing hard paving and subsequent land filling works for an area of 687.43m<sup>2</sup> for farming and goat keeping. There will be 3 temporary single-storey structures with a total floor area of about 307.73 m<sup>2</sup> for storage of crops and tools, goat keeping and reception/office (including toilet). The proposed use is generally not in conflict with the planning intention of the “AGR(1)” zone. Noting that agricultural activities are involved in the Site, the Site is about 100m from the boundary of LVNP, and it is located on another side of Sheung Yue River, DAFC has no strong view against the application from agricultural aspect and perspective of LVNP. In view of this, approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR(1)” zone.
- 11.2 The proposed hobby farm use is not entirely incompatible with the existing surrounding land uses which are rural in character predominated by mainly fallow agricultural land, vegetation, ponds and some domestic structures.
- 11.3 According to the applicant, public announcement system will not be used at the Site and no parking and loading/unloading space will be provided at the Site. In view of the nature of the proposed hobby farm, it would unlikely cause significant adverse traffic, landscape, environmental or drainage impacts to the surroundings. Relevant departments consulted including C for T, DEP, CE/MN of DSD and CTP/UD&L of PlanD have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and prohibiting the use of public announcement system are recommended in paragraph 12.2 below. The applicant will also be advised to adopt the environmental mitigation measures and requirements in the latest COP. The technical requirements suggested by CE/MN of DSD and D of FS are recommended in paragraph 12.2 below.
- 11.4 The Site is not the subject of any previous application. There is one similar application within the same “AGR(1)” zone for temporary hobby farm (without land filling) approved with conditions by the Committee in 2015 (paragraph 6 and Plan A-1 refer). However, it was subsequently revoked due to non-compliance with approval conditions.

11.5 There are 10 local comments conveyed by DO(N) and 6 public comments received during the statutory publication periods as stated in paragraphs 9.1.11 and 10, with both supporting and objecting comments. The departmental comments and planning considerations and assessments as stated in paragraphs 11.1 to 11.3 are relevant.

## 12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comments in paragraphs 9.1.11 and 10, the Planning Department has no objection to the proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years and filling of land.

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 4.12.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval conditions

- (a) no operation between 6:00 p.m. and 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 at any time during the planning approval period;
- (c) the submission of proposal for fire service installations 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 4.6.2021;
- (d) in relation to (c) above, the implementation of proposal for 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 4.9.2021;
- (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 4.6.2021;
- (f) in relation to (e) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 4.9.2021;
- (g) if any of the above planning condition (a) or (b) is not complied with during the planning approval period, the approved hereby given shall cease to have effect and shall be revoked without further notice; and
- (h) if any of the above planning condition (c), (d), (e) or (f) 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 Members' reference:

the proposed development is not in line with the planning intention of the "AGR(1)" zone which is primarily to retain and safeguard the agricultural land/farm/fish ponds for agricultural purposes and to serve as a buffer to give added protection to the Long Valley Nature Park. No strong planning justifications are given in the submission for a departure from the planning intention, even on a temporary basis.

**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. Attachment**

<b>Appendix Ia</b>	Application form and supplementary information received on 11.6.2020 and 16.6.2020 respectively
<b>Appendix Ib</b>	FI received on 9.7.2020
<b>Appendix Ic</b>	FI dated 14.10.2020
<b>Appendix Id</b>	FI dated 11.11.2020
<b>Appendix Ie</b>	FI dated 19.11.2020
<b>Appendix If</b>	FI dated 26.11.2020
<b>Appendix II</b>	Similar Application
<b>Appendices III-1 to III-6</b>	Public Comments
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan

<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
DECEMBER 2020**