

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/784

<u>Applicant</u>	: Mr. Tang Sai Yu represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 866 in D.D. 103, Sze Pai Shek, Kam Tin
<u>Site Area</u>	: About 2,833 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>	: 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 occupied by a pond, grassland, a hobby farm with a structure without valid planning permission (**Plans A-2, A-4a and A-4b**). The Site is not the subject of any previous planning application.
- 1.2 According to the applicant, about 61% of the Site (1,727m²) is for cultivation. A single-storey (not exceeding 4m high) structure with a floor area not exceeding 125m² for visitor centre and farmer resting room is provided on-site. The existing grassland within the Site is proposed to be converted for cultivation. The Site can be accessed via a footpath from Kam Ho Road and no parking space will be provided within the Site. Daily operation of the farm including transportation of

materials and disposal of waste will be carried out by trolleys. The hobby farm will operate from 9:00am to 6:00pm daily, including public holidays. The estimated number of visitors is less than 20 on Saturdays, Sundays and public holidays and less than 10 on weekdays. Visitor will pay entrance fee for each visit. The applicant proposes that no audio amplification system would be installed on-site. The access plan and layout plan 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 19.4.2018 **(Appendix I)**
- (b) Further Information (FI) received on 11.5.2018 in response to departmental comments **(Appendix Ia)**
(accepted and exempted from publication and recounting requirements)
- (c) FI received on 30.5.2018 in response to departmental comments **(Appendix Ib)**
(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 involved.
- (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 Kam Tin 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. Notwithstanding, if there are suspected unauthorized development (UD) found at the Site, investigation will be conducted. Should there be sufficient evidence to prove that the use is an UD under the Town Planning Ordinance (the Ordinance), appropriate enforcement action will be taken.

5. **Previous Application**

The Site is not the subject of any previous planning application.

6. **Similar Applications**

- 6.1 There are 4 similar applications (No. A/YL-KTS/576, 659, 697 and 779) within the same “AGR” zone on the Kam Tin South OZP. Details of the application are summarized in **Appendix II** and the locations of the application sites are shown on **Plan A-1**.

Approved Applications

- 6.2 Applications No. A/YL-KTS/659 and 779 both for temporary hobby farm were approved with conditions by the Committee on 6.2.2015 and 6.4.2018 respectively mainly for reasons that the use was generally in line with the planning intention of the “AGR” zone since the proposed development would involve the use of the site for farming purpose; DAFC had no objection to the application from the agricultural point of view; approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone; the proposed development was considered not incompatible with the surrounding areas which were rural in character; in view of the scale and nature the proposed development would unlikely cause significant adverse environmental, traffic or drainage impacts and relevant departments consulted had no adverse comment on the application; and technical issues could be addressed by the approval conditions. However, application No. A/YL-KTS/659 was revoked on 6.8.2016 due to non-compliance of approval conditions related to submission and implementation of landscape, drainage and fire proposals.

Rejected Applications

- 6.3 Application No. A/YL-KTS/576 for temporary place for hobby farm, ecological cycling tour and barbecue spot and application No. A/YL-KTS/697 for temporary place for barbecue site and kiosks were rejected by the Committee on 21.6.2013 and 18.3.2016 respectively on the grounds that the development is not in line with the planning intention of “AGR” zone; no strong planning justification for a departure from the planning intention; there was no detailed information provided

on the design and operation of the development; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and landscape impacts and approving the application would set an undesirable precedent for similar applications within the “AGR” zone; and the cumulative effect would result in a general degradation of the rural environment and landscape quality of the area.

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

7.1 The Site is:

- (a) occupied by a pond, grassland, hobby farm with a structure without valid planning permission; and
- (b) accessible via a footpath connecting to Kam Ho Road.

7.2 The surrounding areas are rural in character, mainly occupied by residential structures/dwellings, cultivated agricultural land, hobby farm and unused land. The hobby farm is suspected unauthorized development subject to enforcement action by the Planning Authority:

- (a) to its immediate south are residential structures/dwellings and further south is unused land zoned “Conservation Area” (**Plan A-1**). A watercourse runs along the southern and eastern boundary of the Site; and
- (b) to its west is a hobby farm. To its north are cultivated agricultural land, unused land and residential structures/dwellings.

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 Kam Ho Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL 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 the terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

Considering there is no parking provision nor vehicular access to the lot 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):

- (a) He has no comment on the application from the highways maintenance point of view.
- (b) There is no vehicular access proposed/granted under the application. It is noted from the application that no run-in/out and direct vehicular access to the Site are proposed.

Environment

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

- (a) It is noted that there is an existing pond within the Site. According to the applicant, the development would not involve any filling or excavation.
- (b) Provided that the applicant would minimize any noise from the applied 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.
- (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” issued by DEP to minimize any potential environmental nuisance.
- (d) 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 necessary mitigation measures to prevent polluting the watercourse adjacent to the Site. Adequate supporting infrastructure including waste / wastewater collection and disposal facilities should be provided for the proper collection, treatment and disposal of waste / wastewater generated from the applied 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”.
- (e) The Site falls within the consultation zone of Au Tau Water Treatment Works which is a Potentially Hazardous Installation. Based on the information provided, he has no objection to the application from chlorine risk perspective.

Food and Environmental Hygiene

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

- (a) A relevant licence shall be obtained from FEHD if food business or related place of entertainment is involved.

- (b) No FEHD's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (c) For any waste generated from the commercial/trading activities, the applicant should arrange its disposal properly at her own expenses.
- (d) His detailed comments are at **Appendix III**.

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 area is predominantly rural in character dominated by agricultural land, temporary structures, and woodland slopes. The temporary use is considered not incompatible with existing landscape setting.
- (c) According to site inspection on 4.5.2018, the Site is an active farmland with existing trees in good condition and a pond is found at the east of the Site. Further adverse impact on existing landscape character and landscape resources due to the applied use is not anticipated.
- (d) Should the application is approved, approval condition on the proper maintenance of all landscape plantings within the Site at all time during the planning approval period should be included in the planning approval.

Agriculture

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

- (a) As it is noted that a substantial portion of the Site is retained for cultivation purpose and the soil surface will be retained, he has no strong view against the application from agriculture point of view. However, the temporary structure involved in the application should not be regarded as agricultural structure.
- (b) There is a watercourse immediately adjacent to the Site. Should

the application be approved, the applicant is advised to avoid disturbing or polluting the watercourse.

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 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 in-principle objection 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.

District Officer's Comments

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

His office has not received any comment from the locals.

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 Electrical and Mechanical Services (DEMS);
- (c) Director of Leisure and Cultural Services (DLCS);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (e) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 27.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 18.5.2018, two public comments from World Wide Fund Hong Kong and a member of the public (**Appendices IV-1 and IV-2**) were received objecting to the application mainly on the grounds that there is lack of information on the design and operation of the farm such as the number of participants, type and frequency of the activities/events to be conducted within the Site; the applicant failed to demonstrate that the development would not generate adverse environment, drainage and landscape impacts on the surrounding areas, particularly agriculture area adjoining the Site; the proposed large footprint of the structure for visitor centre and storeroom is not well-justified; and there are a number of illegal camping sites operating in Kam Tin area to provide accommodation for low cost mainland tours, the real objective of the proposal must be evaluated.

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 61 % of the Site will be occupied by 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 hobby farm is considered not incompatible with the surrounding areas which are rural in character, mainly occupied by residential structures/dwellings, cultivated agricultural land, hobby farm and unused land.
- 11.3 According to the applicant, the estimated number of visitors is less than 20 on Saturdays, Sundays and public holidays and less than 10 on weekdays, and they will access to the Site via a footpath connecting to Kam Ho Road. No parking space will be provided on-site. The applicant also advised that no audio amplification system will be used at the Site. In view of the nature of the hobby farm, it would unlikely cause significant adverse environmental, traffic or drainage impacts and relevant departments consulted including C for T, CTP/UD&L of PlanD, CE/MN of DSD, 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 (h).

- 11.4 There are four similar applications within the same “AGR” zone. Two of them for temporary hobby farm (No. A/YL-KTS/659 and 779) were approved with conditions by the Committee on 6.2.2015 and 6.4.2018 respectively as stated in paragraph 6.2 above. The other two applications No. A/YL-KTS/576 and 697 for temporary place for hobby farm, ecological cycling tour and barbecue spot and temporary place of recreation, sports or culture (including barbecue site and kiosks) were rejected by the Committee on 21.6.2013 and 18.3.2016 respectively as stated in paragraph 6.3 above. These rejected applications are different from the current application in terms of the applied uses as they involved recreational uses such as barbecue and cycling tour.
- 11.5 Two objecting comments were received mainly on the grounds as mentioned in paragraph 10 above. In this regard, departments consulted including DEP, CTP/UD&L of PlanD and CE/MN of DSD have no adverse comment on the application. The planning considerations and assessments stated above are also relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taking into account the public comments 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 15.6.2021. 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 audio amplification system is allowed to be used on the Site during the planning approval period;

- (c) the proper maintenance of all landscape plantings within the Site at all times during the planning approval period;
- (d) 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 15.12.2018;
- (e) in relation to (d) 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 15.3.2019;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 15.12.2018;
- (h) in relation to (g) 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 15.3.2019;
- (i) if any of the above planning conditions (a), (b), (c) or (f) 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;
- (j) if any of the above planning conditions (d), (e), (g) or (h) 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
- (k) 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 V**.

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

- (a) the 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

Appendix I	Application form with supplementary information received on 19.4.2018
Appendix Ia	FI received on 11.5.2018 in response to departmental comments
Appendix Ib	FI received on 30.5.2018 in response to departmental comments
Appendix II	Similar application within the same “AGR” zone on the Kam Tin South OZP
Appendix III	Detailed comment of DFEH
Appendices IV-1 to V-2	Public comments received during the statutory publication period
Appendix V	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
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2018**