

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/241

<u>Applicant</u>	: Mr. Ting Wai Keung represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 361 S.B RP in D.D. 112, Shek Kong, Yuen Long
<u>Site Area</u>	: About 546 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 in the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plans A-2 and A-4**).
- 1.2 The Site is the subject of a previous application No. A/YL-SK/215 for proposed temporary shop and services (real estate agency) for a period of 3 years which was rejected by the Rural and New Town Planning Committee (the Committee) on 26.8.2016.
- 1.3 According to the applicant, about 50% of the Site (273m²) will be used as farmland. The remaining area will be soil/sand ground with the erection of two

2-storey temporary structures of not more than 6m in height with a total floor area of 216 m² for visitor centre, agricultural learning centre, storage of farm tools and farmer resting room. The operation hours are 9 a.m. to 6 p.m. daily (including public holidays). The visitors will pay entrance fee to use the facilities at the Site and appointment to visit the proposed hobby farm will be required. The applicant estimated that there will be not more than 2 and 5 visitors on weekdays and weekends respectively. There will also be 2 staffs in the proposed hobby farm. The applicant proposes that no public announcement system will be used on-site. The Site is accessible via a footpath connecting to Nam Hing West Road and no parking spaces will be provided. The location plan and layout plan submitted by the applicant are at **Drawings A-1** and **A-2**.

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

- (a) Application form with planning statement received on 25.7.2018 **(Appendix I)**
- (b) Further Information (FI) received on 24.8.2018 in response to departmental comments **(Appendix Ia)**
- (c) FI received on 5.9.2018 in response to departmental comments **(Appendix Ib)**
- (d) FI received on 6.9.2018 providing clarifications and response to departmental comments **(Appendix Ic)**
- (e) FI received on 12.9.2018 providing clarifications **(Appendix Id)**
- (f) FI received on 7.11.2018 providing clarifications **(Appendix Ie)**

1.5 The application was originally scheduled for consideration by the Committee on 21.9.2018. Upon request of the applicant, the Committee agreed to defer consideration of the application for two months to allow more time for the applicant to prepare FI to address the departmental comments. After the deferral, the applicant submitted FI on 7.11.2018. The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement and FI in **Appendices Is** to **Ie**. 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. Visitors will take public transport and walk to the Site.

- (b) The Site is not hard-paved and currently of soil ground. The applicant will implement the proposed development in accordance to the proposed scheme and will strictly comply with all approval conditions after obtaining planning permission. All materials will be hand-carried by staff from Nam Hing West Road to the Site.
- (c) The applicant will provide septic tank to treat the sewage from the Site according to relevant guidelines.
- (d) The farm area will be divided and rented to different holiday farmers. Farm tools will be provided to visitors. The types of crop to be grown include cabbage and strawberry, which will be free to carry away by holiday farmers. Learning sessions will be given to visitors to learn about the basic of farming in the agricultural learning centre.

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. 31A) 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

- 4.1 The Site is the subject of current planning enforcement action (No. E/YL-SK/195) involving storage use. Enforcement Notice (EN) was issued to the responsible person on 11.7.2017. Upon the discontinuation of the unauthorized development on site, Compliance Notice was issued on 19.4.2018. Reinstatement Notice (RN) was issued on 26.4.2018 under s.23(3) of the Town Planning Ordinance (TPO) requiring the notice recipients to remove the fill materials on-site and to grass the Site.
- 4.2 According to the site inspection at RN expiry and recent site inspection, it was noted that the RN requirements had not been met. The Planning Authority will continue to monitor the progress of reinstatement of the Site to determine whether further enforcement/prosecution action has to be taken against the responsible persons.

5. Previous Application

The Site is the subject of a previous application No. A/YL-SK/215 for proposed temporary shop and services (real estate agency) for a period of 3 years rejected by the Committee on 26.8.2016. Details of the previous application are summarized in **Appendix II** and its location is shown on **Plan A-1**. The application was rejected mainly on the grounds that it was not in line with the planning intention of the “AGR” zone; the

proposed development was not compatible with the surrounding rural character; there were adverse departmental comments; and approval of the application would set an undesirable precedent.

6. Similar Applications

There are two similar applications (No. A/YL-SK/235 and 244) in the same “AGR” zone on the OZP for proposed temporary hobby farm use for a period of 3 years approved by the Committee with conditions on 4.5.2018 and 7.12.2018. Details of the similar applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**. The application was approved for the reasons that the approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone; the proposed use was not incompatible with the surrounding area; no adverse departmental comment and technical requirements could be addressed by approval conditions.

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

7.1 The Site is:

- (a) currently vacant; 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, fallow agricultural land, Shek Kong Barracks, a school, an open storage yard and vacant/unused land:

- (a) to its immediate north is a local track connecting to Nam Hing West Road, to its further north across the local track and nullah is the Shek Kong Barracks; and
- (b) to its east, south and west are unused land/vacant, residential structures/dwellings, fallow agricultural land and Pat Heung Central Primary School, an open storage yard and vacant 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 Shek Kong Airfield 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. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications of any of the above 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 the LandsD.

Traffic

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

It is noted that no vehicular access will be required by the development. He has no comment from traffic engineering perspective.

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

The walkway connecting the Site and Nam Hing West Road is not and will not be maintained by HyD.

Agriculture

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

- (a) The Site falls within “AGR” zone and possess potential for agricultural rehabilitation. On the understanding that about 50% of the Site will be used of cultivation purpose, and no pavement is proposed, he has no strong view against the application from the agricultural point of view.
- (b) There is a nullah to the north of the Site along which some bird species have been recorded. Should the application be approved, the applicant shall be reminded to avoid disturbing or polluting the nullah, and avoid causing damage to trees along the nullah during operation.

Environment

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

- (a) According to the applicant, the proposed development will not involve the use of any form of audio amplification system. 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) 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 Environmental Protection

Department's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.

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 connected to Nam Hing West Road via an informal footpath to the north. Small houses are concentrated within "V" zone to the further west of the Site. The Site is the subject of a previous rejected planning application of different use (No. A/YL-SK/215), to which he had some reservations from the landscape planning perspective.
- (c) Referring to the aerial photo dated 13.3.2018, the Site is situated in an area of rural landscape character comprising of scattered of tree groups, farmlands and small houses. Although the proposed use is not in line with the planning intention of "AGR" zone, it is not incompatible with the surrounding environment.
- (d) With reference to the site visit dated 10.8.2018 and recent site photos dated 3.8.2018, the Site is vacant with bare ground partly covered with grasses and groundcovers. Corrugated metal fences are erected along the entire site boundary. No tree is recorded within the Site. Adverse impact to landscape resources within the Site is not anticipated. Despite the vegetation within Site was cleared and hard paved under the previous application (No. A/YL-SK/215), the Site is now covered with soil under this application and agricultural activity is allowed. No adverse impact on landscape resources and landscape character is anticipated arising from the proposed development.
- (e) Should the application be approved, approval condition on submission and implementation of landscape proposal should be included in the permission.

Drainage

9.1.7 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.

Food and Environmental Hygiene

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

- (a) If the proposal involves any commercial/trading activities, no environmental nuisance should be generated to the surroundings. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.
- (b) His detailed comment is at **Appendix IV**.

Building Matters

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

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (b) 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.

- (c) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with 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.

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

10. Public Comments Received During Statutory Publication Period

On 3.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 24.8.2018, five comments from World Wide Fund for Nature Hong Kong, Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society, Designing Hong Kong, and member of the public (**Appendices V-1 to V-5**) were received. All of them object to the application mainly on the grounds that the proposed development is not in line with planning intention of “AGR” zone; the Site is subject to enforcement action and approval of the application may encourage ‘destroy first, build later’ and set an undesirable precedent for similar applications in “AGR” zone; there are active farmland in the locality and the proposed use is incompatible with the adjoining land uses; too many approvals have been granted for hobby farm use without a careful examination of site condition and the likelihood of abuse of the approval conditions.

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 50% of the Site will be farmland and the remaining area will be soil ground. 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, fallow agricultural land, a school, Shek Kong Barracks and vacant/unused land.

- 11.3 According to the applicant, the maximum number of visitor is 5 per day 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, landscape 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 prohibiting 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 requirements 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 The Site is subject to a previous application for temporary shop and services (real estate agency) which was rejected by the Committee on 26.8.2016 for the reasons as stated in paragraph 5 above. The current application is for a different use, and there are no adverse departmental comments. Also, there are two similar applications for temporary hobby farm use within the same “AGR” zone on the OZP approved with conditions by the Committee on 4.5.2018 and 7.12.2018 as stated in paragraph 6 above. Approval of the current application is in line with the Committee’s previous decision on similar applications.
- 11.5 Five objecting comments were received mainly on the grounds as mentioned in paragraph 10 above. In this regards, temporary approval would not frustrate the long-term planning intention, and departments consulted including DAFC has no adverse comment on the application. The planning considerations and assessments as 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 has no objection to the proposed temporary place of recreation, sports or culture (hobby farm) 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 21.12.2021. 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 at any time during the planning approval period;
- (c) the submission of 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 21.6.2019;
- (d) in relation to (c) above, the implementation of 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 21.9.2019;
- (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 21.6.2019;
- (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 21.9.2019;
- (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 21.6.2019;
- (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 21.9.2019;
- (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 VI**.

- 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" 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.

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 25.7.2018
Appendix Ia	FI received on 24.8.2018 in response to departmental comments
Appendix Ib	FI received on 5.9.2018 in response to departmental comments
Appendix Ic	FI received on 6.9.2018 providing clarifications and response to departmental comments
Appendix Id	FI received on 12.9.2018 providing clarifications

Appendix Ie	FI received on 7.11.2018 providing clarifications
Appendix II	Previous Application
Appendix III	Similar Applications
Appendix IV	Detailed comment of DFEH
Appendices V-1 to V-5	Public comments received during the statutory publication period
Appendix VI	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
DECEMBER 2018**