

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/11

- Applicant** : Tin Yuen Company Limited represented by Metro Planning & Development Company Limited
- Site** : Lots 466 RP (Part) and 467 RP in D.D. 90, Lin Ma Hang Road, Man Kam To, New Territories
- Site Area** : About 1,480 m²
- Land Leases** : Block Government lease (demised for agricultural use)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zoning** : “Agriculture” (“AGR”)
- Application** : 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 a proposed temporary place of recreation, sports or culture (hobby farm) for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Hobby Farm)’ is a Column 2 use in “AGR” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the submission, about 1,231 m² (about 83.2%) of the Site will be used as cultivation/ farm area for growing vegetables. Two 1-storey temporary structures with a total floor area of about 120 m² and building height of about 3 m will be erected at the northwestern part of the Site for storage of farm tools & portable toilet (with floor area of about 80 m²) and rain shelter (with floor area of about 40 m²) respectively (**Drawing A-1**). Four private car parking spaces (measuring 5 m x 2.5 m each) and manoeuvring space will be provided at the eastern part of the Site. The Site is accessible via Lin Ma Hang Road with an ingress/egress point located at the eastern edge of the Site (**Drawing A-1 and Plan A-2**). The Site is currently vacant.
- 1.3 The proposed operation hours are from 9:00 a.m. to 5:00 p.m. daily including Sundays and public holidays. The estimated number of visitors will be no more than 20 persons per day. The agricultural products would only be for visitors’ own consumption purpose.

No public announcement system and loud speaker would be used at the Site. The proposed layout plan, landscape plan and drainage plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.

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

- (a) Application Form with attachments received on 6.3.2020 **(Appendix I)**
 - (b) Further Information (FI) received on 31.3.2020 ^ **(Appendix Ia)**
 - (c) FI received on 7.4.2020 ^ **(Appendix Ib)**
- ^ *accepted and exempted from publication*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary information attached to the Application Form at **Appendices I, Ia and Ib**. They can be summarised as follows:

- (a) the proposed development is akin to a farm and intended for agricultural activity which is in line with the planning intention of “AGR” zone. The scale, form and nature of the proposed hobby farm is compatible with the surrounding environment;
- (b) the Site is currently vacant. No site formation works will be carried out on Site. The Site will be covered by soil and no pavement is proposed;
- (c) the Site is accessible via Lin Ma Hang Road. The traffic generated and attracted by the proposed development would be within non-peak hours and no adverse traffic impact on surrounding area is anticipated;
- (d) no public announcement system or loud speaker will be installed at the Site to minimise the impact of noise on the surrounding area; and
- (e) there would be no adverse environmental and drainage impacts to the surrounding area. To avoid pollution to the nearby natural stream/watercourse, no pesticide will be used in the proposed hobby farm while portable toilets are proposed and sewage will be collected regularly.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Application

There is no previous application for the Site.

5. Similar Application

There is no similar application within/ partly within the “AGR” zone in the vicinity of the Site in the Man Kam To area.

6. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plan A-4)

6.1 The Site is:

- (a) vacant fallow land overgrown with common weeds; and
- (b) accessible via Lin Ma Hang Road (**Plan A-2**).

6.2 The surrounding areas have the following characteristics:

- (a) to its north are a footpath, a drainage channel and fallow agricultural land (**Plan A-2**);
- (b) to its further north are plant nursery, ruins and domestic structures and fallow agricultural land within the village cluster of Muk Wu Nga Yiu (**Plans A-1 and A-2**);
- (c) to its west and southwest are some domestic structures, fallow agricultural land and sites for storage uses and parking of vehicles; and
- (d) to its east are Lin Ma Hang Road, fallow agricultural land and vacant land.

7. Planning Intention

The planning intention of the “AGR” zone is to primarily 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.

8. Comments from Relevant Government Departments

8.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

8.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots which are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed 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) please be advised that there is an existing footpath on Lot 466 RP in D.D. 90 (**Plan A-2**); and
- (c) should the application be approved, the owner of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW 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.

Agriculture and Nature Conservation

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

- (a) the Site falls within "AGR" zone and possesses potential for agricultural rehabilitation. She has no strong view against the application from agriculture point of view on the understanding that agricultural activities are involved in the proposal and no pavement is proposed; and
- (b) from nature conservation point of view, it is noted that the Site is fallow land overgrown with common weeds. A drainage channel is located to the north of the Site (**Plan A-2**). She has no comment on the application if the *Bombax ceiba* (木棉) located on Government land to the northeast of the Site (**Plan A-2**) would not be affected by the future vehicular access.

Traffic

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

- (a) it is noted from the applicant's submission that there would be no vehicular trips at peak hours (i.e. morning peak from 7:00 a.m. to 9:00 a.m. and afternoon peak from 5:00 p.m. to 7:00 p.m.). The traffic impact is considered minimal and the application is considered tolerable from the traffic engineering point of view;
- (b) should the application be approved, an approval condition to request the applicant to submit and implement traffic management measures for the Site is recommended; and
- (c) the vehicular access between the Site and Lin Ma Hang Road is not managed by his department. The applicant should seek comment from the responsible party.

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

- (a) he has no adverse comment on the application; and

- (b) there is no vehicular access leading from Lin Ma Hang Road to the Site. Should the application be approved, the applicant is required to form a vehicular access to his satisfaction and sort out its maintenance responsibility with the relevant department. Upon termination of the approval period, the applicant is required to reinstate the vehicular access to its original state.

Environment

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

- (a) he has no objection to the application;
- (b) as the application is temporary in nature, the applicant is advised to follow EPD's latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)";
- (c) in view of the nearby watercourse, the applicant is advised to strictly observe all relevant pollution control ordinances, particularly on waste management and disposal and water pollution, follow relevant measures given in the EPD's latest CoP, and put in place necessary precautionary/ pollution control measures to prevent any pollution of the watercourse as a result of the operational and construction activities. Best management practice should be adopted to avoid refuse and other pollution, including pesticides to be used in the hobby farming, from entering the surface runoff and the watercourse; and
- (d) there is no existing public sewer in the vicinity of the Site. As toilet would be provided at the Site, the applicant shall have to provide his own effective sewage treatment and disposal measures to cater for any sewage arising from the operation of the proposed use. If septic tank and soakaway is proposed, its design and construction should follow the requirements of ProPECC 5/93. The Precolation Test and Minimum clearance requirements stated in ProPECC 5/93 should be fully complied with and duly certified by consulting engineer/ Authorised Person (AP).

Landscape

8.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) she has no objection to the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising of temporary structures, village house, vegetated area and clustered tree groups. The proposed temporary hobby farm is considered not incompatible with the surrounding landscape setting. Significant adverse landscape impact arising from the application is not anticipated; and

- (c) since existing tree groups and vegetation are found in close proximity of the Site, should the application be approved, it is considered not necessary to impose a landscape condition as its effect of additional landscaping on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, an approval condition to request the applicant to submit and implement a drainage proposal for the Site is recommended to ensure that the proposed development will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Water Supply

8.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) existing water mains inside the Site will be affected (**Plan A-2**). The applicant is required to either divert or protect the water mains found on Site. His advisory comments are at **Appendix III**.

Building Matters

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

there is no record of submission of the proposed building/ structure to the Building Authority (BA) for approval. For any new proposed buildings, his advisory comments under the Buildings Ordinance are at **Appendix III**.

Fire Safety

8.1.10 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 (FSIs) being provided to the satisfaction of his department;
- (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. In addition, the applicant should be also advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and

the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and

- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

- (a) he has consulted the locals regarding the application. The 1st Vice-Chairman of Ta Kwu Ling District Rural Committee and the Resident Representative (RR) of Nga Yiu object to the application as they are not aware of the details of the application; and
- (b) the incumbent North District Council member of the subject constituency has no comment on the application.

8.2 The following Government departments have no comment on / no objection to the application:

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (b) Director of Electrical and Mechanical Services (DEMS); and
- (c) Commissioner of Police (C of P).

9. Public Comments Received During Statutory Publication Period

On 13.3.2020, the application was published for public inspection. During the statutory public inspection period, four public comments were received (**Appendix II**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. WWF-HK, The Hong Kong Bird Watching Society and Designing Hong Kong Limited object to the application mainly on the grounds that the proposed development is not in line with the planning intention of "AGR" zone; there are potential adverse drainage and sewerage impacts to the surrounding areas; and the setting of undesirable precedent.

10. Planning Considerations and Assessments

10.1 The proposed hobby farm for a period of 3 years falls entirely within an area zoned "AGR" on the OZP. According to the submission, about 1,231 m² (about 83.2%) of the Site will be used for cultivation and farm area. The remaining area which is about 249 m² (about 16.8% of the Site) will be used for storage of farm tools & portable toilet, rain shelter, car park and manoeuvring space (**Drawing A-1**). The proposed development is considered generally in line with the planning intention of "AGR" zone which is primarily 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. DAFC has no strong view against the application from agriculture point of view. The 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.

- 10.2 The Site is situated in an area of rural landscape character comprising fallow agricultural land, temporary structures, village house, vegetated area and clustered tree groups. The proposed temporary hobby farm is considered not incompatible with the surrounding landscape setting. Significant adverse landscape impact arising from the application is not anticipated. In this regard, CTP/UD&L of PlanD has no objection to the application from landscape planning point of view.
- 10.3 The Site is accessible via Lin Ma Hang Road (**Plan A-2**). Having reviewed the traffic information submitted by the applicant, C for T considers that the proposed development is tolerable from traffic engineering point of view. DEP has no objection to the application, and the applicant should be reminded to adopt the environmental mitigation measures and requirements as set out in ProPECC PN5/93, the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” and all relevant environmental protection/ pollution control ordinances. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on / no objection to the application.
- 10.4 Regarding the local objection conveyed from DO(N) of HAD and adverse public comments as mentioned in paragraphs 8.1.11 and 9 above respectively, the relevant Government departments’ comments and planning assessments above are relevant.

11. Planning Department’s Views

- 11.1 Based on the assessments made in paragraph 11 and having taken into account local comments conveyed by DO(N) of HAD and the public comments in paragraph 8.1.11 and 9 above, the Planning Department has no objection to the application.
- 11.2 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 24.4.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 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 and loud speaker, as proposed by the applicant, is allowed to be used on the Site during the planning approval period;
- (c) the submission of a 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 24.10.2020;
- (d) in relation to (c) above, the provision of drainage facilities 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 24.1.2021;

- (e) the submission of proposals for fire service installations and water supplies for firefighting 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 24.10.2020;
- (f) in relation to (e) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 24.1.2021;
- (g) the submission of traffic management measures within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 24.10.2020;
- (h) in relation to (g) above, the implementation of traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 24.1.2021;
- (i) the submission of the design of vehicular run-in/ run-out to the Site along Lin Ma Hang Road within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 24.10.2020;
- (j) in relation to (i) above, the provision of vehicular run-in/ run-out to the Site along Lin Ma Hang Road within 9 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 24.1.2021;
- (k) if planning conditions (a) or (b) 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;
- (l) if any of the above planning conditions (c), (d), (e), (f), (g), (h), (i) or (j) 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
- (m) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

11.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's 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 and to retain fallow arable land with

good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 12.2 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.
- 12.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

13. Attachments

Appendix I	Application Form with Attachments received on 6.3.2020
Appendix Ia	Further Information received on 31.3.2020
Appendix Ib	Further Information received on 7.4.2020
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Landscape Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos