

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

**APPLICATION NO. A/NE-TKL/598**

- Applicant** : Mr. CHUK Tat Ming represented by Metro Planning and Development Company Limited
- Site** : Lot 1088 S.B (Part) in D.D. 82, Shui Hau, Ta Kwu Ling, New Territories
- Site Area** : About 1,520 m<sup>2</sup>
- Land Status** : (a) Block Government Lease (demised for agricultural use)  
(b) Letter of Approval (L of A) No. 5985 for erection of temporary structures for the purpose of watchman shed and agriculture storage
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan No. S/NE-TKL/14
- 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 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 Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Horse Riding School, Hobby Farm, Fishing Ground only) in “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is paved and currently vacant.
- 1.2 According to the applicant, the hobby farm mainly comprises farm area and two one-storey structures located at the northern part of the Site with a total floor area of 40m<sup>2</sup> for rain shelter, and store room for farm tools and toilet respectively (**Drawing A-1**). The Site is accessible from Ping Che Road via a local track with a 8m wide ingress/egress at its southwestern corner (**Plan A-1 and Drawing A-1**). Two private car parking spaces (measuring 5m x 2.5m) and a 11m in diameter manoeuvring circle are provided at the southwestern part of the Site (**Drawing A-1**). Except about 220m<sup>2</sup> (about 15%) will be provided for manoeuvring of vehicle and parking spaces near the ingress/egress of the Site, about 800m<sup>2</sup> (about 53%) of the Site will be reserved for hobby farm and the rest of the Site (i.e. 500m<sup>2</sup> or about 32%) will be used for

landscaping purpose. The hobby farm will be open to public for participation in organic farming and can accommodate a maximum of 10 visitors at the same time. The operation hours of the hobby farm are between 9:00 a.m. and 5:00 p.m. daily. Advanced booking to visit the hobby farm is required. Public announcement system will not be used on the Site. The site layout plan, landscape plan and drainage plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.

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

- (a) Application Form received on 7.6.2018 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Further Information received on 28.6.2018 **(Appendix Ib)**
- (d) Email dated 18.7.2018 requesting for deferment of consideration of the application **(Appendix Ic)**
- (e) Further Information received on 31.8.2018 **(Appendix Id)**
- (f) Further Information received on 9.10.2018 **(Appendix Ie)**
- (g) Further Information received on 10.10.2018 **(Appendix If)**

1.4 At the request of the applicant (**Appendix Ic**), the Rural and New Town Planning Committee (the Committee) of the Board on 3.8.2018 agreed to defer making a decision on the application for two months pending the preparation of further information to address the departmental comments. The applicant submitted the further information on 31.8.2018, 9.10.2018 and 10.10.2018 respectively (**Appendices Id to If**) and the application is rescheduled for consideration by the Committee on 19.10.2018.

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

The justifications put forth by the applicant in support of the application are detailed in Supplementary Planning Statement at **Appendix Ia** and further information at **Appendices Id to If**. They can be summarized as follows:

- (a) the proposed hobby farm is very similar to the agricultural activity always permitted in “AGR” zone. The proposed development is not deviating from the planning intention of the “AGR” zone and should be regarded as a compatible use within the “AGR” zone. The interim conversion for hobby farm would encourage the long term development of agricultural activity in the area;
- (b) the hobby farm is for cultivating the interest and knowledge of participants in organic farming and providing opportunities for participants to experience organic farming;
- (c) the scale, form and nature of the hobby farm is compatible with the surrounding environment as only a few residential dwellings are found to the north of the Site and there will be no structure with height exceeding 3m within the Site;
- (d) a number of land lots are therefore left vacant, unused and unmanaged which generate environmental and hygiene problems. Approval of the application can provide an opportunity for better land management in revitalizing and managing the Site with the support of commercial operation that can fulfil the planning intention of “AGR” zone;
- (e) there are similar planning applications for hobby farm approved by the Board and

similar favourable treatment is anticipated from the Board for the current application;

- (f) various assessments undertaken concluded that the proposed development would have no significant adverse impacts on the surroundings. The applicant is also conscientious in providing a number of technical proposals and mitigation measures to address the possible impacts to the surrounding areas;
- (g) the hobby farm would not aggravate the traffic conditions of Ping Che Road and nearby road networks;
- (h) the hobby farm is not a polluting use and would be closed during the period from 5:00 p.m. to 9:00 a.m.. There will be no sound system for announcement on the Site. The proposed development would not generate significant environmental and noise impact to the environment;
- (i) the hobby farm would not generate adverse drainage impacts with the implementation of drainage facilities. All the proposed drainage facilities will be provided by and maintained at the applicant's own expense;
- (j) about 800m<sup>2</sup> of the Site will be reserved for hobby farm for cultivation purpose. Around 220m<sup>2</sup> of the Site will be paved and only cover the surface U-channel, vehicle manoeuvring space and two parking spaces. The rest of the area (i.e. 500m<sup>2</sup>) of the Site will be used for landscaping purpose;
- (k) the applicant has proposed traffic management/control measures to address traffic concerns; and
- (l) regarding the paved area under the subject application (i.e. the surface U-channel, vehicle manoeuvring space and two parking spaces), the applicant will reinstated and unpaved the concerned area upon the expiry of the planning permission if the application is approved by the Board.

### **3. Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is not the "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Ta Kwu Ling Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

### **4. Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department, the current use on the Site is currently not subject to any active enforcement action. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

**5. Previous Application**

There is no previous application for the Site.

**6. Similar Application**

There is no similar application for ‘place of recreation, sports or culture (hobby farm)’ use in the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area.

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

7.1 The Site is:

- (a) mainly flat and paved;
- (b) vacant and covered by a layer of sand with five containers and two utility facilities at its eastern and western fringe; and
- (c) accessible from Ping Che Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) rural in landscape character predominated by vacant/unused land, active/fallow agricultural land, scattered tree groups, open storage yards, dumping of construction materials and temporary structures;
- (b) to the west and north east are active/fallow agricultural land, vacant land, with scattered temporary structures for domestic purposes;
- (c) to the east is a wooden “Green Belt” zone (**Plans A-2 and A-3a**); and
- (d) to the southwest, south and southeast are vacant land, open storage yards, and temporary structures for domestic and warehouse purposes.

**8. Planning Intention**

The planning intention of the “AGR” zone in the Ping Che and Ta Kwu Ling area 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.

**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 Comment of the District Lands Officer/North, Lands Department (DLO/N, LandsD):
- (a) the Site comprises private lot namely which is an Old Schedule lot held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. L of A No. 5985 was issued for erection of temporary structures for the purpose of watchman shed and agriculture storage on Lot 1088 S.B in D.D. 82 within the application area. The existing temporary structures erected on the Site are not acceptable under the said L of A;
  - (b) the occupation boundary and application boundary does not tally. Portions of the adjoining Lots 1088 S.A ss.14 and 1112 in D.D. 82 are being occupied (**Plan A-2**). It came to his attention that unauthorized structures were erected on the Site. The unauthorized structures are not acceptable under the Lease. His office reserves the right to take necessary lease enforcement actions against the above irregularities; and
  - (c) if the application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) to cover all the proposed structures on the Site. 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**

- 9.1.2 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- (a) the Site falls within "AGR" zone and possesses a potential for agricultural rehabilitation. Based on the Further Information submitted by the applicant (**Appendix Id**), it is noted that a substantial area of the Site will be used for hobby farm and around 15% of the area will be paved. Any proposed pavement should be minimized as far as possible; and
  - (b) based on the Further Information submitted by the applicant (**Appendix If**), she has no strong view against the application from agriculture point of view as the applicant will reinstate the paved area upon expiry of the planning application.

### **Traffic**

- 9.1.3 Comments of the Commissioner for Transport (C for T):
- (a) in view that the application will be operating between 9:00 a.m. to 5:00 p.m. with an estimated maximum traffic generation rate of 1 passenger car unit/hour (pcu/hr) from and traffic attraction rate of 1 pcu/hr to the

Site, the traffic impact is considered tolerable;

- (b) based on the Further Information submitted by the applicant (**Appendix Id**), he has no in-principle objection to the application. However, the applicant should advise the details, preferably with drawings, showing the signs to be erected at the ingress/egress of the Site for pedestrian safety purpose; and
- (c) should the application be approved, an approval condition on the submission and implementation of traffic management measures is recommended.

### **Environment**

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

- (a) given the proposed hobby farm is temporary in nature, 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)” issued by DEP in order to minimize any potential environmental impact;
- (b) noting from the Further Information submitted by the applicant that a toilet is proposed in Structure 2 (**Appendix Ib**), the applicant should be reminded to incorporate relevant environmental measures in Annex I of the COP and to strictly observe the Water Pollution Control Ordinance (WPCO) to avoid any pollution to the nearby environment; and
- (c) there was no substantiated environmental complaint against the Site in the past three years.

### **Landscaping**

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

- (a) she has reservation on the application from the landscape planning perspective;
- (b) with reference to aerial photo of 2018 and site photos, the Site is situated in an area of rural landscape character comprising of some agricultural lands, scattered tree groups, some hard paved areas and scattered temporary structures. According to PlanD’s record, a number of applications for Small House use at the north of the Site were approved. The proposed use is considered not incompatible with the surrounding landscape character;
- (c) based on the site photos, the Site is currently a bare land without existing trees. A row of fruit trees are found outside the Site along the eastern boundary. Significant changes or disturbances to the existing landscape resource arising from the proposed use are not anticipated. However, the level of the Site appears approximately 1m higher than its adjacent land and

there is no information in the submission to illustrate the extent and the depth of further land filling required for the farming area of the hobby farm;

- (d) having reviewed the Further Information (**Appendix Id**), the following comments for revision of landscape proposal should be addressed at the condition compliance stage:

the landscape proposal should be in an appropriate scale to show both the planting and drainage alignment proposal to ensure there is a clearance of 600mm between the proposed trees and drainage/boundary fence. In addition, hard paved areas should be indicated; and

- (e) should the application be approved, the submission and implementation of a landscape proposal to the satisfaction of the Board or of the Director of Planning is recommended.

### **Drainage**

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

- (a) he has no in-principle objection to the application from the public drainage point of view;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it 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. Environmental Protection Department (EPD) should be consulted regarding the sewerage treatment/disposal facilities for the proposed development.

### **Building Matters**

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

- (a) there is no record of submission of the proposed building/structure to the Building Authority (BA) for approval;
- (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 BA 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 BA 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 under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under Building (Planning) Regulation 41D; and
- (e) if the Site is not abutting a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at the building plan submission stage.

### **Fire Safety**

9.1.8 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) and water supplies for firefighting being provided to the satisfaction of his department;
- (b) emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (c) detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

### **Water Supply**

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

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to his department's standards.

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

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

he has consulted the locals regarding the application. The incumbent North District Council (NDC) member of subject constituency has no comment to the application.

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

- (a) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Commissioner of Police (C of P);
- (c) Director of Leisure & Cultural Services (DLCS);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (f) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD).

## **10. Public Comments Received During Statutory Publication Period**

On 15.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection periods, three public comments were received (**Appendix II**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application while a NDC member supports the application mainly on the ground that hobby farm would provide convenience to villagers. An individual opposes to the application mainly on the reasons that the proposal appears to legitimize ongoing brownfield use; most of the ‘hobby farm’ applications were not for agricultural use; and the intention of the proposal might for illegal camping grounds to accommodate low cost tour groups.

## **11. Planning Considerations and Assessments**

11.1 The subject application is for temporary place of recreation, sports or culture use (hobby farm) for a period of 3 years at the Site zoned “AGR” on the OZP (**Plan A-1**). According to the applicant (**Appendices Id and Ie**), about 800m<sup>2</sup> of the Site will be reserved for hobby farm for cultivation purpose. Around 220m<sup>2</sup> of the Site will be paved and only cover the surface U-channel, vehicle manoeuvring space and two parking spaces. The rest of the area (i.e. 500m<sup>2</sup>) of the Site will be used for landscaping purpose. The proposed use is considered generally 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. Noting that a substantial area of the Site will be used for hobby farm and the applicant will undertake the reinstatement of the Site upon expiry if planning permission is granted by the Committee, DAFC has no strong view against the application from agriculture point of view. In this regard, 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 under application is considered not incompatible with the surrounding land uses which are of rural landscape character predominated by active/fallow agricultural land, vacant lands, scattered tree groups, open storage yards and temporary structures for domestic purposes (**Plan A-2**). CTP/UD&L of PlanD has reservation on the application from landscape planning perspective mainly on the grounds that there is

no information in the submission to illustrate the extent and the depth of further land filling required for the farming area of the hobby farm. Nevertheless, no significant adverse impact on existing landscape resource arising from the proposed development is anticipated.

- 11.3 The applicant submitted information on traffic aspect to demonstrate that the proposed use would not induce any significant adverse traffic impact to the surrounding area. In this regard, C for T has no in-principle objection to the application. Other relevant Government departments consulted, including DEP, CE/MN of DSD, CHE/NTE of HyD, D of FS and CE/C of WSD, have no adverse comment on or no objection to the application.
- 11.4 There are currently five containers and two utility facilities deposited at the eastern and western fringe of the Site (**Plans A-4a and A-4b**). An advisory clause is recommended to remind the applicant that the planning permission, if granted by the Committee, is given to the development/use under application and does not condone any other development/use (i.e. storage use) which currently exists on the Site and not covered by the application.
- 11.5 Regarding the adverse public comment mainly on the grounds that the proposal appears to legitimize ongoing brownfield use; most of the 'hobby farm' applications were not for agricultural use; and the intention of the proposal might for illegal camping grounds to accommodate low cost tour groups, the Government departments' comments and planning assessments above are relevant. As for the suspected non-agricultural use of the subject application, if unauthorized development is found on-site, it will be subject to enforcement action taken by the Planning Authority.

## **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 above, the Planning Department considers that the temporary use under the application 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 19.10.2021. 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. daily, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no use of public announcement system, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 19.4.2019;

- (d) in relation to (c) 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 19.7.2019;
- (e) 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 19.4.2019;
- (f) in relation to (e) 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 19.7.2019;
- (g) 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 19.4.2019;
- (h) in relation to (g) 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 19.7.2019;
- (i) 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 19.4.2019;
- (j) in relation to (i) 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 19.7.2019;
- (k) if any of the above 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 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**.

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection is suggested for Member's reference:

- (a) the proposed development is not in line with the planning intention of the "AGR"

zone which is intended 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. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis; and

- (b) the approval of the application will set an undesirable precedent for similar applications within the same “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the 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 the 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**

<b>Appendix I</b>	Application Form received on 7.6.2018
<b>Appendix Ia</b>	Supplementary Planning Statement
<b>Appendix Ib</b>	Further Information received on 28.6.2018
<b>Appendix Ic</b>	Email dated 18.7.2018 requesting for deferment of consideration of the application
<b>Appendix Id</b>	Further Information received on 31.8.2018
<b>Appendix Ie</b>	Further Information received on 9.10.2018
<b>Appendix If</b>	Further Information received on 10.10.2018
<b>Appendix II</b>	Public Comments
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Landscape Plan
<b>Drawing A-3</b>	Drainage Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos