

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HT/21

- Applicant** : Ms FUNG Chiu Han represented by R-riches Property Consultants Limited
- Site** : Lots 1091 RP, 1134 S.A, 1134 RP in D.D. 76, Hok Tau, Fanling, New Territories
- Site Area** : 3,371m² (about)
- Land Lease** : Block Government lease (demised for agricultural use)
- Plan** : Approved Hok Tau Outline Zoning Plan (OZP) No. S/NE-HT/7
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Place of Recreation, Sports or Culture (Hobby Farm, Barbecue Spot, Play Area, Handicraft Making and Refreshment Kiosk) for a Period of 3 Years and Associated Filling of Land

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, barbecue spot, play area, handicraft making and refreshment kiosk) for a period of 3 years and associated filling of land (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Hok Tau OZP No. S/NE-HT/7. According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years and filling of land within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is largely paved and vacant with some temporary structures (**Plans A-4a and 4b**).
- 1.2 According to the applicant, about 60% (about 2,033m²) of the Site at its northern and southern parts will be used as farm area while the rest of the area (about 40% of the Site or equivalent to 1,338m²) will be filled with concrete to facilitate a flat surface for erection of structures, footpath and circulation area (**Drawing A-2**). Although the Site is currently paved, the applicant states that she would remove the paving and implement the proposed use according to the proposal submitted (**Appendix If**). Three temporary structures with a total floor area of about 356m² at a building height of about 3.5 m (1 storey) will be erected at central part of the Site for handicraft making and agricultural education room, refreshment kiosk and storage of farm tools, barbecue spot, play area and toilet (**Drawing A-1**). Eight private car parking spaces (measuring 5 m x 2.5 m each) and one loading/unloading space for light goods vehicle (measuring 7 m x 3.5 m each) will be provided at the southern corner of the Site near

the ingress/egress point abutting Hok Tau Road (**Drawing A-1**). The Site is accessible via a local track leading to Hok Tau Road (**Plan A-2**).

- 1.3 The proposed operation hours are from 9:00 a.m. to 6:00 p.m. from Mondays to Sundays including public holidays. The estimated number of visitors during weekdays and weekends are about 30 and 50 respectively. There will be about eight staff working at the Site. Visitors are required to make appointment in advance and pay entrance fee to use the facilities in the Site. No public announcement system and loud speaker will be used within the Site. The proposed site layout plans and land paving area are shown in **Drawings A-1 to A-2** respectively.
- 1.4 The Site is the subject of a previously approved application submitted by the same applicant as the current application for the same use, which was revoked on 12.6.2023 due to non-compliance with approval conditions. Details of the previous application are set out in paragraph 4.2 below. Compared with the previous application, the major development parameters and layouts of the proposed development are generally the same as the current one except that the proposed farm area in the current application has increased from 55% to 60% of the Site (+5%) and will involve a proposed paving area of not more than 0.2m concrete for the area of 1,338m² (**Drawing A-2**).
- 1.5 In support of the application, the applicant submitted the following documents:
 - (a) Application Form with Attachments and Supplementary Statement received on 4.10.2023 (**Appendix Ia**)
 - (b) Further Information (FI) received on 8.11.2023 ^ (**Appendix Ib**)
 - (c) FI received on 13.11.2023^ (**Appendix Ic**)
 - (d) FI received on 14.11.2023^ (**Appendix Id**)
 - (e) FI received on 7.12.2023^ (**Appendix Ie**)
 - (f) FI received on 20.12.2023^ (**Appendix If**)

^ *accepted but exempted from publication and recounting requirements*
- 1.6 On 24.11.2023, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for two months.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendix Ia** and summarized as follows:

- (a) the proposed use is on a temporary basis, which will not jeopardize the long term planning intention of "AGR" zone;
- (b) the Site is the subject of two previously approved applications (No. A/NE-HT/9 and 16) submitted by the same applicant for the same use. The applicant has encountered difficulties when identifying a suitable contractor to prepare the drainage proposal and implement the accepted fire service installations (FSIs) proposal under the last approved application No. A/NE-HT/16. The run-in/out proposal was completed but the application was revoked prior site inspection of the relevant department;
- (c) there are similar approved applications in the vicinity of the Site. Approval of the current application would not set an undesirable precedent for similar applications

within the “AGR” zone;

- (d) the Site is accessible via Hok Tau Road leading to Lau Shui Heung Road and adverse traffic impact on the surrounding road network should not anticipated;
- (e) public announcement system, portable loud speaker or any form of audio amplifier system will be prohibited at the Site to minimize the noise impact on the surrounding areas; and
- (f) the proposed development will be connected to the septic tank in compliance with the standards of Environmental Protection Department (EPD)’s Professional Persons Environmental Consultative Committee Practice Note (ProPECC) PN 1/23. Adverse sewerage impact is not anticipated.

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

The applicant is not a “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. 31B) by taking reasonable steps to give notification to the owner including posting notice at the Site and sending the notice to the Fanling District Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to any planning enforcement action.

5. Previous Applications

- 5.1 The Site, wholly or in part, is the subject of two previously approved applications No. A/NE-HT/9 and 16 for the same use. Application No. A/NE-HT/9 submitted by two individuals including the same applicant as the current application, covering a larger area than the current application was approved by the Committee on 7.12.2018 mainly on consideration that the proposed use was considered not in conflict with the planning intention of the “AGR” zone and there were no adverse traffic, environmental and drainage impacts on the surrounding areas.
- 5.2 Before the lapse of the application No. A/NE-HT/9 on 7.12.2021, the same applicant as the current application submitted application No. A/NE-HT/16 which was approved by the Committee on 12.3.2021 mainly on the same considerations as detailed in paragraph above and also that the site was subject of a previous approval for the same use submitted by one of the same applicants. The application was revoked on 12.6.2023 due to non-compliance with approval conditions in relation to submission and implementation of drainage proposal and implementation of FSIs proposal and the run-in/out proposal.
- 5.3 Details of the previous applications are summarised at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application within the same “AGR” zone in the vicinity of the Site over the past five years.

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

7.1 The Site:

- (a) is largely paved and vacant with some temporary structures (**Plans A-3 and A-4a and A-4b**);
- (b) with the southern part near the ingress/egress point fenced off (**Plan A-4a**); and
- (c) is accessible via a local track leading to Hok Tau Road (**Plan A-2**).

7.2 The surrounding areas are of rural landscape character surrounded by greenhouse structures to its immediate east, woodland at the west, active/fallow agricultural lands and vegetated areas. A watercourse is located to the immediate east of the subject site, which eventually leads to the Tan Shan River, an Ecological Important Stream (**Plan A-2**)

8. Planning Intention

- 8.1 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraphs 9.2 and 9.3 below, other government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are at in **Appendices III and IV** respectively.

Land Administration

9.2 District Lands Officer/North, Lands Department (DLO/N, LandsD) has the following comments on the application:

- (a) the Site comprises Old Schedule Lots held under the Block Government Lease, which contain the restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via Government Land (GL) is granted to the Site;

- (b) the applied use has been operating on the Site. There are unauthorized structures erected within the Site. The lot owner(s) should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without separate notice;
- (c) portion of the unauthorized structures erected at Lot 1091 RP in D.D. 76 was found extended to the adjoining GL outside the Site (**Plan A-2**). Any occupation of GL without Government's prior approval is an offence. The lot owner(s)/the applicant should immediately cease the occupation of the GL and her office reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice;
- (d) as land filling works are proposed in the planning submission, the applicant should comply with all the land filling requirements imposed by relevant Government departments. GL should not be disturbed unless with prior approval; and
- (e) should the application be approved, the lot owner(s)/applicant cease the occupation of GL as demanded in paragraph (c) above, the lot owner(s) will need to apply to her office for Short Term Waiver (STW) to permit the structure(s) erected/to be erected on Site. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. The application will be considered by the LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

9.3 District Officer (North), Home Affairs Department (DO(N), HAD) has relayed the following local views on the application.

- (a) the Chairman, the First Vice-Chairman and the Vice-Chairman of Fanling District Rural Committee object to the application mainly on the grounds of adverse traffic and environmental impacts;
- (b) the Indigenous Inhabitant Representative and the Resident Representative of Hok Tau Wai support the application as the application will provide a recreational place for the public enjoyment and there are no objections from Hok Tau Wai villagers and the public; and
- (c) the Chairman of Lung Shan Area Committee has no comment on the application.

10. Public Comments Received During Statutory Publication Period (Appendix V)

On 13.10.2023, the application was published for public inspection. During the first three weeks of statutory public inspection period, eight public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining seven comments received from the Chairman, the First Vice-Chairman, the

Vice-Chairman of Fanling District Rural Committee, the Conservancy Association, Kadoorie Farm and Botanic Garden, Hong Kong Bird Watching Society and an individual raise objection to/ have concerns on the application mainly on the grounds that the proposed use would not be in line with the planning intention of the “AGR” zone, the proposed recreational development would cause adverse sewerage, environmental and traffic impacts on the surrounding areas, its previous approval was revoked due to non-compliance with the approval conditions, and approval of the application would set an undesirable precedent of the future applications in the area.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary place of recreation, sports or culture use (Hobby Farm, Barbecue Spot, Play Area, Handicraft Making and Refreshment Kiosk) for a period of 3 years and associated filling of land at the Site zoned “AGR” on the OZP (**Plan A-1**). According to the applicant, about 2,033m² of the Site (about 60% of the Site) will be used for farm area while the rest of the area (about 40% of the Site or equivalent to 1,338m²) will be filled with concrete to facilitate a flat surface for site formation of structures, footpath and circulation area (**Drawing A-2**). The proposed hobby farm is considered not in conflict with the planning intention of “AGR” zone as detailed in paragraph 8.1 above. Director of Agriculture, Fisheries and Conservation has no strong view against the application from an agricultural perspective on the understanding that agricultural activities are involved in the proposed use. Taking into account the planning assessment below, the proposed use on a temporary basis of three years could be tolerated.
- 11.2 Filling of land within the “AGR” zone requires planning permission as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, Chief Engineer/Mainland North of Drainage Services Department (CE/MN of DSD) and Director of Environmental Protection (DEP) have no objection to the application from drainage and environmental planning perspectives. An approval condition requiring reinstatement of the Site to an amenity is recommended, should the Committee decide to approve the application.
- 11.3 The Site is situated in an area of rural landscape character surrounded by erected greenhouse structures to its immediate east, woodland at the west, active/fallow agricultural lands and vegetated areas. The proposed use is considered not entirely incompatible with the surrounding land uses. As significant adverse impact on the landscape character and the existing landscape resources within the Site arising from the proposed use is not anticipated, Chief Town Planner/Urban Design & Landscape, Planning Department has no objection to the application from the landscape planning perspective. It is noted that a watercourse is located to the immediate east of the subject site, which eventually leads to the Tan Shan River, an Ecological Important Stream (**Plan A-2**). To address the concern of affecting/polluting the watercourse, relevant conditions including the provision of boundary fencing and submission and implementation of the drainage proposal have been included in the approval conditions.
- 11.4 The Commissioner for Transport has no comment on the application from the traffic engineering point of view. DEP has no objection to the application provided that no public announcement system will be used at the Site, and the applicant should be reminded to adopt the environmental mitigation measures and requirements as set out in ProPECC PN 1/23, 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 Director of Fire Services (D of FS), CE/MN of DSD and Chief Engineer/Construction of Water Supplies Department have no adverse comment on/no objection to the application.

- 11.5 Although DLO/N of LandsD has concerns on unauthorized structures erected on the Site, which are subject to lease enforcement actions, the applicant indicates that he will submit STW application to LandsD to facilitate the proposed structures at the Site upon the approval of current application (**Appendix If**). Such land matter would be addressed separately in land regime.
- 11.6 The Site is the subject of a previously approved application (No. A/NE-HT/16) for the same use submitted by the same applicant as the current application. It was approved by the Committee on 12.3.2021 mainly on the consideration as detailed in paragraph 5.2, and was revoked on 12.6.2023 due to non-compliance with approval conditions on drainage proposal, run-in/out proposal and FSIs proposal. According to the applicant (**Appendix Ia**), there was difficulty to identify a suitable contractor to prepare the drainage proposal and implement the accepted FSIs proposal, which resulted into revocation of the last application. Related run-in/out, drainage and FSI proposals have been included in support of the current application. Relevant departments including Chief Highways Engineer/New Territories East, Highways Department, CE/MN of DSD and D of FS have no objection/comment on the application. As compared with the previous application No. A/NE-HT/16, the major development parameters and layouts of the proposed development are generally the same as the current one except that the proposed farm area has increased from 55% to 60% of the Site (+5%) and paving of not more than 0.2m concrete for the area of 1,506m² for site formation of structures, footpath and circulation area as proposed in the current application.
- 11.7 Regarding the local objections conveyed by DO(N) of HAD and public comments in paragraphs in 9.3 and 10 above respectively, the government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the local objections conveyed by DO(N) of HAD and public comments in paragraphs in 9.3 and 10 above respectively, the Planning Department considers that the proposed temporary use 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 **26.1.2027**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on site at any time during the planning approval period;

- (c) the provision of peripheral fencing, as proposed by the applicant, within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 26.10.2024;
- (d) the implementation of the accepted 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 26.10.2024;
- (e) in relation to (d) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations 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 26.7.2024;
- (g) in relation to (e) above, the implementation of the fire service installations proposal 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 26.10.2024;
- (h) if planning condition (a), (b) or (e) 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;
- (i) if any of the above planning condition (c), (d), (f), or (g) 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
- (j) 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 IV**.

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

- the proposed use 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.

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

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| Appendix Ia | Application Form with Attachments received on 4.10.2023 |
| Appendix Ib | FI received on 8.11.2023 |
| Appendix Ic | FI received on 13.11.2023 |
| Appendix Id | FI received on 14.11.2023 |
| Appendix Ie | FI received on 7.12.2023 |
| Appendix If | FI received on 20.12.2023 |
| Appendix II | Previous Applications |
| Appendix III | Departmental Comments |
| Appendix IV | Recommended Advisory Clauses |
| Appendix V | Public Comments |
| Drawing A-1 | Proposed Site Layout Plan |
| Drawing A-2 | Plan Showing Farm and Paving Areas |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4a to A-4c | Site Photos |

**PLANNING DEPARTMENT
JANUARY 2024**