

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/498

- Applicant** : Innolife HK Limited represented by R-riches Property Consultants Limited
- Site** : Lot 1372 RP (Part) in D.D. 100, Tsiu Keng, Kwu Tung South, New Territories
- Site Area** : 631m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Kwu Tung South Outline Zoning Plan No. S/NE-KTS/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Place of Recreation, Sports or Culture (Horticultural Learning Centre) for a Period of 3 Years and Filling of Land

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 (horticultural learning centre) for a period of 3 years and filling of land. The Site falls within an area zoned “AGR” on the Draft Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/17 (**Plan A-1**). According to the Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP.¹ In addition, any filling of land within the “AGR” zone also requires permission from the Board. The Site has already been developed and used for the applied use without planning permission.
- 1.2 According to the applicant, the development comprises 6 single-storey structures (3m to 5m high) with a total floor area of about 259m² for horticultural learning rooms, storage, office, rain shelter, toilet and ancillary canteen. The development involves filling of land (not more than a depth of 0.2m) of about 404m² (about 64% of the Site)

¹ According to the Notes for “AGR” zone, ‘Place of Recreation, Sports or Culture (Horse Riding School, Hobby Farm, Fish Ground only)’ is Column 2 use. Horticultural Learning Centre is not a Column 2 use.

as site formation for structure and circulation space. The remaining areas are for plant nursery (about 146m², 23% of the Site) and landscaping area (about 81m², 13% of the Site). Portable toilet and septic tank are provided within the Site. The layout plan and paved ratio plan are at **Drawings A-1 and A-2**.

- 1.3 The Site is accessible from Fan Kam Road via Tsiu Keng Road and a local track. An entrance/exit is at the northwest tip of the Site (**Drawing A-1 and Plan A-2**). The operation hours are from 9:00 a.m. to 6:00 p.m. daily. Only visitor of the Site will be served at the ancillary canteen. The estimated maximum number of visitor and staff member per day is 20 and 5 respectively. Visitors are required to make appointment to access the Site. Visitors, staff or delivery crew are required to access the Site by public transport along Tsiu Keng Road before walking to the Site. One 5.5 tones lorry is used for delivery of larger goods with loading/unloading at Tsiu Keng Road. No parking or loading/unloading space is provided within the Site. No loudspeaker, audio amplifier and public announcement system will be used at the Site.
- 1.4 In support of the application, the applicant has submitted the following documents:
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|-----|--|------------------------|
| (a) | Application Form with Plans received on 3.6.2021 | (Appendix I) |
| (b) | Supplementary Information with Plan of 8.6.2021 | (Appendix Ia) |
| (c) | Further Information (FI) of 14.7.2021 [#] | (Appendix Ib) |
| (d) | FI of 26.7.2021 [#] | (Appendix Ic) |
| (e) | FI of 4.8.2021 [#] | (Appendix Id) |
| (f) | FI of 31.8.2021 [#] | (Appendix Ie) |
- [#] exempted from publication
- 1.5 On 23.7.2021, the Rural and New Town Planning Committee (the Committee) agreed to defer a decision on the application as requested by the applicant to allow time for preparation of FI to address departmental comments. On 26.7.2021, the applicant submitted FI, and 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 Application Form, supplementary information and FIs at **Appendices I and Ia to Ie**. They are summarized as follows:

- (a) The temporary development will not jeopardize the long term planning intention of the “AGR” zone. A large amount of space is reserved for agricultural use (plant nursery). The horticultural activity is similar to the always permitted agricultural use.
- (b) The development is intended to serve the nearby locals. The development involves organizing horticulture courses for the interest groups/individuals to learn more on horticultural techniques and to enhance public awareness in greening.
- (c) Vehicles are prohibited to enter the Site at any time during the planning approval period. One green minibus and two bus stops are located 20m, 220m/230m from the Site respectively.

- (d) Goods to support the operation will be hand carried by staff. One 5.5 tones lorry is deployed for delivery of larger items to the Site once a week between 10 a.m. to 11 a.m. for approximately 10 minutes. Loading/unloading activities will be carried out at Tsiu Keng Road on the basis that it will not affect traffic flow.
- (e) The existing six single-storey structures and land filling area (i.e. about 404m²) will be remained for applied use. The land filling of the Site is to provide stronger ground reinforcement to stabilise the existing soiled ground and prevent erosion from surface run-off. The paved/filled area will be remained and no additional filling of land will be carried out at the Site.
- (f) The development will not create significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas.
- (g) Portable toilet and septic tank are provided for sewerage disposal. The design of the septic tank and soakaway (STS) system follows the requirements of Environmental Protection Department (EPD). Management and maintenance of the STS will be carried out regularly to ensure sewage generated from the applied use will not cause nuisance to nearby locals.
- (h) The applicant will reinstate the Site to an amenity area after the planning approval period.

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

The applicant is not the “current land owner” of the Site 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 Sheung Shui District Rural Committee (SSDRC) by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is not subject to any active enforcement action.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Application**

There is an application within the same “AGR” zone for temporary place of recreation, sports or culture (hobby farm) which was approved in 2013 and revoked in 2014. There is no similar application for horticultural learning centre.

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

7.1 The Site is:

- (a) fenced off, developed and used for the applied use without planning permission. Six single-storey structures are found on site; and
- (b) accessible from Fan Kam Road via Tsiu Keng Road and a local track.

7.2 The surrounding areas are predominantly rural in nature mainly surrounded by agricultural land with the following characteristics:

- (a) to the north and northeast are active and fallow agricultural land, scattered domestic structures and vacant/unused land;
- (b) to the east are domestic structures and a watercourse;
- (c) to the south and southwest are active agricultural land, farm and plant nursery;
- (d) to the west and northwest are Tsiu Keng Road, active and fallow agricultural land and domestic structures; and
- (e) the area to its north and west is planned for the development of Agricultural Park (Plan A-1).

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/North, Lands Department (DLO/N, LandsD):

- (a) The Lot is an Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access to the Lot, and there is no guarantee that any adjoining Government land will be allowed for vehicular access to the Site for the applied use.

- (b) The existing structures erected on the Lot without prior approval from his office are not acceptable under Lease concerned. His office reserves the right to take necessary lease enforcement actions against the aforesaid structures.
- (c) South-eastern portion of the Lot is covered by a Letter of Approval (LoA) No. 4775 for erection of a chicken shed. Given the dimensions and use of the existing structures on the Lot do not tally with those of LandsD's record, his office will investigate and take necessary action on the LoA if situation warrants.
- (d) North-western portion of the Lot is close proximity to a project namely "Construction of Access Road at Tsiu Keng, Sheung Shui".
- (e) It is noted that the land filling works has been performed on the Site. The applicant should ensure that no private lot(s)/ Government land adjacent to the Site have been disturbed. Besides, the applicant should comply with the land filling requirements imposed by relevant Government department(s), if any.
- (f) If the planning application is approved, the current owner of the lot concerned shall apply to his office for a Short Term Waiver ("STW") covering all the actual occupation area and the structures concerned. 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 administration fee as considered appropriate by his office.

Traffic

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

He considers that the application could be tolerated from traffic engineering point of view.

Agricultural

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

The Site falls within the "AGR" zone and is currently comprised of plant nursery and temporary structures. Agricultural activities are active in the vicinity, and agricultural infrastructures such as footpath and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. The Site is also under active cultivation. Therefore, the application is not supported from agricultural perspective.

Environment

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

- (a) Provided that the applicant would minimize any environmental nuisance to nearby sensitive receivers, he has no objection to the application from environmental planning perspective.
- (b) There is no environmental complaint against the Site received by DEP in the past three years.
- (c) His advisory comments are at **Appendix III**.

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

The Site is in an area where no public sewerage connection is available.

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 perspective.
- (b) According to aerial photo of 2020, the Site is situated in an area of rural inland plains landscape character surrounded by farmlands, vegetated areas and temporary structures. Based on their site record taken on 24.6.2021, the Site is fenced off and mostly hard paved occupied by pot plantings and planters. Temporary structures are observed in the northern and southeastern portions of the Site. Some existing trees of common species are found along the northern and southern site boundary. No significant sensitive landscape resource is observed within the Site (i.e. Old and Valuable Trees (OVT)/rare and protected species) and the applied structures and land filling are not in conflict with the existing trees; hence, significant adverse landscape impact arising from the application is not anticipated.
- (c) The Site is already in operation, the applied development involves six 1-storey structures, which is considered not entirely incompatible with its surrounding environment. His advisory comments are at **Appendix III**.

Drainage

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

- (a) He has no objection to the application from the public drainage

viewpoint.

- (b) Should the application be approved, conditions should be included to request the applicant to submit, implement and maintain a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area.
- (c) His advisory comments are at **Appendix III**.

Food and Environmental Hygiene

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

- (a) He has no adverse comments/objection to the application.
- (b) No Food and Environmental Hygiene Department's facilities will be affected.
- (c) A staff canteen that exclusively use by the staff members of that working place does not require a food business licence from his department. However, if the said canteen provided foods to the outsiders with payment, a food business licence is required.
- (d) The operation of the canteen must not cause any environmental nuisance to the surroundings. The refuse generated by the proposed canteen are regards as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity. Other advisory comments are at **Appendix III**.

Fire Safety

9.1.9. Comments of the Director of Fire Services (D of FS):

He has no objection in principle to the proposal subject to fire service installations (FSI) being provided to his satisfaction. Relevant layout plans incorporated with the proposed FSI should be submitted to his department for approval. His advisory comments are at **Appendix III**.

District Officer's Comments

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

The North District Council (NDC) member of the subject constituency, the Resident Representative (RR) of Tsiu Keng and the Chairman of Fung Shui Area Committee have no comment. The Chairman of SSDRC and the Indigenous Inhabitant Representative (IIR) of Tsiu Keng object to the application mainly on the grounds of traffic congestion.

- 9.2 The following Government departments have no adverse comment on/no objection to the application and their advisory comments, if any, are at **Appendix III**:

- (a) Chief Building Surveyor/New Territories West, Buildings Department
- (b) Chief Engineer/Construction, Water Supplies Department
- (c) Chief Highways Engineer/ New Territories East, Highways Department
- (d) Commissioner of Police
- (e) Project Manager (North), Civil Engineering and Development Department

10. Public Comments Received During Statutory Publication Period

On 11.6.2021, the application was published for public inspection. During the three-week statutory publication period, a total of 4 public comments (**Appendices II-1 to II-4**) were received. Two comments submitted by individuals object to the application mainly on the grounds that the applied use would cause adverse traffic impact; the application is intended to legitimize the existing structures without planning permission; and the Site falls within “AGR” zone which needs to reserve for food production. Kadoorie Farm & Botanic Garden Corporation provides views that the Site is within the “AGR” zone in which Agricultural Park (Phase 1) is being developed by the Government. The Board should consider whether the applied use is in line with the planning intention of the “AGR” zone. The remaining comment submitted by an individual indicates no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary place of recreation, sports or culture (horticultural learning centre) for a period of 3 years and filling of land. The Site falls within an area zoned “AGR” on the Draft Kwu Tung South OZP No. S/NE-KTS/17 (**Plan A-1**). The planning intention of “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. Although the plant nursery (subsumed under agricultural use) and landscaping areas are always permitted, land filling as well as the horticultural learning centre requires planning permission. DAFC does not support the application from agricultural perspective as agricultural activities are active in the vicinity and agricultural infrastructures such as footpath and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. The applied use is not entirely in-line with the planning intention of the “AGR” zone. Nevertheless, approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “AGR” zone.
- 11.2 The Site has been developed for the applied use with 6 single-storey (3m to 5m high) structures (total floor area of 259m²) for horticultural learning rooms, storage, office, toilet, rain shelters and ancillary canteen. The land filling which has already been completed (not more than a depth of 0.2m) involves an area of about 404 m² (about 64% of the Site) as site formation for structure and circulation space. A total of 36% of the Site are used for plant nursery (23%) and landscaping area (13%). CTP/UD&L, PlanD has no objection to the application from the landscaping planning perspective as the applied use is not entirely incompatible with its surrounding environment which are farmlands, vegetated areas and temporary

structures. Significant adverse landscape impact arising from the Site is not anticipated.

- 11.3 According to the applicant, loudspeaker, audio amplifier and public announcement system will not be used at the Site. DEP has no objection to the application. Other departments consulted including C for T, D of FS and CE/MN, DSD have no adverse comment on the application. In view of the nature and scale, the horticultural learning centre would unlikely cause significantly adverse environmental, traffic, sewerage and drainage impacts to the surroundings. To minimize any possible environmental nuisance, approval condition restricting the operation hours is recommended in paragraph 12.2 below. The technical requirements suggested by CE/MN, DSD and D of FS are recommended in paragraph 12.2 below.
- 11.4 The Site does not involve any previous application. There is no similar application for horticultural learning centre within the same “AGR” zone.
- 11.5 There are 4 public comments as stated in paragraph 10. In this regards, the relevant departmental comments as well as planning considerations and 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 public comments mentioned in paragraph 10, the Planning Department considers that the temporary place of recreation, sports or culture (horticultural learning centre) could be tolerated for a period of 3 years and filling of land.
- 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 10.9.2024. 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) the submission of proposal for fire service installations 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 10.3.2022;
- (c) in relation to (b) above, the implementation of proposal for 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 10.6.2022;
- (d) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.3.2022;

- (e) in relation to (d) above, the implementation of drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.6.2022;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all time during the planning approval period;
- (g) if any of the above planning condition (a) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (h) if any of the above planning condition (b), (c), (d) or (e) 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
- (i) upon 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 III**.

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

the development is not in line with the planning intention of the "Agriculture" 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 to justify 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 Plans received on 3.6.2021

Appendix Ia	Supplementary Information with plan of 8.6.2021
Appendix Ib	FI received of 14.7.2021
Appendix Ic	FI of 26.7.2021
Appendix Id	FI of 4.8.2021
Appendix Ie	FI of 31.8.2021
Appendices II-1 to II-4	Public Comments
Appendix III	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Paved Ratio Plan
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
SEPTEMBER 2021**