

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/1055

<u>Applicant</u>	: Mr. LAM Tung Man represented R-riches Property Consultants Limited
<u>Site</u>	: Lots 925 RP (Part) and 926 RP (Part) in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	: About 959m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Eating Place with Ancillary Facilities for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary eating place with ancillary facilities for a period of three years and associated filling of land at the application site (the Site), which falls within an area zoned “AGR” on the OZP (**Plan A-1a**). According to the covering Notes of the OZP, temporary use or development of any land not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). Filling of land in the “AGR” zone also requires planning permission from the Board. The Site is currently fenced-off, partly paved and used for the applied use without valid planning permission (**Plans A-2 to A-4b**).
- 1.2 The Site is accessible from Mei Fung Road (**Plans A-2 and A-3**). According to the applicant, the applied use involves three single-storey structures with building heights of not more than 3.5m and a total floor area of about 306m² for restaurant, rain shelter and washroom (**Drawing A-1**). Four staff members will be working at the Site to serve not more than 30 visitors per day. The applicant also applies for regularisation of filling of land for 670m² (70%) and proposed filling of land for 289m² (30%), with concrete of not more than 0.1m in depth (to level of about 10.1mPD) for site formation and vehicular circulation (**Drawing A-2**). Seven parking spaces for private car are provided at the Site. The operation hours are between 9 a.m. and 11 p.m. daily, including Sundays and public holidays. The site layout plan and land filling plan submitted by the applicant are at **Drawings A-1 and A-2** respectively.

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

- (a) Application Form with attachments received on 3.10.2024 (**Appendix I**) and 9.10.2024
- (b) Further Information (FI) received on 1.11.2024* (**Appendix Ia**)
- (c) FI received on 13.11.2024* (**Appendix Ib**)

** accepted and exempted from publication and recounting requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I to Ib** and can be summarised as follows:

- (a) The Site forms part of the approved scheme under previous application No. A/YL-KTN/859 for temporary holiday camp, barbecue site with ancillary eating place which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board in 2022. The uses under the said application ceased to operate due to decline in local camping industry. The applicant would take up the operation of the eating place to serve the pressing demand of the locals and workers in Fung Kat Heung area.
- (b) The applied use is temporary in nature and approval of the current application will not frustrate the long-term intention of the “AGR” zone. The applied use is not incompatible with the surrounding areas and there was similar application in the vicinity of the Site.
- (c) The applied filling of land is required to meet the operational needs. Sufficient space is provided for vehicles to manoeuvre smoothly within the Site to ensure that no vehicle will turn back onto the local access. The applied use will generate infrequent trips. Adverse traffic impact is not anticipated. In support of the application, the applicant has submitted drainage and fire service installations proposals.

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 posting site notice and sending notice to the Kam Tin Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action (No. E/YL-KTN/698) against unauthorized development (UD) involving use for holiday camp, use for eating place, use for place for parking of vehicles and storage use (**Plan A-2**). Enforcement Notice (EN)

was issued on 30.7.2024 requiring discontinuation of the UD by 30.9.2024. Recent site inspection after the EN expiry revealed that the eating place is still in operation. The Site is currently under monitoring according to the prevailing enforcement practice.

5. Previous Applications

- 5.1 The Site, in part or in whole, is involved in six previous applications (No. A/YL-KTN/474, 520, 665, 772, 817 and 859) for temporary hobby farm and/or holiday camp and barbecue site (three also involve ancillary canteen or eating place), with or without filling of land, which are not relevant to the current application.
- 5.2 Details of the previous applications are summarised in **Appendix II** and their locations are shown on **Plan A-1b**.

6. Similar Application

- 6.1 There is one similar application (No. A/YL-KTN/876) for temporary eating place with filling of land within the same “AGR” zone in the vicinity of the Site in the past five years. The application was approved with conditions by the Committee in July 2023 mainly on the considerations that temporary approval would not frustrate the long-term planning intention; the proposed use was not incompatible with the surrounding land uses; and the relevant government departments consulted generally had no adverse comment or their technical concerns could be addressed by approval conditions. The planning permission was subsequently revoked in October 2024 due to non-compliance with approval conditions.
- 6.2 Details of the similar application are summarised in **Appendix II** and its location is shown on **Plan A-1a**.

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

- 7.1 The Site is:
- (a) currently fenced-off, partly paved and used for the applied use without valid planning permission; and
 - (b) accessible from Mei Fung Road.
- 7.2 The surrounding areas are rural in character with an intermix of open storage/storage yards, parking of vehicles, works site, hobby farm, residential structures, farmland and vacant land.

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 for the “AGR” zone, 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 the Relevant Government Departments

- 9.1 Apart from the government department as set out in paragraph 9.2 below, other 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 provided in **Appendices III** and **IV** respectively.

- 9.2 The following government department does not support the application:

Agriculture and Nature Conservation

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

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation;
- (b) the Site falls within “AGR” zone and is generally occupied by some structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, and plant nurseries; and
- (c) no comment on the application from nature conservation perspective.

10. Public Comments Received During Statutory Publication Period

On 15.10.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received from The Conservancy Association and an individual objecting to the application mainly on the grounds that the applied use is not in line with the planning intention of the “AGR” zone; the applied use will cause adverse environmental and drainage impacts; and approval conditions under the previous application at the Site were not complied with (**Appendix V**).

11. Planning Considerations and Assessments

- 11.1 The application is for temporary eating place with ancillary facilities for a period of three years and associated filling of land at the Site zoned “AGR” (**Plan A-1a**). The planning intention of the “AGR” zone 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. Whilst the applied use is not in line with the planning intention of the “AGR” zone and DAFC does not support the application from agricultural perspective, taking into account the planning assessments below, the applied use on a temporary basis of three years could be tolerated.

- 11.2 Filling of land in the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, the Chief Engineer/Mainland North of Drainage Services Department and Director of Environmental Protection have no objection to the application from drainage and environmental perspectives respectively. An approval condition requiring reinstatement of the Site to an amenity area upon expiry of the planning permission is recommended should the Committee decide to approve the application.
- 11.3 The applied use is considered not incompatible with the surrounding land uses which are rural in character with an intermix of open storage/storage yards, parking of vehicles, residential structures and vacant land. The Chief Town Planner/Urban Design and Landscape of Planning Department (PlanD) has no objection to the application from landscape planning perspective considering that the applied use is not incompatible with the surrounding landscape character and significant adverse impact on the landscape resources arising from the applied use is not anticipated.
- 11.4 Other relevant government departments consulted, including the Commissioner for Transport and Director of Fire Services, have no objection to or no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the revised ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ to minimise any potential environmental nuisance caused by the applied use.
- 11.5 There is one approved similar application for temporary eating place within the same “AGR” zone in the vicinity of the Site in the past five years as mentioned in paragraph 6.1 above. Approving the current application is in line with the Committee’s previous decision.
- 11.6 Regarding the public comments mentioned in paragraph 10, the departmental comments and planning assessments above are relevant. For the previous applications at the Site, they involve different uses as detailed in paragraph 5.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10 above, PlanD considers that the applied use could be tolerated for a period of three 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 three years until

22.11.2027. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission of a revised 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 22.5.2025;
- (b) in relation to (a) above, the implementation of the 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 22.8.2025;
- (c) in relation to (b) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the implementation of the accepted 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 22.8.2025;
- (e) if the above planning condition (c) 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;
- (f) if any of the above planning condition (a), (b) or (d) 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
- (g) 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 at **Appendix IV**.

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

the applied use with associated filling of land 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 given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form with attachments received on 3.10.2024 and 9.10.2024
Appendix Ia	FI received on 1.11.2024
Appendix Ib	FI received on 13.11.2024
Appendix II	Previous and similar applications
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Site layout plan
Drawing A-2	Land filling plan
Plan A-1a	Location plan
Plan A-1b	Previous application plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a and 4b	Site photos

**PLANNING DEPARTMENT
NOVEMBER 2024**