

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/690

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| <u>Applicant</u> | : Mr. HUI Chun Wa represented by Mr. KWOK Chi Man |
| <u>Site</u> | : Lots 956, 958 and 959 RP in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long |
| <u>Site Area</u> | : About 2,337 m 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/9 |
| <u>Zoning</u> | : “Agriculture” (“AGR”) |
| <u>Application</u> | : 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 temporary place of recreation, sports or culture (hobby farm) for a period of 3 years. According to the Notes of the OZP, ‘Place of Recreation, Sports or Culture (Horse Riding School, Hobby Farm, Fishing Ground only)’ is a Column 2 use within the “AGR” zone, which requires permission from the Town Planning Board (the Board). The Site is not the subject of any previous application. The Site is hard-paved, vacant with a few vacant structures (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the proposed development involves two single-storey structures with building heights of 4m and 5m and a total floor area of about 840m² for temporary office, storage for visitors, storage of farm tools and a shelter for farming area. According to the applicant, all the existing hard-paving at the Site will be removed. The farming area of the Site will be about 1,340m² (about 57% of the Site) and the remaining area of about 997m² (about 43% of the Site) will be soil ground. Two parking spaces for private car will be provided within the Site. The operation hours will be 10:00am to 5:00pm daily including public holidays. According to the applicant, the maximum number of visitors will be about 60 at

any one time, and no public announcement system would be used at the Site. The Site is accessible from Fung Kat Heung Road via a local track. The site layout and vehicular access plan submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application form with supplementary statement and plans received on 18.11.2019 **(Appendix I)**
- (b) Further Information (FI) received on 24.12.2019 providing response to departmental comments **(Appendix Ia)**
[exempted from publication]
- (c) FI received on 7.1.2020 providing response to departmental comments **(Appendix Ib)**
[exempted from publication]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in supplementary statement in **Appendix I** and FIs in **Appendices Ia to Ib**. They can be summarized as follows:

- (a) The proposed use is temporary in nature which will not jeopardize the long-term planning intention of the “AGR” zone. The Site will be developed into an environmental educational farm. Vegetables will be planted and shared with visitors. Appointment and entrance fee is required for using the facilities within the farm.
- (b) The proposed use is compatible with the surrounding environment mostly occupied by hobby farms, flower fields and greenhouses. No night-time lighting and polluting activities will be carried out at the Site. The applicant will adopt proper environmental mitigation measures to minimize adverse environmental impact on the surrounding area. No filling of land will be involved. Visitors will access the Site by public transport and no adverse traffic impact is anticipated.
- (c) Prior consultation with the locals has been conducted and they have no objection to the application.

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. 31A) by posting site notice and sending notice to the Kam Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to on-going planning enforcement action (No. E/YL-KTN/498) against an unauthorized development (UD) involving storage use. Enforcement Notice was issued on 20.6.2019 to the concerned party requiring discontinuation of the UD. According to the latest site inspection, the UD has been discontinued.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are 23 similar applications for temporary hobby farm concerning 19 sites within the same “AGR” zone on the Kam Tin North OZP. Except application No. A/YL-KTN/394, all the similar applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2015 and 2019 for a period of 3 or 5 years. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 Five applications for temporary hobby farm (one with caravan holiday camp) for five sites near Cheung Kong Tsuen and Tai Kong Po were approved between 2015 and 2017 mainly for the reasons that temporary approval would not frustrate the long-term planning intention; proposed developments were not incompatible with the surrounding land uses; would unlikely cause significant adverse environmental, traffic, landscape or drainage impacts; and concerned departments had no objection to the application. However, four of them were revoked due to non-compliance with approval conditions.
- 6.3 Seventeen applications for temporary hobby farm (three with caravan holiday camp) for 14 sites at Fung Kat Heung and near Pak Wai Tsuen were approved between 2015 and 2019 for similar reasons as stated in paragraph 6.2 above. However, three of them were revoked due to non-compliance with approval conditions.
- 6.4 Application No. A/YL-KTN/394 for proposed temporary field study/education centre and hobby farm for a period of 5 years was rejected by the Board on review on 14.6.2013 mainly on the grounds that the site was the subject of unauthorized land filling and the fill material were not suitable for cultivation; there was no detailed information regarding the design and operation of the proposed development particularly the hobby farm, field study/education centre and the office with porch; the applicant failed to demonstrate that the development would not generate adverse landscape and drainage impacts on the surrounding areas; and approving the application would set an undesirable precedent and the cumulative effect of which would result in a general degradation of the rural environment of the area.

6.5 Application No. A/YL-KTN/691 for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years and filling of land to the southeast of the Site will be considered in the same meeting.

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

7.1 The Site is:

- (a) hard-paved, vacant with a few vacant structures; and
- (b) accessible from Fung Kat Heung Road via a local track.

7.2 The surrounding areas are rural in character predominated by active agricultural land, hobby farm, residential structures/dwellings, open storage/storage yards, parking of vehicles and vacant/unused land. The open storage/storage yards and parking of vehicles are suspected UD subject to enforcement action by the Planning Authority (**Plan A-2**):

- (a) to its immediate north are two sites for temporary hobby farm use with valid planning permission (Applications No. A/YL-KTN/665 and 670; the latter under construction) and a site for temporary animal boarding establishment use with valid planning permission (Application No. A/YL-KTN/ 651; under construction) (**Plan A-2**). To its immediate south is a site subject to previous planning permission for temporary hobby farm (Application No. A/YL-KTN/513) but the planning permission was revoked due to non-compliance with approval conditions (**Plan A-1**);
- (b) to its east and further north and south are active agricultural land, scattered residential structures/dwellings and vacant/unused land; and
- (c) to its west and northwest across a local track are open storage/storage yard, parking of vehicles, hobby farm, scattered residential structures/dwellings and vacant land.

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 summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer, Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible from Fung Kat Heung Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should planning approval be given to the planning application, the lot(s) owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on Site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by his department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance

responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) Fung Kat Heung Road is not maintained by his department.
- (b) His department is not/ shall not be responsible for the maintenance of any access connecting the Site and San Tam Road.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Agriculture

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

The Site is currently a paved vacant land and possesses potential for agricultural rehabilitation. Taking into account the proposed agricultural activities, he has no strong view against the application from agricultural point of view.

Environment

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

- (a) Provided that the applicant would minimize any noise from the proposed use such as prohibiting the use of public announcement system, portable loudspeakers or any form of audio amplification system so that it would not cause adverse environmental nuisance to nearby sensitive receivers, he has no objection to the application from the environmental planning perspective subject to the following approval conditions:
 - (i) the proposed development should only be operated between 10am to 5pm on the Site, as proposed by the applicant, during the planning approval period; and
 - (ii) no public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at any time during the planning approval period, as proposed by the applicant.
 - (iii) The applicant is advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental

nuisance. Adequate supporting infrastructure / facilities should be provided for proper collection, treatment and disposal of waste / wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of Environmental Protection Department (EPD)'s Practice Note for Professional Persons PN 5/93 "Drainage Plans subject to Comment by the EPD".

- (iv) There was no substantiated environmental complaint concerning the Site received in the past three years.

Landscape

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

- (a) She has no objection to the application from the landscape planning point of view.
- (b) With reference to the aerial photo taken in 2018, the Site is situated in an area of rural landscape character. The surrounding area of the Site is comprised of farmlands, vacant land, temporary structures and scattered tree groups. Considering the adjacent sites for hobby farms and animal boarding establishment (Application Nos. A/YL-KTN/513, 651, 665 and 670) within the same "AGR" zone have been approved and similar uses could be found in proximity, the proposed development is considered not incompatible with existing landscape setting in proximity.
- (c) According to the site visit conducted on 4.12.2019, the Site was hard paved and fenced off. Two existing trees of common species were found along the northeastern and northwestern boundary of the Site. Further significant adverse landscape impact arising from the development is not anticipated.
- (d) The applicant is reminded that any proposed tree felling shall be approved by the relevant tree authority prior to commencement of works.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of

drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the BO. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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.
- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) The Site does not abut on a specified street of not less than 4.5m

wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Food and Environmental Hygiene

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

- (a) For any waste generated from such activities or operations, the applicant should arrange disposal properly at her own expenses.
- (b) Proper licence/permit issued by Food and Environmental Hygiene Department (FEHD) is required if there is any catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.
- (c) No FEHD's facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.

District Officer's Comments

9.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from locals and he has no comments on the application from departmental point of view.

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

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Director of Electrical and Mechanical Services;
- (c) Project Manager (West), Civil Engineering and Development Department; and
- (d) Commissioner of Police.

10. Public Comments Received During the Statutory Publication Period

On 29.11.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from World Wildlife Fund for Nature Hong Kong and Hong Kong Bird Watching Society (**Appendices III-1 to III-2**). Both comments object to the application mainly on the grounds that the proposed use is not in line with the planning intention of "AGR" zone; the Site involved authorized development and "destroy first, develop later"; and would set an undesirable precedence for similar applications in the "AGR" zone.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years in the “AGR” zone. 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. According to the applicant, about 57% of the Site will be used for farming. The proposed use is generally not in conflict with the planning intention of the “AGR” zone. DAFC has no strong view to the application from agricultural point of view. 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 proposed development comprises farm and two single-storey structures and is considered not incompatible with the surrounding areas which are predominated by active agricultural land, hobby farms, residential structures/dwellings and vacant/unused land.
- 11.3 According to the applicant, no public announcement system will be allowed at the Site. In view of the nature of the proposed hobby farm, it would unlikely cause significant adverse environmental, traffic or drainage impacts to the surroundings. Relevant departments consulted including C for T, CTP/UD&L of PlanD, DEP, CE/MN of DSD and D of FS have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and prohibiting the use of public announcement system at the Site are recommended in paragraph 12.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (h) below.
- 11.4 There are 22 similar applications for proposed temporary hobby farm within the same “AGR” zone approved with conditions by the Committee between 2015 and 2019, including two and one applications to the immediate north and south of the Site respectively. Approval of the application is in line with the Committee’s previous decisions on similar applications.
- 11.5 Two public comments were received during the statutory publication period objecting to the application mainly on the grounds as mentioned in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as stated 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 has no

objection to the proposed temporary place of recreation, sports or culture (hobby farm) 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 17.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00pm and 10:00am, 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 at the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (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 17.7.2020;
- (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 17.10.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of 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 17.7.2020;
- (h) in relation to (g) above, the implementation of 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 17.10.2020;
- (i) if any of the above planning conditions (a), (b), (c) 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;
- (j) if any of the above planning conditions (d), (e), (g) or (h) 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

- (k) 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 proposed development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. This zone 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 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

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| Appendix I | Application form with plans received on 18.11.2019 |
| Appendix Ia | FI received on 24.12.2019 |
| Appendix Ib | FI received on 7.1.2020 |
| Appendix II | Similar applications within the same "AGR" zone on the Kam Tin North OZP |
| Appendices III-1 to III-2 | Public comments received during the statutory publication period |
| Appendix IV | Advisory Clauses |
| Drawing A-1 | Layout Plan |

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| Drawing A-2 | Access Plan |
| Plan A-1 | Location Plan with Similar Applications |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4a to 4b | Site Photos |

**PLANNING DEPARTMENT
JANUARY 2020**