

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/871

<u>Applicant</u>	: Go Green (Hong Kong) Limited
<u>Site</u>	: Lots 760 RP, 762 RP, 795 RP, 797 RP, 798, 799, 800, 801, 802, 803 in D.D. 103 and adjoining government land, Sze Pai Shek, Kam Tin, Yuen Long
<u>Site Area</u>	: 13,485 m ² (including 233m ² (about 1.7%) Government Land)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: 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 under the “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently used as the applied use without planning permission (**Plans A-2 to A-4g**).
- 1.2 The Site is the subject of a previous application for the same applied use submitted by the same applicant which was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) in 2019. The planning permission was revoked in 2020 due to non-compliance with approval conditions on implementation of drainage and fire service installations (FSIs) proposals.

- 1.3 According to the applicant, 83% of the Site (11,216.47m²) is farmland and 7% (950m²) is grassland. About 6% of the Site (800m²) is cemented roads and places for storage, and the remaining area is wooden platform. 39 single-storey structures (not exceeding 3.5m high) with a total floor area of about 1,319m² for ancillary office, storage of farming materials and organic fertilizer, rooms/sheds for seminar/briefing/green house, animal houses, farmer/caretaker/visitor resting place are provided on-site. The solar panels within the Site are ancillary facilities for education purpose and to support part of the farm's electricity supply for irrigation.
- 1.4 The Site can be accessed via a footpath from Kam Ho Road. There is no vehicular access and no parking space is provided within the Site. The hobby farm operates from 10:00am to 6:00pm daily, including public holidays. The estimated number of visitors is less than 50 on Saturdays, Sundays and public holidays and less than 10 on weekdays. The applicant stated that no public announcement system would be installed on-site and no food business or place of entertainment is involved at the Site. Besides farming, educational workshops for family, school and organization are also provided. Septic tanks will be used at the Site. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.5 Compared with the previous approved application (No. A/YL-KTS/810), which was submitted by the same applicant, the current application is for the same use with the same site area, layout and total floor area.
- 1.6 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with planning statement and plans received on 8.12.2020 **(Appendix I)**
 - (b) Further Information (FI) received on 27.1.2021 providing response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the planning statement and FI in **Appendices I and Ia**. They can be summarized as follows:

- (a) The applied use is compatible with the surrounding area. No filling or excavation of land will be involved. There are similar applications for temporary hobby farm within the same "AGR" zone approved with conditions in recent years. The current application is the same as the last approved application (No. A/YL-KTS/810). The drainage plan was approved by the Drainage Services Department. The existing rivers are maintained and cleaned on regular interval to ensure the natural drainage system is functioned properly. The fire service plan was approved by the Fire Services Department and the FS251 certificate is enclosed in the current submission. The applicant will comply with all the approval conditions if the application is approved.
- (b) The visitors will pay a fee to enter the farm. Visitors will be encouraged to go to the farm by public transportation. No public announcement system will be installed on-site

to minimize the noise impact on the surrounding area. The applicant will strictly 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” issued by Environmental Protection Department to minimize any potential environmental nuisance.

- (c) The applicant has tried to keep the cemented road, place for storage and number of structures in minimal. The grassland will be turned into farmland when there are more manpower after the pandemic. All landscape plantings within the Site will be properly maintained. The Site will be reinstated by the end of the planning approval period.
- (d) The applicant partners with different NGOs, schools and organizations to organize educational tours. Organic farming method is employed at the Site. The Agriculture, Fisheries and Conservation Department (AFCD) has issued a Farmer Identity Certificate to the operator and the hobby farm is supported by AFCD’s Organic Farmer Support Service and under AFCD’s Leisure Farm Category. Support letters from university professor and NGO were received to support the applied use.

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

The applicant is not a “current land owner” of the private land portion of the Site but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and advertisement in 3 newspapers. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion, the “Owner’s Consent/Notification” requirement is not applicable.

4. Background

The Site is currently not subject to any planning enforcement case. Should there be sufficient evidence to prove that the current operation on-site constitute an authorized development under the Town Planning Ordinance, enforcement action will be taken.

5. Previous Application

The Site is the subject of one previous application (No. A/YL-KTS/810) submitted by the same applicant for the same use which was approved with conditions by the Committee in 2019 mainly for the reasons that approval of the application on a temporary basis would not frustrate the long-term planning intention; the applied use was not incompatible with the surrounding areas; and relevant departments consulted had no adverse comment on the application. While the approval conditions on submission of drainage and FSI proposals have been complied with, the planning permission was revoked on 5.4.2020 due to non-compliance with approval conditions on the implementation of these proposals. Details of the application are summarized in **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are 7 similar applications for temporary place of recreation, sports or culture within the same “AGR” zone. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.

5 approved applications

- 6.2 Applications No. A/YL-KTS/659, 779, 784, 814 and 857 for temporary hobby farm for a period of 3 or 5 years were approved with conditions by the Committee between 2015 and 2020 mainly for similar reasons as stated in paragraph 5 above. However, the planning permission of application No. A/YL-KTS/659 was revoked due to non-compliance with approval conditions.

2 rejected applications

- 6.3 Application No. A/YL-KTS/576 for temporary place for hobby farm, ecological cycling tour and barbecue spot and application No. A/YL-KTS/697 for temporary place of recreation, sports or culture (including barbecue site and kiosks) were rejected by the Committee in 2013 and 2016 on the grounds that the development was not in line with the planning intention of “AGR” zone; there was no detailed information provided on the design and operation of the development; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and/or landscape impacts; there were adverse departmental comments; and approving the application would set an undesirable precedent for similar applications within the “AGR” zone.

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

- 7.1 The Site is:

- (a) used for the applied use without planning permission; and
- (b) accessible via a footpath connecting to Kam Ho Road near the West Rail Kam Sheung Road Station.

- 7.2 The surrounding area is rural in character intermixed with residential structures/dwellings, cultivated and fallow agricultural land, an orchard, hobby farms, plant nursery and vacant/unused land:

- (a) to its north, south and west are residential structures/dwellings, hobby farms, orchard, plant nursery, cultivated and fallow agricultural land and unused land. A watercourse runs along the western boundary of the Site; and
- (b) to its east are a footpath and the elevated Tsing Long Highway. To the further east across Tsing Long Highway are Kam Ho Road and the West Rail Kam Sheung Road Station (**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 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 Government Land (GL) and 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) No permission is given for occupation GL (about 233m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) Should planning approval be given to the planning application, the lots owners 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 applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Furthermore, the applicant has to exclude the GL portion from the Site or apply to his office for a Short Term Tenancy to occupy the GL. Applications for any of the above will be considered by LandsD acting in the capacity as the 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 rent or fee, as may be imposed by the LandsD.

Traffic

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

Considering that there is neither parking provision nor vehicular access to the lot and the induced traffic impact is minimal, he has no comment on the application.

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

It is noted from the applicant's submission that no vehicular access is proposed or to be granted under the application. He has no comments from highways maintenance point of view.

Agriculture and Nature Conservation

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

- (a) The Site falls within "AGR" zone and possesses potential for agricultural rehabilitation. He has no strong view against the application for the applied use from agricultural point of view on the understanding that agricultural activities are involved in the applied use and the Site will be reinstated upon the expiry of the planning permission.
- (b) Noting that the Site is disturbed in nature, he has no adverse comment on the application from nature conservative perspective. Nevertheless, there is a watercourse immediately along the western boundary of the Site. Should the application be approved, the applicant shall be reminded to adopt necessary measures to avoid polluting the watercourse from the applied use during the operation.

Environment

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

- (a) There was no substantiated environmental complaints concerning the Site received in the past three years.
- (b) Provided that the applicant would minimize any noise from the applied 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 environmental planning perspective subject to the following approval condition:

No public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at anytime during the planning approval period.

- (c) The applicant is advised (i) 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” to minimize any potential environmental nuisance; (ii) to provide adequate supporting infrastructure / facilities for proper collection, treatment and disposal of waste / wastewater generated from the applied 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 EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" including percolation test; and (iii) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

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 perspective.
- (b) Based on the aerial photo taken on 18.2.2020, the Site is situated in an area of rural landscape character comprising of scattered tree groups, temporary structures, active and abandoned farmlands. The development is not incompatible to the landscape character of the area. The Site is in operation as hobby farm. Few existing trees are found within the Site. Referring to applicant's submission, no tree felling is proposed within the Site. Also, the proposed layout is not in conflict with the existing trees. Significant adverse impact on landscape resources within the Site is not anticipated.
- (c) The applicant is reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation/removal scheme under the Lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Drainage

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

- (a) He has no objection in principle to the application from the public drainage point of view and no adverse comment on the submitted drainage proposal and its implementation. Nevertheless, the applicant should be reminded to note the following:

- (i) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.
 - (ii) The development would neither obstruct overland flow nor adversely affected any existing natural streams, village drains, ditches and the adjacent areas.
- (b) Should the application be approved, approval conditions on maintenance of the drainage facilities in the agreed drainage proposal for the development should be included.

Fire Safety

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

- (a) The submitted FSIs proposal is considered acceptable to his department.
- (b) The applicant is reminded that the installation /maintenance/ modification/ repair work of FSI shall be undertaken by a Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/maintenance/modification/repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to him.
- (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) As there is no record of approval granted by the Building Authority (BA) for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in

accordance with the BO.

- (c) His detailed comment on unauthorised building works, provision of access, temporary or licenced structures are at **Appendix IV**.
- (d) Detailed comments under the BO will be provided at building plan submission stage.

District Officer's Comments

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

- (a) There is no village representative in the vicinity of the Site, no consultation has been conducted by his office.
- (b) He has no comment on the application from departmental point of view.

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

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

10. Public Comments Received During the Statutory Publication Period

On 18.12.2021, the application was published for public inspection. During the three-week statutory publication period, 3 public comments were received from Designing Hong Kong and individuals (**Appendices IV-1 to IV-3**). One comment from an individual supports the application as hobby farm development in Hong Kong should be supported. The other two object to the application as agriculture land should be used for food production; the development was still in operation after the planning permission was revoked and the Site was subject to previous planning enforcement action; approval of the application will further legitimize unauthorized use of land; and the approval of application would set an undesirable precedent for other applications within the "AGR" zone.

11. Planning Considerations and Assessments

11.1 The application is for 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 83% of the Site is used for farming. The applied use is generally not

in conflict with the planning intention of the “AGR” zone. DAFC has no strong view on the application from the agricultural point of view. It is considered that approval of the application on a temporary basis of 3 years would not frustrate the long-term planning intention of the “AGR” zone.

- 11.2 The hobby farm is considered not incompatible with the surrounding area which is rural in character predominated by residential structures/dwellings, cultivated and fallow agricultural land and vacant/unused land. About 6% of the Site is cemented roads and places for storage. According to the applicant, the paved area and number of structures has been kept to a minimum.
- 11.3 According to the applicant, no public announcement system and no parking space will be used/provided on-site. In view of the nature of the hobby farm, it would unlikely cause significant adverse environmental, traffic or drainage impacts on the surrounding area. Relevant departments consulted including C for T, CTP/UD&L of Plan D, 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) to (b). The applicant will also be 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”. The technical requirements of CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (e) below.
- 11.4 The Site is the subject of a previous application submitted by the same applicant for the same use which was approved for 3 years in 2019 mainly on the grounds as detailed in paragraph 5 above. The planning permission was revoked in 2020 due to non-compliance with approval conditions on the implementation of drainage and FSIs proposals. In the current application, the applicant has submitted relevant proposals and CE/MN of DSD and D of FS has no adverse comment on the application. They also considered the submitted drainage and FSI proposals acceptable. Compared with the previous approved application, the current application has the same site area, layout and total floor area. As there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application. The applicant will be advised that should he fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given by the Committee to any further application.
- 11.5 There are seven similar applications within the same “AGR” zone. Five of them for temporary hobby farm were approved with conditions by the Committee between 2015 and 2020 as stated in paragraph 6.2 above. The other two applications for temporary hobby farm, ecological cycling tour and barbecue spot and temporary place of recreation, sports or culture (including barbecue site and kiosks) were rejected by the Committee in 2013 and 2016 as stated in paragraph 6.3 above. These rejected applications are different from the current application as they involved recreational uses such as barbecue and cycling tour. Also, there were adverse departmental comments from DAFC, DEP and UD&L of PlanD on the applications.

- 11.6 Three public comments were received during the statutory publication period as stated in paragraph 10 above. In this regard, departmental comments and the planning considerations and assessments 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 in paragraph 10, the Planning Department has no objection to the temporary place of recreation, sports or culture (hobby farm) for a period of 3 years.
- 12.2 Should the Committee decide to approval the application, it is suggested that the permission shall be valid on a temporary basis for a period 3 years until 5.2.2024. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. to 10:00 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 the Site at any time during the planning approval period;
- (c) 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 **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 5.8.2021;
- (e) if any of the above planning conditions (a), (b) or (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 the above planning condition (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 V**.

- 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 “AGR” zone which is primarily 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

Appendix I	Application Form with planning statement and plans received on 8.12.2020
Appendix Ia	FI received on 27.1.2021
Appendix II	Previous s.16 application covering the Site
Appendix III	Similar applications within the same “AGR” zone on the Kam Tin South OZP
Appendix IV	Public Comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4g	Site Photos

**PLANNING DEPARTMENT
FEBURARY 2021**