

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/670

<u>Applicant</u>	: Mr. LAM Tung Man represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 913 RP (Part), 925 RP (Part) and 927 (Part) in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long
<u>Site Area</u>	: About 2,359 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 5 Years

1. The Proposal

- 1.1 The applicant seeks planning application to use the application site (the Site) for temporary place of recreation, sports or culture (hobby farm) for a period of 5 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 partly paved and party covered by vegetation. Most of the Site is vacant with a few caravans stored at the eastern portion (**Plans A-2 to A-4**).
- 1.2 The Site comprises two portions. For the eastern portion, two one-storey structures with building height of 3m and total floor area of about 54m² for refreshment kiosk and storage of farms tools and 5 converted caravans with total covered area of about 93m² for farmer resting rooms will be provided. For the western portion, another one-storey structure with building height of 3m and floor area of about 108m² for visitor centre will be provided. According to the applicant, the total farming area of the Site is about 1,207m² (i.e. about 51% of the

Site) and the remaining area of about 1,152m² (i.e. about 49% of the Site) are sands/soil ground. No hard-paving is proposed at the Site. The maximum number of visitors at the Site will not exceed 10 on Monday to Friday and 25 on Saturdays, Sundays and public holidays. 5 private car parking spaces and 1 loading/unloading space for light goods vehicle will be provided within the Site. The Site is accessible from Fung Kat Heung Road via a local track. The operation hours are 10:00 am to 6:00 pm daily including public holidays. No camping and overnight accommodation will be provided within the Site for visitors. Septic tanks will be used at the Site. According to the applicant, no public announcement system would be used at the Site. The site layout and vehicular access plans 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 planning statement and plans received on 18.6.2019 **(Appendix I)**
- (b) Further Information (FI) received on 7.8.2019 providing response to departmental comments **(Appendix Ia)**

2. Justifications from the Applicant

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

- (a) The Site will be developed into an environmental educational farm. Guided tour on agricultural and farming knowledge will be provided. Fruits and vegetables will be planted and visitors can bring the crops home for free. Entrance fee is required for using the facilities within the farm.
- (b) Two applications (Nos. A/YL-KTN/513 and 520) for temporary place of recreation, sports or culture uses located at the south of the Site were approved by the Board. The proposed use is temporary in nature which will not jeopardize the long-term planning intention of the “AGR” zone.
- (c) The applicant will reinstate the Site to amenity area upon expiry of the planning permission and approval of the application will not set an undesirable precedent of other similar applications. Landscape, drainage and fire safety facilities will be provided at the Site to fulfill the approval conditions if the application is approved.

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

- 4.1 The western portion of the Site is subject to an on-going planning enforcement action (No. E/YL-KTN/491) against an unauthorized development (UD) involving filling of land. Reinstatement Notice (RN) was issued on 3.7.2019 requiring reinstatement of the concerned land. If the notice is not complied with, prosecution action may be taken.
- 4.2 The eastern portion of the Site is subject to an on-going planning enforcement action (E/YL-KTN/492) against an UD involving recreation use. Enforcement Notice (EN) was issued on 26.2.2019 to the concerned parties requiring discontinuation of the UD. As site inspection revealed that the UD still continued upon expiry of the EN, prosecution action may be followed.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are twenty similar applications (No. A/YL-KTN/394, 465, 474, 513, 516, 520, 535, 536, 538, 571, 579, 609, 610, 615, 620, 626, 630, 636, 649 and 665) within the same "AGR" zone on the Kam Tin North OZP. Except applications No. A/YL-KTN/394 and 649, 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 years. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 Five applications (No. A/YL-KTN/465, 516, 535, 538 and 571 for temporary hobby farm (A/YL-KTN/535 included caravan holiday camp)) for five sites near Cheung Kong Tsuen and Tai Kong Po were approved between 2015 and 2017 mainly on the grounds that temporary approval would not frustrate the long-term planning intention; not incompatible with the surrounding land uses; the proposed developments would unlikely cause significant adverse environmental, traffic, landscape or drainage impacts; and concerned departments had no objection to the application.
- 6.3 Thirteen applications (No. A/YL-KTN/474, 513, 520, 536, 579, 609, 610, 615, 620, 626, 630, 636 and 665 for temporary hobby farm (A/YL-KTN/520, 536 and 665 included caravan holiday camp)) for 11 sites at Fung Kat Heung and near Pak Wai Tsuen were approved between 2015 and 2019 on similar grounds as stated in paragraph 6.2 above.

- 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 filling 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 On 3.5.2019, the Committee deferred a decision on Application No. A/YL-KTN/649 for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 5 years pending further information from the applicant and concerned departments on site background, existing soil condition and operation details of the proposed use. The application will be considered in the same meeting.

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

7.1 The Site is:

- (a) partly paved and party covered by vegetation. Most of the Site is vacant with a few caravans stored at the eastern portion; and
- (b) accessible from Fung Kat Heung Road via a local track.

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

- (a) to its north, east and south are cultivated agricultural land, scattered residential structures/dwellings, open storage/storage yards, a hobby farm (with planning permission under application No. A/YL-KTN/665) and vacant/unused land; and
- (b) to its west and northwest across a local track are open storage/storage yard, parking of vehicles, 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 the 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) His department shall not be responsible for the maintenance of any access connecting the Site and Fung Kat Heung Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.

Agriculture

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

Taking into account the proposed agricultural activities, he has no strong view against the application from agricultural point of view, provided that the Site, if pavement is involved, will be reinstated upon the expiry of the planning permission.

Environment

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

- (a) According to the information provided by the applicant, the operation hours of the hobby farm are from 10:00am to 6:00pm daily including public holidays. Moreover, no public announcement system will be adopted for the proposed uses.
- (b) He has no objection to the application from the environmental planning perspective provided that the applicant would minimize the noise from the proposed use such as prohibiting the use of public announcement system, portable loudspeaker and any form of audio amplification system so that it would not affect nearby sensitive receivers.
- (c) The applicant is 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” to minimise 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 soak way system will be used, its design and construction should follow the requirements of Environmental Protection Department (EPD)’s Practice Note for Professional Persons (ProPECC PN) No. 5/93 “Drainage Plans subject to Comment by the EPD”.

- (d) 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 surrounding area is comprised of farmlands, temporary structures, carparks and scattered tree groups. The proposed use is not incompatible with the landscape setting in proximity.
- (c) According to the site visit conducted on 5.7.2019, some existing trees of common species in fair to good conditions were found along the northeastern boundary of the eastern portion of the Site. Moreover, some caravans were parked and some shrub planting were planted at the eastern portion of the Site. The western portion of the Site was covered by the grasses and no tree was observed. Tree felling will not be involved and further significant adverse landscape impact arising from the proposed development is not anticipated.
- (d) In consideration that there is no prominent public frontage around the Site, should the application be approved, landscape condition in planning approval is not recommended as its effect on enhancing the quality of public realm is not apparent.

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, conditions requiring the applicant to submit, implement and maintain the drainage proposal for the development should be included in the planning permission.

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) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are UBW (Unauthorized Building Works) under the BO and should not be designated for any proposed use under the application.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's 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) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (d) 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.
- (e) If the Site does not abut on a specified street of not less than 4.5m wide, 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) If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.
- (b) Proper licence and/or permit issued by FEHD is required if any food business and/or activities related to place of entertainment is involved:
 - (i) For the operation of any types of food business, relevant food licence(s) and/or permit(s) should be obtained from FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132).
 - (ii) Any person who desires to keep or use any place of public entertainment for example a theatre and cinema or a place, building, erection or structure, whether temporary or permanent, on one occasion or more, capable of accommodating the public presenting or carrying on public entertainment within Places of Public entertainment (PPE) Ordinance (Cap. 172) and its subsidiary legislation, such as a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment, cinematograph or laser projection display or an amusement ride and mechanical device which is designed for amusement. A Place of Public Entertainment Licence (or Temporary Place of Public Entertainment Licence) should be obtained from FEHD whatever the general public is admitted with or without payment.

Water Supplies

9.1.11 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing waterworks reserve for existing raw water mains will be affected (**Plan A-2**). No structure shall be erected over this waterworks reserve and such area shall not be used for storage of car-parking purpose.
- (c) The Water Authority and his officers and contractors, his or their workmen shall have the free access at all times to the said area with necessary plant and vehicles for the purpose of construction, inspection, operation, maintenance and repair works. All other services across, through or under the Waterworks Reserve are required to seek authorization from the Water Authority.
- (d) No trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water main. The developer shall bear the cost of any necessary diversion work affected by the proposed development.
- (e) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

Electricity

9.1.12 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the ‘Code of Practice on Working near Electricity Supply Lines’ established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer’s Comments

9.1.13 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 particular comments on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department; and
- (b) Commissioner of Police.

10. Public Comments Received During the Statutory Publication Period

On 25.6.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received from Designing Hong Kong Limited and individuals (**Appendices III-1 to III-3**). The commenters object to the application mainly on the grounds that the proposed use would affect the land available for genuine farming; may involve “destroy first, develop later” case; would set an undesirable precedence for similar applications in the “AGR” zone; induced adverse hygiene and drainage impacts to the surroundings; affect living environment of the area; and the Site would be used for other profit-making activities instead of the proposed hobby farm use.

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 5 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. According to the applicant, about 51% 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 against the application from agricultural point of view. It is considered that approval of the application on a temporary basis for a period of 5 years would not frustrate the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development comprises farm and some single-storey structures and is considered not incompatible with the surrounding land uses which are predominated by cultivated agricultural land, residential structures/dwellings, open storage/storage yards, parking of vehicles, hobby farm and vacant/unused land.
- 11.3 According to the applicant, the Site will not accommodate more than 25 visitors. No overnight accommodation and 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 unauthorized development on the Site will be subject to enforcement action by the Planning Authority. Besides, the applicant will also 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 18 similar applications for proposed temporary hobby farm within the same “AGR” zone approved with conditions by the Committee between 2015 and 2019, including a site on the immediate south of the Site. Approval of the application is in line with the Committee’s previous decisions on similar applications.
- 11.5 Three 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 assessment made in paragraph 11 and having taken into account the public comments 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 5 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 5 years until 16.8.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00pm 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 on 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 16.2.2020;

- (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 16.5.2020;
- (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 16.2.2020;
- (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 16.5.2020;
- (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 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 18.6.2019
Appendix Ia	FI received on 7.8.2019
Appendix II	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendices III-1 to III-3	Public comments received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Site Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**