

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTS/814**

<b><u>Applicant</u></b>	: Mr. Tang Sai Yu represented by R-riches Property Consultants Limited
<b><u>Site</u></b>	: Lots 900(part) and 901 S.B (part), Sze Pai Shek, Kam Tin, Yuen Long
<b><u>Site Area</u></b>	: 1,664.4 m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: 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 permission to use the application site (the Site) for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 5 years (**Plan A-1**). 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 planning permission from the Town Planning Board (the Board). The Site is partly paved, occupied by a temple without planning permission and greenhouse/plant nursery (**Plans A-2 to A-4b**). The Site is not the subject of any previous planning application.
- 1.2 The Site comprises two portions in close proximity and each with its own entrance. According to the applicant, 16% of the Site (269.3m<sup>2</sup>) is for farm area at the southern portion and 4 single-storey structures (about 5m high) with a total floor area of 439.8m<sup>2</sup> are erected for greenhouse/plant nursery at the northern

portion. Another 7 single-storey structures (2.6m to 3m high) with a total floor area of 139.5m<sup>2</sup> are for farmer resting rooms, security kiosks and portable toilets. About 5.3% (88.5m<sup>2</sup>) of the Site is hard-paved and 60.2% (1,001.2 m<sup>2</sup>) is covered by tiles with soiled ground underneath (**Drawing A-3**). The Site can be accessed via a footpath from Kam Ho Road. There is no vehicular access and no parking or loading/unloading space is provided within the Site. The operation hours are 10:00am to 5:00pm daily, including public holidays. The estimated number of visitors is less than 15 on Saturdays, Sundays and public holidays and less than 5 on weekdays. Visitors are required to make appointment and pay daily rent to use the facilities within the Site. Hydroponic farming will be carried out at the green houses and vegetable and fruits will be grown at the Site. No audio amplification system and no food business will be carried out at the Site. Septic tanks will be used at the Site. The plans showing the access, site layout and paved ratio submitted by the applicant are at **Drawings A-1 to A-3**.

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

- (a) Application form with supplementary statement (Appendix I) received on 15.1.2019
- (b) Further Information (FI) received on 4.3.2019 (Appendix Ia) providing clarifications and response to departmental comments

## 2. **Justifications from the Applicant**

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

- (a) The proposed development is operated by a religious organization. Nevertheless, any form of worshipping or burning of joss paper will not take place at the Site. The applicant will strictly follow the proposed scheme and reinstate the Site to an amenity area after the planning approval is obtained.
- (b) The proposed use is compatible with the surrounding area.
- (c) The operator of the hobby farm will provided farm tools for visitors. The crops will be free to carry away by farmers.
- (d) There will be no selling of food or drinks at the Site. Staff and visitors will be required to carry away the waste to minimize any adverse impact on the environment. The applicant will comply with the approval conditions/relevant regulations related to sewage, fire safety, landscape and drainage aspects 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 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 sending notification letter to Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

**4. Background**

The Site is currently not subject to any active enforcement case. The southern part of the Site, i.e. Structure B2, has a bronze incense burner installed, and the indoor setting was for worshipping purpose. The religious institution use on the Site would be subject to planning enforcement action under the Town Planning Ordinance (the Ordinance).

**5. Previous Application**

The Site is not the subject of any previous planning application.

**6. Similar Applications**

6.1 There are 6 similar applications (No. A/YL-KTS/576, 659, 697, 779, 784 and 810) within the same “AGR” zone on the Kam Tin South OZP. Details of the applications are summarized in **Appendix II** and the locations of the application sites are shown on **Plan A-1**.

*Approved Applications*

6.2 Applications No. A/YL-KTS/659, 779, 784 and 810 for temporary hobby farm for 3 years were approved with conditions by the Committee on 6.2.2015, 6.4.2018, 15.6.2018 and 4.1.2019 respectively mainly for the reasons that the proposed development was generally in line with the planning intention of the “AGR” zone since it would involve the use of the site for farming purpose; DAFC had no strong view on the application from the agricultural point of view; approval of the application on a temporary basis would not frustrate the long-term planning intention; there were similar approved applications in the vicinity; not incompatible with the surrounding areas; in view of the scale and nature the proposed development would unlikely cause significant adverse environmental, traffic or drainage impacts and relevant departments consulted had no adverse comment on the application; and technical issues could be addressed by the approval conditions. However, permission for application No. A/YL-KTS/659 was revoked on 6.8.2016 due to non-compliance with approval conditions related to submission and implementation of landscape, drainage and fire proposals.

### *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 on 21.6.2013 and 18.3.2016 respectively on the grounds that the development was not in line with the planning intention of “AGR” zone; no strong planning justification for a departure from the planning intention; 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 landscape impacts; there were adverse departmental comments; and approving the application would set an undesirable precedent.

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

7.1 The Site is:

- (a) partly paved and occupied by a temple (Photo 7 on **Plan A-4b**) without valid planning permission and greenhouse/plant nursery; and
- (b) accessible via a footpath connecting to Kam Ho Road.

7.2 The surrounding areas are rural in character, mainly occupied by cultivated and fallow agricultural land, residential structures/dwellings and unused land:

- (a) to its immediate south is a residential structure/dwelling, and to its further south are cultivated agricultural land and unused land; and
- (b) to its east, west and north are cultivated and fallow agricultural land, 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 summarised 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 to Kam Ho Road via Government Land (GL) and private land. 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 the application be approved, 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):

Considering there is neither parking provision nor vehicular access to the lot and the induced traffic 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):

- (a) There is no vehicular access proposed/granted under the application. It is noted from the application that no run-in/out and direct vehicular access to the Site are proposed.

- (b) His department does not and will not maintain any access connecting the Site and Kam Ho Road. The applicant should be responsible for his own access arrangement.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

### **Environment**

#### 9.1.4 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 any environmental nuisance to nearby sensitive receivers, he has no objection to the application from environmental planning perspective.
- (b) 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” issued by DEP 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’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department ”.
- (c) The Site falls within the consultation zone of Au Tau Water Treatment Works which is a Potentially Hazardous Installation. Based on the information provided, he has no objection to the application from chlorine risk perspective.

### **Agriculture**

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

- (a) The Site was occupied by some temporary structures and greenhouses and it falls within “AGR”. Upon recent site visit, agricultural activities in the vicinity were very active. Noting the

proposed agricultural activities and ratio of paved land in the FI submitted by the applicant, he has no strong view against the application from agriculture point of view provided that the Site will be reinstated upon expiry of planning permission.

- (b) The Site was generally vegetated in 2015 according to aerial photos and the Site was disturbed between 2017 and 2018. He has no record of application(s) for Letter of Approval for erecting agricultural structures on the Site.

### **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.
- (b) According to the aerial photo of 2018, the surrounding area is comprised of woodland, farmland and some temporary structures. The proposed use is considered not incompatible with the existing landscape setting in proximity.
- (c) Based on site visit conducted on 13.2.2019, the Site was fenced off and the proposed use was in operation. No existing tree was found within the Site. Further adverse landscape impact arising from the proposed use is not anticipated.
- (d) In consideration that the Site was surrounded by dense tree groups outside the Site, which formed the effective landscape buffer, and the landscape quality was enhanced by shrub planting and lawn within the Site, landscape condition is not recommended should the application be approved by the Board.

### **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 development from public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

**Fire Safety**

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

- (a) He has no in-principle objection to the application 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 FSIs 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) There is no record of approval by the Building Authority 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) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (c) 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.
- (d) 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.

- (e) 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.
- (f) 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) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the such activity/operation, the applicant should arrange disposal properly at her own expenses.
- (c) Proper licence / permit issued by his department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Under the Food Business Regulation, Cap. 132X, a food business licence is required for the operation of the relevant type of food business listed in the Regulation. According to the given information, the proposed hobby farm itself is not a food business stipulated in Cap.132X. Hence, a mere hobby farm without any food business mentioned in Cap.132X involved does not require a food business licence from FEHD.

### **Water Supply**

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

- (a) He has no objection to the application.

- (b) For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### **District Officer's Comments**

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

His office has not received any comment from the locals and he has no comment on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Director of Leisure and Cultural Services (DLCS); and
- (d) Commissioner of Police (C of P).

## **10. Public Comments Received During Statutory Publication Period**

On 25.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 15.12.2019, 2 public comments from the Hong Kong Bird Watching Society and an individual (**Appendices III-1 and III-2**) were received objecting to the application mainly on the grounds that the proposed use is not in line with the planning intention; the Site has potential for farmland rehabilitation; construction of greenhouse, toilets and resting rooms would bring adverse impacts on soil and water and would lead to a loss of arable land and degradation of the Site; the Site may involve "develop first, build later" case; approval of the application would set an undesirable precedent; too many approvals granted for hobby farm use without careful examination of the site conditions and likelihood of abuse of approval conditions; and fake farms would deprive genuine farmers to access agricultural land and legitimize brownfield operation.

## **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 at a site zoned "AGR". The planning

intention of the “AGR” zone is 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 16% of the Site is for farm area and 4 structures (439.8m<sup>2</sup> in floor area) are for greenhouse/plant nursery. The applied use is generally not in conflict with the planning intention of the “AGR” zone and 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 for a period of 5 years would not frustrate the long-term planning intention of the “AGR” zone.

- 11.2 The proposed hobby farm is considered not incompatible with the surrounding areas which are rural in character, mainly occupied by cultivated and fallow agricultural land, residential structures/dwellings and unused land.
- 11.3 According to the applicant, the estimated number of visitors is less than 15 on Saturdays, Sundays and public holidays and less than 5 on weekdays, and they will access to the Site via a footpath connecting to Kam Ho Road. No parking space will be provided on-site and no audio amplification system or food business will be carried out at the Site. In view of the nature of the hobby farm, it would unlikely cause significant adverse environmental, traffic, landscape or drainage impacts and relevant departments consulted including C for T, CTP/UD&L of PlanD, CE/MN of DSD, CE/C of WSD and D of FS have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and 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-site will be subject to enforcement action by the Planning Authority. 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” issued by DEP. Technical requirements of CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (g).
- 11.4 There are six similar applications within the same “AGR” zone. Four of them for temporary hobby farm for 3 years (No. A/YL-KTS/659, 779, 784 and 810) were approved with conditions by the Committee between 2015 and 2019 as stated in paragraph 6.2 above. The other two applications (No. A/YL-KTS/576 and 697) for temporary place for hobby farm, ecological cycling tour and barbecue spot and temporary place of recreation, sports or culture (including barbecue site and kiosks) for 3 years were rejected by the Committee on 21.6.2013 and 18.3.2016 respectively 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/or CTP/UD&L of PlanD on the applications.
- 11.5 Two objecting comments were received mainly on the grounds of not in line with the planning intention, adverse environmental impact and concern on fake farming. In this regard, concerned departments have no adverse comment on the

application and temporary approval would not frustrate the long-term planning intention. The planning considerations and assessments stated above are also relevant.

## **12. Planning Department's Views**

- 12.1 Based on the assessments made in paragraph 11 and having taking 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 8.3.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 5:00 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 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 8.9.2019;
- (d) in relation to (c) 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 8.12.2019;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of fire service installation 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 8.9.2019;
- (g) in relation to (f) above, the provision of fire service installations within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 8.12.2019;
- (h) if any of the above planning conditions (a), (b) or (e) 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;

- (i) if any of the above planning conditions (c), (d), (f) or (g) 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
- (j) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

### Advisory Clauses

The recommended advisory clauses are attached at **Appendix 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 primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission 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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|--------------------|-----------------------------------------------------------------------|
| <b>Appendix I</b>  | Application form with supplementary information received on 15.1.2019 |
| <b>Appendix Ia</b> | FI received on 4.3.2019 providing clarifications and response to      |

departmental comment

<b>Appendix II</b>	Similar applications within the same “AGR” zone on the Kam Tin South OZP
<b>Appendices III-1 to III-2</b>	Public comments received during the statutory publication period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Access Plan
<b>Drawing A-2</b>	Site Layout Plan
<b>Drawing A-3</b>	Paved Ratio Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to 4b</b>	Site Photos

**PLANNING DEPARTMENT  
MARCH 2019**