

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/826

<u>Applicant</u>	: Mr. CHAN Chiu Hung Danny represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 1159 RP in D.D. 106, Kam Sheung Road, Kam Tin, Yuen Long
<u>Site Area</u>	: About 2,164 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan No. S/YL-KTS/15
<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 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 in the “AGR” zone, which requires permission from the Town Planning Board (the Board). The Site is currently vacant and covered with vegetation (**Plans A-2 to A-4**).
- 1.2 The Site is the subject of three previous applications for proposed temporary animal boarding establishment, New Territories Exempted Houses and temporary barbecue spot. All of them were rejected by the Rural and New Town Planning Committee (the Committee) between 2007 and 2011.
- 1.3 According to the applicant, the proposed development involves 1 one-storey structure with a building height of about 3.5m and a total floor area of about 54m² for reception, farmer resting room, agricultural education room and storage of

farm tools uses. The farming area is about 1,725m² (about 80% of total site area) while the remaining area within the Site is soil ground. The operation hours will be between 10 a.m. and 5 p.m. daily including public holidays. The estimated number of visitors will not exceed 5 on weekdays and 10 on weekends and public holidays. Visitors are required to pay daily entrance fee. According to the applicant, no public announcement system will be used at the Site. The Site is accessible via Kam Shui South Road branching off from Kam Sheung Road. One loading/unloading space for light goods vehicle will be provided within the Site. The site layout plan, vehicular access plan and paved area ratio plan submitted by the applicant are shown in **Drawings A-1 to A-3**.

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

- (a) Application Form with supplementary information (**Appendix I**) received on 9.7.2019
- (b) Further information received on 6.11.2019 in (**Appendix Ia**) response to departmental comments
[exempted from publication requirement]
- (c) Further information received on 17.1.2019 in (**Appendix Ib**) response to departmental comments
[exempted from publication requirement]

1.5 The application was originally scheduled for consideration by the Committee on 6.9.2019. At the request of the applicant, the Committee on 6.9.2019 and 3.1.2020 agreed to defer making a decision on the application to allow time for applicant to address the departmental comments. Further information was received on 6.11.2019 and 17.1.2020.

2. Justifications from the Applicant

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

- (a) The proposed development is temporary in nature and would not frustrate the long-term planning intention. The Site will be reinstated to an amenity area after expiry of the planning approval and approval of the application would not set an undesirable precedent.
- (b) The Site is intended to be developed as an educational hobby farm serving the nearby residents, mainly for growing vegetable and fruits.
- (c) Since the Site is bounded by existing workshop, storage and residential development at the east, south and west, the only available vehicular access is via Kam Shui South Road. Sufficient maneuvering space will be provided within the Site to minimize traffic impact on the surrounding areas.

- (d) The applicant will provide landscaping, drainage facilities and fire service installations for compliance with the planning conditions (if necessary).

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 Pat Heung 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 planning enforcement action.

5. Previous Applications

- 5.1 The Site involves 3 previous applications. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 Application No. A/YL-KTS/398 for proposed temporary animal boarding establishment for a period of 5 years was rejected by the Committee on 27.7.2007 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; the proposed development was not compatible with the adjacent large-scale residential development which would be susceptible to potential adverse environmental nuisances; and there was insufficient information in the submission to demonstrate that the proposed development would not have adverse environmental, drainage and archaeological impacts on the surrounding areas.
- 5.3 Application No. A/YL-KTS/471 for proposed two New Territories Exempted Houses was rejected by the Committee on 7.8.2009 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; the proposed development was incompatible with the surrounding area comprising open storage yards and warehouses uses and would be subject to adverse environmental impact; it would affect the planting sites established as mitigation measures under a drainage project; and approval of the application would set an undesirable precedent for similar application within the “AGR” zone.
- 5.4 Application No. A/YL-KTS/526 for proposed temporary barbecue spot for a period of 3 years was rejected by the Committee on 4.3.2011 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; the proposed development was incompatible with the tranquil character of the adjacent low-rise residential development; the applicant failed to demonstrate that the proposed development would not generate adverse environmental and traffic impacts on the surrounding areas and there were adverse

departmental comments; and the approval of the application would set an undesirable precedent for similar application within the “AGR” zone.

6. Similar Application

There is no similar application for temporary hobby farm within the same “AGR” zone on the OZP.

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

7.1 The Site is:

- (a) currently vacant and covered with vegetation; and
- (b) accessible from Kam Shui South Road via a strip of planting area.

7.2 The surrounding areas are rural in character predominated by residential dwellings/structures, fallow agricultural land, open storage yards, warehouses, parking of vehicles and vacant /unused land. The open storage yards, warehouses and parking of vehicles are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its immediate southwest is a residential development (Seasons Palace);
- (b) to its immediate north is a planting area and Kam Shui South Road. Across the road are a nullah, residential dwellings/structures, fallow agricultural land and unused land; and
- (c) to its east and south are open storage yards, parking of vehicles, and warehouses.

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 Kam Shui South 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 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 Transport Department (TD). 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) If the access arrangement is agreed by TD, the applicant should construct a run in/out at the access point at Kam Shui South Road in accordance with the latest version of Highways Standard Drawing No. H113 and H114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement. The detailed design of the run-in/out proposal should be submitted to his department for agreement before commencement of any works.
- (b) The applicant shall be responsible for any modification of existing street furniture and footpath, if any, for the proposed run-in/out. The modification shall be completed at the applicant's own cost to the satisfaction of TD and HyD. If lowering/diversion of street lighting cable is necessary, the applicant should liaise with the Lighting Division of his department. The detailed proposal for the modification work should be submitted to TD and HyD for agreement prior to implementation. Excavation Permit should be obtained from his office prior to commencement of excavation works on public roads and footpaths maintained by his office.
- (c) His department is/shall not be responsible for the maintenance of any access connecting the Site and Kam Shui South Road.
- (d) 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 and Nature Conservation

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

- (a) The Site possesses potential for agricultural rehabilitation. He has no strong view on the application from agricultural point of view on the understanding that agricultural activities are involved in the proposed use and no pavement is proposed.
- (b) He has reservation in principle on the application from nature conservation perspective since the vehicular access of the proposed use would encroach upon the planting site (established

as ecological mitigation measures for the Main Drainage Channels for Yuen Long and Kam Tin) managed by his department. Nevertheless, should the application be approved and LandsD raises no objection to the proposed vehicular access, his department would cease the maintenance of the planting site at / near the concerned area.

Environment

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

- (a) 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.
- (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” 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 soakaway system will be used, its design and construction should follow the requirement of EPD’s Practice Note for Professional Persons (ProPECC PN) 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department”.

Landscape

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

- (a) He has no objection to the application from the landscape planning point of view.
- (b) Based on aerial photo of 2018, the surrounding area of the Site is comprised of low-rise residential development, clusters of temporary structures and scattered tree groups. The proposed use is considered not incompatible with the landscape setting in proximity.
- (c) According to the site visit conducted on 19.7.2019, the Site was covered with self-seeded groundcovers. 6 nos. of existing trees, *Leucaena leucocephala* (銀合歡) which are invasive and undesirable species, were found at the middle of the Site. In view

that there is no significant landscape resource within the Site, further significant adverse landscape impact arising from the proposed development is not anticipated.

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 development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal and the 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.

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 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 building, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building

works (UBW) under the Buildings Ordinance (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 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) 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) If the Site does not abut on a specified street of not less than 4.5 m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Project Interface

9.1.10 Comments of the Project Manager (West, Civil Engineering and Development Department (PM(W),CEDD):

He has no objection to the application. However, the Site falls within one of the potential housing development sites identified in the Land Use Review for Kam Tin South and Pat Heung, which is subject to further technical feasibility study to be undertaken. The application should be considered in the context of the housing developments at Kam Tin South, the existing infrastructure, the current uses permitted under the existing OZP, the prevailing land administration policy and the BO.

Environmental Hygiene

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

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.

Others

9.1.12 Comments of the Director of Leisure and Cultural Services (DLCS):

The proposed run in/out connecting to Kam Shui South Road encroaches onto the planting areas with trees and shrubs under his department's maintenance. The applicant should conduct a tree survey and submit a Tree Preservation and Removal Proposal to relevant government department for approval according to DEVB TC(W) No. 7/2015.

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 upon close of consultation and he has no particular comments on the application.

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

- (a) Director of Electrical and Mechanical Services;
- (b) Executive Secretary, Antiquities and Monuments Office;
- (c) Chief Engineer/Construction, Water Supplies Department; and
- (d) Commissioner of Police.

10. Public Comments Received During the Statutory Publication Period

- 10.1 On 16.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 15 comments (**Appendices III-1 to III-15**) were received from Designing Hong Kong, residents/owners of the Seasons Palace and individuals. All of them object to the application mainly on the grounds that the development will cause adverse traffic, pedestrian safety, environmental (e.g. lighting, noise and odour) and hygiene impact; the proposed use will create nuisances to the nearby residents and not compatible with the nearby residential development; the Site is subject to previously rejected applications; the proposed use is not in line with the planning intention of the "AGR" zone; and approval of the application will set an undesirable precedent.

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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural

purposes. According to the applicant, about 80% of the Site will be used for farmland. The proposed 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. The approval of the application on a temporary basis of 5 years would not frustrate the long-term planning intention of the “AGR” zone.

- 11.2 The proposed use which involves farmland and one 1-storey structure is considered not incompatible with the surrounding areas which are rural in character predominated by residential dwellings/structures and vacant/unused land.
- 11.3 According to the applicant, not more than 10 visitors will be accommodated at the Site at one time, and no public announcement system would be used at the Site. In view of the nature of the hobby farm, it will unlikely cause significant adverse landscape, environmental, traffic or drainage impacts to the surroundings. Relevant departments consulted including C for T, DEP, CTP/UD&L of Plan D, CE/MN of DSD and D of FS have no adverse comment on the application. Regarding DAFC’s concern on the proposed run-in/out encroaching upon the planting site (established as ecological mitigation measures for the Main Drainage Channels for Yuen Long and Kam Tin) managed by his department, the run-in/out only occupies a small area (**Drawing A-2** and **Plan A-2**) and C for T and CHE/NTW of HyD have not raised objection to the proposed vehicular access. 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). 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. 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 CHE/NTW of HyD, C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (j) below.
- 11.4 The Site is subject to 3 previous applications rejected by the Committee, but they are for different uses from the current application and the details are set out in paragraph 5 above. There is no similar application for temporary hobby farm within the same “AGR” zone.
- 11.5 15 public comments were received during the statutory publication period, all objecting to the application as stated 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 as mentioned in paragraph 10 above, 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 approval the application, it is suggested that the permission shall be valid on a temporary basis for a period 5 years until 6.3.2025. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 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) 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 a run-in/out proposal at Kam Shui South Road within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the TPB by 6.9.2020;
- (e) in relation to (d) above, the implementation of a run-in/out proposal at Kam Shui South Road within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the TPB by 6.12.2020;
- (f) 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 6.9.2020;
- (g) in relation to (f) 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 6.12.2020;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) 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 6.9.2020;
- (j) in relation to (i) 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 6.12.2020;

- (k) if any of the above planning conditions (a), (b), (c) or (h) 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;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) 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
- (m) 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

- Appendix I** Application form with attachments received on 15.10.2019
- Appendix Ia** Further Information received on 6.11.2019
- Appendix Ib** Further Information received on 17.1.2020

Appendix II	Previous applications covering the Site
Appendices III-1 to III-15	Public comments received during the statutory publication period
Appendix IV	Advisory clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Layout Plan
Drawing A-3	Paved Ratio Plan
Plan A-1	Location plan with previous applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2020**