

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

**APPLICATION NO. A/YL-KTN/716**

<b>Applicant</b>	:	Mr. TANG Wai Ip
<b>Site</b>	:	Lot 1093 in D.D. 107, Kam Tin North, Yuen Long
<b>Site Area</b>	:	526.1m <sup>2</sup>
<b>Lease</b>	:	Block Government Lease (demised for agricultural use)
<b>Plan</b>	:	Approved Kam Tin North Outline Zoning Plan (OZP) No.S/YL-KTN/9
<b>Zoning</b>	:	“Agriculture” (“AGR”)
<b>Application</b>	:	Proposed Temporary Animal Boarding Establishment for a Period of 3 Years and Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of 3 years and filling of land. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in the “AGR” zone which requires planning permission from the Town Planning Board (the Board). Filling of land in “AGR” zone also requires planning permission from the Board. The Site is currently vacant and covered by vegetation (**Plans A-2 and A-4**).
  
- 1.2 According to the applicant, the proposed development involves 4 one/ two storey temporary structures with a total floor area of about 254.5m<sup>2</sup> and building height of 5m to 6m for animal boarding establishment, site office and storage. The whole site (526.1m<sup>2</sup>) is proposed to be filled by concrete by a maximum of 0.5m (from about 9mPD to 9.5mPD). The business hours are from 9am to 6pm daily (including public holiday), with 24 hours animal boarding services. Not more than 20 dogs will be accommodated at the Site. No public announcement system and whistle blowing will be used at the Site. All dogs will be kept indoor between 6pm and 9pm and the structures for animal boarding establishment will be enclosed with soundproofing material and equipped with mechanical ventilation and air conditioning. No car parking space will be provided at the Site. The Site is accessible by a local track branching off Castle Peak Road – Tam Mi. The site layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application form with planning statement and plans received on 28.5.2020 **(Appendix I)**
- (b) Supplementary information received on 1.6.2020 **(Appendix Ia)**
- (c) Further Information (FI) received on 13.7.2020 and 14.7.2020 in response to departmental comments\* **(Appendix Ib)**
- (d) FI received on 15.7.2020 in response to departmental comments\* **(Appendix Ic)**
- (e) FI received on 12.11.2020 in response to departmental comments\* **(Appendix Id)**

*\* Exempted from the publication requirement*

1.4 At the request of the applicant, the Committee on 1.9.2020 agreed to defer making a decision on the application to allow time for the applicant to address departmental comments. After the deferral request, the applicant has submitted FI in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

## **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 to Ie**. They can be summarized as follows:

- (a) The proposed development is temporary in nature and would not frustrate the long-term planning intention of the “AGR” zone. Similar animal boarding establishment applications were approved in the vicinity.
- (b) The proposed development will take into account the surrounding environment and land uses. The applicant would implement drainage proposal and relevant mitigation measures to protect the environment and reduce flooding. The loading/unloading activities will be carried out near the Site (with a local access leading to Castle Peak Road – Tam Mi) and animals and construction materials will be carried to the Site by trolley. The construction materials will be covered by canvas to reduce nuisance induced during transportation by trolley. Staff will access the Site on foot or by bicycle. No adverse traffic impact is anticipated.
- (c) The proposed land filling aims to stabilize the base of the structures as well as to facilitate construction of drainage facilities. It can also avoid the loss of soil when visitors leave the Site. Upon expiry of the planning approval, the fill materials will be removed and the applicant will ensure that the soil will be suitable for agricultural purpose.

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

The applicant is not the “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 notice at the Site and sending registered mail to the Kam Tin Rural Committee. 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 Application**

There is no previous application at the Site.

**6. Similar Applications**

Animal Boarding Establishment

6.1 There are 35 similar applications for temporary animal boarding establishment involving 23 sites within the same “AGR” zone. Except Application No. A/YL-KTN/156, which was rejected by the Rural and New Town Planning Committee (the Committee), the remaining 34 applications were approved with conditions by the Committee. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

*One Rejected Application*

6.2 Application No. A/YL-KTN/156 for proposed dog kennel for a period of 3 years was rejected by the Committee on 8.11.2002 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and there was no information in the submission to demonstrate that the proposed development would not cause adverse environmental and drainage impacts on the surrounding areas.

*34 Approved Applications*

6.3 34 applications at 22 sites were approved with conditions by the Committee for 2 to 5 years between 2005 and 2020 for similar reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; previous approvals were granted and the applicants had made effort to comply with the approval conditions; and/or the relevant government departments generally had no adverse comments on the developments. However, planning permissions for 15 applications were revoked due to non-compliance with approval conditions.

6.4 Apart from the above processed similar applications, application No. A/YL-

KTN/730 for proposed animal boarding establishment for a period of 3 years within the same “AGR” zone will be considered in the same meeting.

### Land Filling

- 6.5 There are four applications involving filling of land within the same “AGR” zone. Three are for temporary hobby farm and/ or caravan holiday camp (Applications No. A/YL-KTN/691, 693 and 726), which involved filling of 10% to 29.8% of the site area and with a depth of 0.2 to 0.5m. The remaining one is for animal boarding establishment (Application No. A/YL-KTN/723), which involved filling of the entire site (734.7m<sup>2</sup>) by about 0.5m. These applications were approved with conditions by the Committee in 2020 for the reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; and/ or the relevant government departments generally had no adverse comments on the developments.

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

7.1 The Site is:

- (a) currently vacant and covered by vegetation; and
- (b) accessible by a local track leading to Castle Peak Road –Tam Mi.

7.2 The surrounding areas are rural in character intermixed with fallow/active agricultural land, plant nurseries, orchard, hobby farm, open storage/ storage yards, residential structures/dwellings and vacant/unused land:

- (a) to its east and south are open storage/ storage yards, a plant nursery, an orchard and vacant/unused land;
- (b) to its north are a hobby farm, active/ fallow agricultural land, a plant nursery, scattered residential structures/ dwellings and vacant/ unused land (a piece of land is subject to a planning approval for temporary animal boarding establishment); and
- (c) to its west are residential dwellings/ structures, active agricultural land and unused land.

## **8. Planning Intention**

- (a) 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.
- (b) According to the Explanatory Statement of the OZP, as filling of land/pond may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

## **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 an Old Scheduled 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) Should planning approval be given to the application, the lot owner 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. 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 rent 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 Castle Peak Road – Tam Mi.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.

### **Environment**

#### 9.1.4 Comments of the DEP:

- (a) There was no environmental complaint concerning the Site received in the past three years.
- (b) Provided that the facilities will be properly designed and maintained to minimize any potential environmental nuisance, he has no objection to the application subject to the following approval conditions:
  - (i) The animals shall be kept inside the enclosed structures between 6:00 p.m., and 9:00 a.m., as proposed by the applicant.
  - (ii) No public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site as proposed by the applicant.
- (c) Moreover, the applicant is also advised to (i) properly design and maintain the facilities to minimize any potential environmental nuisance, e.g. the proposed structures for animal boarding establishment should be enclosed with soundproofing materials with provision of 24-hour mechanical ventilation and air-conditional system; (ii) to follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; and (iii) effluent discharges from the Site are subject to control under the Water Pollution Control Ordinance (WPCO). If connection to public sewers is not feasible, septic tank and soakaway system can be used. Its design, construction and operation should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environment Protection Department (EPD)”, including percolation test.

### **Landscape**

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

- (a) She has no objection on the application from the landscape planning point of view.

- (b) Based on the aerial photo taken on 18.10.2019, the Site is situated in an area of rural landscape character comprising active and abandoned farmlands, plant nursery, scattered tree groups and temporary structures. Noting that applications of temporary animal boarding use within the “AGR” zone in proximity to the Site were approved (Nos. A/YL-KTN/588, 642 and 695), the proposed development is not entirely incompatible with the landscape character of the area.
- (c) Referring to site photos dated 16.6.2020, the Site is fenced and vacant. One *Artocarpus heterophyllus* (菠蘿蜜) and one sapling *Bridelia tomentosa* (土蜜樹) are recorded within the Site and they are common species. The proposed temporary structures within the Site will be established by removable and temporary materials which would be transported to the Site by hand or trolley. Significant adverse impact on landscape resources within and near the Site arising from the proposed development is not anticipated.

### **Agriculture**

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

- (a) The Site is currently an abandoned land. The agricultural activities are active in the vicinity, and agricultural infrastructures such as footpath and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, etc. As the Site possesses potential for agricultural rehabilitation, the application for the proposed use and land filling is not supported from agricultural point of view.
- (b) There is no license associated with the address. Under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap. 139I Public Health (Animals)(Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations. On the other hand, the dogs kept by the applicant should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and he is reminded to observe Cap. 169 Prevention of Cruelty to Animals Ordinance at all times.

### **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 proposed development from the public drainage point of view.

- (b) Should the application be approved, the conditions requiring the submission, implementation and maintenance of a 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 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 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) 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) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (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 Buildings Department to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new buildings works (including containers/ open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the 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.

- (e) If the proposed use under application is subject to issue of a license, the applicant should be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with building safety and other relevant requirements as may be imposed by the licensing authority.

### **Environmental Hygiene**

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

- (a) If the proposal involves any commercial / trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. Its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Any animal carcass/ parts shall be properly wrapped or bagged before disposal and in accordance with the relevant legislation. Also, for any waste generated from the activities in the premises, the applicant should handle on their own/ at their expenses.
- (b) 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 any other relevant legislation for the public and the operation of any business should not cause any obstruction.

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

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

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

#### 9.2 The following Government departments have no comment on/ no objection to the application:

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

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

On 17.1.2020, the application was published for public comments. During the three-week statutory publication period, four comments were received from Kadoorie Farm and

Botanical Garden Corporation, Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual (**Appendices III-1 to III-4**). They object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; the Site has agricultural rehabilitation potential and should be retained for farming; approval of the application will set an undesirable precedent for similar applications in the “AGR” zone; the applicant fails to demonstrate that the proposed development would not generate adverse environmental and landscape impacts; and there is no information about the applicant’s status and suitability on caring for animals.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 3 years at the “AGR” zone with filling of land for the entire site (by 0.5m). 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. The proposed use is not entirely in line with the planning intention of the “AGR” zone, and DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. However, approval of the application on a temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed use is considered not entirely incompatible with the surrounding areas which are rural in character intermixed with fallow/active agricultural land, plant nurseries, orchard, hobby farm, residential structures/ dwellings and vacant/ unused land. Although there are residential dwellings/structures in the vicinity of the Site (nearest on the immediate west) (**Plan A-2**), the applicant advises that during non-business hours all the dogs will be kept within the enclosed structures which will be equipped with soundproofing material and mechanical ventilation and air conditioning. In addition, no public announcement system and whistle blowing will be used at the Site. DEP has no adverse comment on the application. According to the applicant, the filling of land is to stabilize the base of structures and facilitate drainage facilities. CE/MN of DSD has no in-principle objection to the proposal.
- 11.3 Relevant departments consulted including C for T, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD, except DAFC, have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours and outdoor animal activities and prohibiting the use of public announcement system and whistle blowing are recommended in paragraphs 12.2 (a) to (c) below. The applicant will also be advised to adopt 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 (d) to (g) recommended in paragraph 12.2 below.
- 11.4 There are 35 similar applications for temporary animal boarding establishment within the same “AGR” zone. 34 of them were approved with conditions by the Committee between 2005 and 2020 as detailed in paragraphs 6.3. The circumstances of the only rejected application are different from the current one. There are also 4 similar applications for filling of land within the same “AGR” zone

(for temporary hobby farm and/ or caravan holiday camp and animal boarding establishment) which were approved with conditions by the Committee in 2020 as detailed in paragraph 6.4. Approval of the current application is in line with the Committee's previous decisions.

- 11.5 Four public comments objecting to the application were received during the statutory publication period as detailed in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as stated above are relevant.

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

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the proposed temporary animal boarding establishment for a period of 3 years and filling of land.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 20.11.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m. (except overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed animal boarding establishment on the Site between 6:00pm and 9:00am, as proposed by the applicant, at all times during the planning approval period;
- (c) no public announcement system, portable loudspeaker, any form of audio amplification system, or whistle blowing is allowed to be used on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) 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 20.5.2021;
- (f) in relation to (e) 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 20.8.2021;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (h) 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 20.5.2021;
- (i) in relation to (h) 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 20.8.2021;
- (j) if any of the above planning condition (a), (b), (c), (d) or (g) is not complied with during planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (k) if any of the above planning condition (e), (f), (h) or (i) 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
- (l) 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 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. 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**

<b>Appendix I</b>	Application form with planning statement and plans received on 28.5.2020
<b>Appendix Ia</b>	Supplementary information received on 1.6.2020
<b>Appendix Ib</b>	FI received on 13.7.2020 and 14.7.2020
<b>Appendix Ic</b>	FI received on 15.10.2020
<b>Appendix Id</b>	FI received on 12.11.2020
<b>Appendix II</b>	Similar applications in the same “AGR” zone on the Kam Tin North OZP
<b>Appendices III-1 to III-4</b>	Public comments received during the statutory publication period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2020**