

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/730

- Applicant** : Maison De Charlotte Pour Des Chats Et Des Chiens Sarl Limited represented by Mr. Tang Lok San
- Site** : Lot 1103 (Part) in D.D. 107, Kam Tin North, Yuen Long
- Site Area** : About 2,826.4 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment for a Period of 3 Years

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. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is largely vacant with a few containers.
- 1.2 The proposed development involves 9 single-storey temporary structures with a total floor area of about 373.93m² and building height not exceeding 3.5m for animal boarding establishment and storage. 2 private car parking spaces and 2 loading/ unloading spaces for light goods vehicle will be provided within the Site. The business hours are from 9:00a.m. to 6:00p.m. daily (including public holidays) with 24 hours animal boarding services. Not more than 150 animals will be accommodated at the Site. According to the applicant, no public announcement system and whistle blowing will be used at the Site. All animals will be kept indoor after business hours and the structures for animal boarding establishment will be enclosed with soundproofing materials and provided with mechanical ventilation and air-conditioning system. The Site is accessible from Castle Peak Road – Tam Mi branching off a local track. 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 document:

- (a) Application form received on 29.9.2020 **(Appendix I)**
- (b) Further Information (FI) received on 4.11.2020 and 6.11.2020 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
- (c) FI received on 11.11.2020 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]
- (d) FI received on 16.11.2020 in response to departmental comments **(Appendix Ic)**
[exempted from publication requirement]

2. **Justifications from the Applicant**

The justification put forth by the applicant in support of the application is detailed in the application form and FI at **Appendices I to Ic**, and is briefly summarized as follows:

- (a) The applicant is a charitable organization and the proposed development is intended to accommodate abandoned animals. The application is for temporary use and the proposed development will not affect the long-term planning intention. There are similar applications approved in the same “AGR” zone.
- (b) The proposed development is not incompatible with the surrounding environment and land use. The applicant will implement drainage proposal and relevant mitigation measures to protect the environment and reduce flooding. No adverse impact will be caused to the nearby watercourse as the structures and parking will be at least 3m from the watercourse and the septic tank will be erected on the western part of the Site at least 15m from the watercourse. The Site will be reinstated after the expiry of the planning approval.

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

The applicant is not the “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 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 subject to planning enforcement action (No. E/YL-KTN/538) against unauthorized development (UD) involving storage use (including deposit of containers). Enforcement Notice (EN) was issued on 29.6.2020 requiring the discontinuation of the

UD. Site inspection on 6.10.2020 revealed that the UD was still continued upon expiry of the notice, the Site would be under close monitoring. If the notice is not complied with, prosecution action may be taken.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 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 April 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/716 for proposed animal boarding establishment for a period of 3 years and filling of land within the same “AGR” zone will be considered at the same meeting.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4)

- 7.1 The Site is:
- (a) paved, currently vacant with a few containers; and
 - (b) accessible from Castle Peak Road- Tam Mi via a local track.

- 7.2 The surrounding area is rural in character predominated by fallow/active agricultural land, residential structures/dwellings, plant nursery, hobby farm, organic farm, orchard, animal boarding establishment, open storage/storage yards and vacant/unused land:
- (a) to the immediate north is an animal boarding establishment. To its further north are open storage yards, residential structures/dwellings, fallow agricultural land and vacant land (three pieces of vacant land are with planning approval for temporary hobby farm and animal boarding establishment);
 - (b) to the east are a watercourse and vacant land; and
 - (c) to its south and west are animal boarding establishment, residential structures/ dwellings (nearest about 5m to its west), cultivated agricultural land, hobby farm, organic farm, plant nursery, orchard, open storage/ storage yards 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 Department

- 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 of LandsD):
- (a) The Site comprises an Old Schedule Agricultural Lot 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 planning application, the lots 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. 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 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 of HyD):

- (a) HyD 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 the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint concerning the Site 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 6:00p.m. and 9:00a.m., as proposed by the applicant, during the planning approval period.
 - (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”; (iii) to provide adequate supporting infrastructure/ facilities 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, 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; and (iv) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

Landscape

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

- (a) Based on the aerial photo taken on 18.10.2019, the Site is situated in an area of rural landscape character comprising scattered tree groups, temporary structures, active and abandoned farmlands. The proposed development is not entirely incompatible to the surrounding landscape character of the area. It is also noted that similar applications (No. A/YL-KTN/588, 642 and 695) of temporary animal boarding use within the “AGR” zone in proximity to the Site were approved.
- (b) Referring to his site visit dated 19.10.2020, the Site is in operation as animal boarding use and mostly paved with asphalt. A few numbers of sapling of *Morus alba* (桑) and *Melia azedarach* (楝) are found at the western boundary. Significant adverse impact to the existing landscape resources arising from the proposed use within the Site is not anticipated. However, in comparing with the aerial photos taken in 2019 and 2018, it is noted that most of the vegetation within the Site has been cleared and hard paved and the Site is in operation as the applied use. There is concern that approval of the application may set an undesirable precedent for such application, encouraging more unauthorized site alteration within the area. The cumulative impact of approval of similar application may further degrade the landscape quality of the “AGR” zone.

Agriculture and Nature Conservation

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

- (a) The Site currently comprises paved abandoned land and temporary structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. He does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- (b) There is a watercourse to the east of the Site. It is noted that a number of measures are proposed, including shifting the installation of septic tanks and soakaway system and construction activities away from the watercourse etc., with a view to avoid polluting the watercourse. He has no comment from nature conservation point of view.
- (c) The subject address is not associated with any license granted by his department. They have not received any application regarding this address.
- (d) 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 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. 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 of 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.

Building Matters

9.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW of BD):

- (a) Before any new building works (including containers/ open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on Site, prior approval and consent of the Building Authority 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 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.
- (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) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.
- (e) Detailed checking under the BO will be carried out at building plan submission stage.
- (f) 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 the building safety and other relevant requirements as may be imposed by the licensing authority.

Fire Safety

9.1.9 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 (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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 issue 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 of HAD):

He has not received any comments from the locals and has no comments on the application.

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

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

10. Public Comments Received During the Statutory Publication Period

On 9.10.2020, the application was published for public comments. During the three-week statutory publication period, six comments (**Appendices III-1 to III-6**) were received from the Hong Kong Bird Watching Society, Kadoorie Farm & Botanic Garden Corporation, World Wide Fund for Nature (Hong Kong) and individuals. The comments

object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; assessments on noise and drainage arrangement should be provided; approval of the application would set an undesirable precedent in the “AGR” zone; the Site is involved in on-going enforcement case and may be subject to ‘destroy first, build later’ practice; there is no information about the applicant’s status and suitability on caring for animals; the proposed access road is not available; the proposed development would cause adverse environmental impact, pollution to the land and noise disturbance and hygienic problem to residents.

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. 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 incompatible with the surrounding area which is rural in character intermixed with fallow/active agricultural land, residential structures/dwellings and vacant/unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest about 5m to its west) (**Plan A-2**), the applicant advises that all the dogs will be kept within the enclosed structures between 6:00p.m. and 9:00a.m.. The structures 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.
- 11.3 Relevant departments consulted including C for T, DEP, CE/MN of DSD, D of FS, except DAFC and CTP/UD&L of PlanD, have no adverse comment on the application. While expressing concern on the cumulative impact of approval of similar application, CTP/UD&L, PlanD considers that significant adverse impacts arising from the proposed use on the existing landscape resource is not anticipated. 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 (i) recommended in paragraph 12.2 below.
- 11.4 The Site is not subject to any previous application. 34 similar applications for temporary animal boarding establishment on 22 sites were approved with conditions by the Committee between 2005 and 2020 as stated in paragraph 6 above. The circumstances of the only rejected application are different from the current one. The approval of the current application is hence in line with the

Committee's previous decisions.

- 11.5 Six public comments were received during the statutory publication period, 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 mentioned in paragraph 10 above, the Planning Department has no objection to the proposed temporary animal boarding establishment for a period of 3 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 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 6:00p.m. and 9:00a.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 6:00p.m. and 9:00a.m., as proposed by the applicant, 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) 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;
- (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 20.8.2021;
- (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 20.5.2021;

- (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 20.8.2021;
 - (i) if any of the above planning condition (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 condition (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.
- 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.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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 received on 29.9.2020

Appendix Ia	FI dated 4.11.2020 and 6.11.2020
Appendix Ib	FI received on 11.11.2020
Appendix Ic	FI received on 16.11.2020
Appendix II	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendices III-1 to III-6	Public comments received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2020**