

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/669

<u>Applicant</u>	: Treasure Gold Construction Engineering Limited
<u>Site</u>	: Lots 3 S.E (Part) and 8 S.L in D.D. 110, Tai Kong Po, Kam Tin, Yuen Long
<u>Site Area</u>	: About 90.6 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Animal Boarding Establishment (Cattery) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary animal boarding establishment (cattery) for a period of 3 years. According to the OZP, ‘Animal Boarding Establishment’ is a Column 2 use under “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is subject to a previous application covering a larger area for filling of pond for organic farming use which was rejected by the Rural and New Town Planning Committee (the Committee) on 18.9.2009. The Site is largely vacant and covered by grass (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development involves a two-storey structure with a total floor area of about 55m² for cattery and caretaker’s office with building height not exceeding 6.5m. A private car parking space and mechanical turn table for manoeuvring of car will be provided within the Site. No more than 6 cats will be accommodated within the Site. The operation hours are between 9:00 am and 7:00 pm daily, including public holidays. No cats and staff will stay in the cattery after the operation hours. The applicant has advised that no public announcement system will be used at the Site. All cats will be kept inside the cattery and the cattery will be enclosed with soundproofing materials with mechanical ventilation and air-conditioning. The Site is accessible via a local track branching off Kong Tai

Road to the south (**Plan A-2**). The site layout plan, drainage plan, landscape plan and vehicular access plan submitted by the applicant are at **Drawings A-1 to A-4**.

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

- (a) Application form and plans received on 11.6.2019 **(Appendix I)**
- (b) Further Information (FI) received on 5.7.2019 and 8.7.2019 clarifying the drainage facilities and traffic arrangement to the Site **(Appendix Ia)**
- (c) FI received on 16.7.2019 providing operation details and drainage proposals in response to departmental comments **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Section 7 of the application form in **Appendix I**. They can be summarized as follows:

- (a) The proposed development is temporary in nature and would not jeopardize the long-term planning intention of the “AGR” zone.
- (b) The nature, form and layout of the proposed development are compatible with the surrounding environment and would not affect the character of the surroundings.
- (c) The result of preliminary technical proposal demonstrated that the impact generated by the proposed development would be insignificant. No adverse traffic, environmental, landscape and drainage impacts are foreseen.
- (d) Some similar applications were approved in Yuen Long and similar preferential treatment should be granted to this application.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is not subject to planning enforcement action.

5. Previous Application

The Site is involved in a previous application (No. A/YL-KTN/331) submitted by a different applicant and covering a larger area for filling of pond for organic farming use, which was rejected by the Committee on 18.9.2009. The application was rejected mainly for reasons that the site was partly filled with construction waste which was not conducive to the organic farming use; Director of Agriculture, Fisheries and Conservation did not support the application; and the development would cause adverse drainage impact on the surrounding areas and no drainage proposal or mitigation measure(s) was provided in the submission to demonstrate that the development would not cause adverse drainage impact. Details of the application are summarized in **Appendix II** and the location of the application site is shown on **Plan A-1**

6. Similar Applications

- 6.1 There are 28 similar applications for temporary animal boarding establishment (No. A/YL-KTN/156, 232, 251, 253, 304, 308, 324, 377, 410, 478, 489, 519, 543, 556, 562, 577, 588, 590, 605, 616, 617, 623, 638, 639, 642, 645, 651 and 652) within the same “AGR” zone on the OZP. Except application No. A/YL-KTN/156 which was rejected by the Committee on 8.11.2002, the remaining 27 applications were approved with conditions by the Committee for 2 to 5 years from 2005 to 2019. Details of these applications are summarized in **Appendix II** while their locations are shown on **Plan A-1**.
- 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 ground that the proposed development was not in line with the planning intention of the “AGR” zone; not compatible with the adjacent residential dwellings which would be susceptible to adverse environmental nuisances and Director of Environmental Protection did not support the application as noise nuisances would be imposed to nearby residents; 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.
- 6.3 Ten applications No. A/YL-KTN/232, 251, 304, 377, 410, 489 and 639 at a site and Nos. A/YL-KTN/253, 308 and 324 at another site were approved with conditions by the Committee for 2 or 3 years between 2005 to 2019 for similar reasons that temporary developments would not frustrate the long-term planning intention of the “AGR” zone; not incompatible with the surrounding land uses; the developments would mainly involve existing on-site structures for animal boarding; previous approvals were granted and the applicants had made effort to comply with the approval conditions; and/or the relevant government departments had no adverse comments on the developments. However, applications No. A/YL-KTN/232, 304, 308, 324, 377 and 410 were revoked on 29.1.2006, 19.3.2010, 5.3.2009, 22.5.2011, 30.9.2012 and 17.7.2014 respectively due to non-compliance with approval conditions.
- 6.4 The remaining 17 applications (No. A/YL-KTN/478, 519, 543, 556, 562, 577, 588, 590, 605, 616, 617, 623, 638, 642, 645, 651 and 652) were approved with conditions by the Committee between 2015 and 2019 for a period of 3 years or 5 years (for

A/YL-KTN/638 and 651 only) for similar reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; and the developments were not incompatible with the surrounding land uses. Applications No. A/YL-KTN/478, 543, 588 and 590 were revoked on 6.5.2016, 23.12.2017 and 16.9.2018 (for both No. A/YL-KTN/588 and 590) respectively due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) largely vacant and covered by grass; and
- (b) accessible from Kong Tai Road via a local track.

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

- (a) to its north are two animal board establishments with planning permission under Applications No. A/YL-KTN/577 and A/YL-KTN/652 (the latter for cattery) and hobby farm. Further north is unused land zoned “Conservation Area”;
- (b) to its east and south are open storage yards, a farm, residential dwellings/structures and vacant/unused land; and
- (c) to its immediate west is a hobby farm with planning permission under Application No. A/YL-KTN/571. To its further west and southwest cross Kong Tai Road are residential structures/dwellings and vacant/unused land.

8. Planning Intention

The planning intention of the “AGR” zone is 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 Kong Tai 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 SKAHRA.
- (d) Should the application be approved, 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 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 incorporated.
- (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/NT West, Highways Department (CHE/NTW, HyD):

- (a) Currently, only the section of Kong Tai Road of about 30m abutting Chi Ho Road is maintained by HyD. HyD shall not be responsible for the maintenance of any access connecting the Site and the section of Kong Tai Road being maintained by HyD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past three years.
- (b) According to the information provided by the applicant, the operation hours of the cattery are from 9:00 am to 7:00 pm daily including public holidays. No more than 6 numbers of cat will stay inside the cattery at a time. Moreover, no cat and staff will be resided at the Site outside the operation hours. The applicant has confirmed in the FI that the cattery will be enclosed with soundproofing materials and provided with mechanical ventilation and air-conditioning system; and the cats will be kept inside the cattery. Moreover, public announcement system will not be allowed at the Site. Based on the above, he has no objection to the application from the environmental planning perspective.
- (c) The applicant is advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. Moreover, effluent discharges from the proposed use are subject to control under the Water Pollution Control Ordinance (WPCO) and a discharge licence under the WPCO should be obtained before a new discharge is commenced. If septic tank and soakaway system will be used, its design and construction should follow the requirements of the Environmental Protection Department’s Practice Note for Professional Persons (ProPECC PN) 5/93 “Drainage Plans subject to Comment by the EPD”.

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 to the application from the landscape planning perspective.

- (b) The Site is the subject of one previous application (No. A/YL-KTN/331) covering a larger area for filling of pond for organic farming, to which she had no objection to the application.
- (c) With reference to the aerial photo taken in 2018, the surrounding area is comprised of farmlands, temporary structures, vacant land, carparks and scattered tree groups. The proposed use is not incompatible with the landscape setting in proximity.
- (d) As observed from the aerial photo of 2018, the Site is a farm land without significant vegetation. Further significant adverse landscape impact arising from the proposed development is not anticipated.
- (e) In consideration that there is inadequate space for meaningful landscape within the Site, should the application be approved, landscape condition in planning permission is not recommended.

Agriculture

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

- (a) The Site falls within the “AGR” zone and is currently fallow land inside a hobby farm. The agricultural activities are active in the vicinity, and agricultural infrastructures such road access and water course are also available. The Site can be used for agricultural activities such as open field cultivation, plant nurseries, etc. As the Site possesses a potential for agricultural rehabilitation, the application is not support from agricultural point of view.
- (b) It is noted that the subject address does not associate with any license granted by his department, nor have they received any application regarding the Site. Should the application be approved, the applicant is reminded that under the current legislation, 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. Moreover, the applicant shall be advised that a valid licence must be obtained from his department if he or she is intending to sell an animal and exhibit any animal in return for a fee. The applicant is also 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 in-principle objection to the proposed development from the public drainage point of view and considers that the drainage proposal submitted is acceptable.
- (b) Should the application be approved, conditions requiring the applicant to submit records of the existing drainage facilities on site and to implement and maintain the drainage proposal should be incorporated in the planning permission.

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 being provided to the satisfaction of his department.
- (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) Before any new building works (including containers/open sheds as temporary buildings) 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). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) If the existing structures (not being New Territories Exempted House) are erected on leased land without the approval of the BD, they are 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) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (e) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Food and Environmental Hygiene

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

- (a) If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.
- (b) Any animal carcass/ parts shall be properly wrapped or bagged before disposal.

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 comments from locals upon close of consultation and 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) 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

- 10.1 On 18.6.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.7.2019, 3 public comments from the Hong Kong Bird Watching Society, Designing Hong Kong and an individual were received (**Appendices IV-1 to IV-3**).

- 10.2 All commenters object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent for similar applications within the “AGR” zone; the Site is a suspected “Destroy First, Build Later” case; there is no information on numbers or type of animals and how much space each animal would be allocated; and toxic waste may go into the ground or nearby streams.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment (cattery) for a period of three years at the 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. The proposed development is not entirely in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, it is considered that temporary approval of the application would not jeopardise the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development comprises a two-storey structure of 6.5m with a total floor area of 55m² and is considered not incompatible with the surrounding areas which are rural in character predominated by residential structures/dwellings, hobby farms, an animal boarding establishment, open storage yards and vacant/unused land. Although there are residential dwellings/ developments in the vicinity of the Site (the nearest about 30m on the west) (**Plan A-2**), the applicant stated that all cats will be kept inside the cattery which is enclosed with soundproofing material and air-conditions and mechanical ventilation. Also, no cats will stay in the cattery after the operation hours and no public announcement system 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 and CTP/UD&L of PlanD have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours, outdoor animal activities and prohibition of use of public announcement system on the Site are recommended in paragraphs 12.2 (a) to (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. 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) in paragraph 12.2 below.
- 11.4 There are 28 similar applications within the same “AGR” zone. Only one application was rejected by the Committee mainly on the grounds that concerned departments including DEP did not support the application and there was no information to demonstrate the proposed development would not cause adverse environmental and drainage impacts on the surrounding areas. The other 27 similar applications were

approved with conditions by the Committee between 2005 and 2019 mainly for similar reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; and the developments were not incompatible with surrounding land uses. In the current application, DEP has no objection to the proposed development. In this regard, approval of the current application is in line with the Committee’s previous decisions.

- 11.5 Three public comments were received during the statutory publication period objecting to the application mainly on the grounds that the proposed development is not in line with the planning intention and adverse environmental impact. The planning considerations and assessments 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, the Planning Department has no objection to the temporary animal boarding establishment (cattery) 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 2.8.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00p.m. and 9:00a.m., 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, as proposed by the applicant, at all times during the planning approval period;
- (c) no public announcement system, portable loud speaker, or any form of audio amplification system 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 a record of the existing drainage facilities on the Site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 2.11.2019;
- (f) the implementation of the accepted 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 2.2.2020;
- (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 2.2.2020;
- (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 2.5.2020;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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;
- (k) if any of the above planning conditions (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 V**.

- 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong justification has been given in the submission to justify 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 plans received on 11.6.2019
Appendix Ia	FI received on 5.7.2019 and 8.7.2019
Appendix Ib	FI received on 16.7.2019
Appendix II	Previous application covering the Site
Appendix III	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendices IV-1 to IV-3	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Drainage Plan
Drawing A-3	Landscape Plan
Drawing A-4	Vehicular Access Plan
Plan A-1	Location Plan with Similar and Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**