

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/672

- Applicant** : Mr. TSOI Tak Lee represented by Metro Planning and Development Company Limited
- Site** : Lot 38 in D.D. 110, Tai Kong Po, Kam Tin, Yuen Long
- Site Area** : 2,300m²
- 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 (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 proposed temporary animal boarding establishment (cattery) for a period of 3 years. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is not the subject of any previous application. The Site is currently used for open storage of vehicles without a valid planning permission (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the proposed development involves 5 single-storey temporary structures with a total floor area not exceeding 220m² and building height not exceeding 3m for three catteries (180m²), a toilet (20m²) and a site office (20m²). 4 private car parking spaces will be provided within the Site. The operation hours are from 9:00 a.m. to 7:00 p.m. daily, including public holidays. Not more than 30 cats will be accommodated at the Site within the operation hours. The applicant advised that no cats and staff will stay at the Site after operation hours, no public announcement system will be used at the Site, and all cats will be kept within enclosed structures with soundproofing materials and provided with mechanical ventilation and air-conditioning system. 4 parking spaces for private cars will be provided at the Site. The Site is accessible from Kong Tai Road via a local track (**Plan A-2**). The site layout plan, landscape plan, drainage 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 with planning statement and plans received on 18.7.2019 **(Appendix I)**
- (b) Further Information (FI) received on 1.11.2019 in response to departmental comments **(Appendix Ia)**
(exempted from publication)
- (c) FI received on 4.12.2019 in response to departmental comments **(Appendix Ib)**
(exempted from publication)

1.4 The application was originally scheduled for consideration by the Rural and New Town Planning Committee (the Committee) on 6.9.2019. Upon request of the applicant, the Committee agreed to defer making a decision on the application on 6.9.2019 to allow time for the applicant to prepare FI to address departmental comments. Upon receipt of FI on 1.11.2019, the application is scheduled for consideration 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 and Ia**. 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 is compatible with the surrounding environment and would not affect the character of the surroundings. The proposed use is to serve the nearby residential neighbourhood.
- (c) Good housekeeping and environmental mitigation measures will be provided to minimize potential impact on the surrounding area. Landscaping and drainage facilities will be provided at the Site. No adverse traffic, environmental, landscape and drainage impacts are foreseen.
- (d) The Site is currently used for open storage of vehicles. Approval of the application would terminate this use and relieve the deterioration of the surrounding environment.
- (e) Similar animal boarding establishment applications were approved in the vicinity of the Site, and similar treatment should be granted to this application.

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 site notice and notifying the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

Filling of land, storage use and parking of vehicles on the Site would be subject to planning enforcement action.

5. **Previous Application**

The Site is not the subject of any previous application.

6. **Similar Applications**

- 6.1 There are 30 similar applications for temporary animal boarding establishment involving 20 sites 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 29 applications were approved with conditions by the Committee for 2 to 5 years between 2005 and 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 at two sites site were approved with conditions by the Committee for 2 or 3 years between 2005 and 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, planning permissions for 6 applications were revoked due to non-compliance with approval conditions.
- 6.4 The remaining 19 applications at 17 sites were approved with conditions by the Committee between 2015 and 2019 for a period of 3 years or 5 years (for No. 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. Planning permissions for 6 applications were revoked due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) currently used for open storage of vehicles without a valid planning permission; and
- (b) accessible from Kong Tai Road and Kam Tin Bypass via a local track.

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

- (a) to its south and southwest are active/fallow agricultural land, residential dwellings/structures (the nearest about 40m to the southwest) and vacant/unused land;
- (b) to its northwest and north are open storage yards, a residential dwelling/structure and vacant/unused land; and
- (c) to its east are open storage yards. To its further east across a road is a nullah.

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 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) The Site is accessible from Kong Tai Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.

- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within 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 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. 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) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Bypass (except part of the access near Kam Tai Road).
- (b) 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.

Environment

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

- (a) There were two substantiated environmental complaints related to waste aspect concerning the Site received by DEP in the past three years.
- (b) According to the information provided by the applicant, the operation hours of the proposed cattery are from 9:00 a.m. to 7 p.m. daily including public holidays. No more than 30 cats will stay inside the cattery at a time.
- (c) Provided that the applicant would minimize the potential environmental nuisance from the proposed use to nearby sensitive receivers such as the cattery will be enclosed with soundproofing materials and provided with mechanical ventilation and air-conditioning system; the cats will be kept inside the cattery; and that public announcement system will not be allowed at the Site, he has no objection to the application from environmental planning perspective.
- (d) 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”. 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 (EPD)’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 point of view.
- (b) With reference to the aerial photo taken in 2018, the surrounding landscape character of the Site is rural fringe landscape. The surrounding area of the Site is comprised of farmlands, temporary structures and some tree groups. Further north to the Site, the area consists of clustered tree groups. Similar temporary use of animal boarding establishment (application No. A/YL-KTN/556) is observed in the same “AGR” zone, which was approved by the Committee in 2017. The proposed use is not incompatible with the landscape setting in proximity.

- (c) According to the site visit conducted on 2.8.2019, the Site was hard paved or covered with aggregate stone for car parking. No existing tree was found within the Site. Further significant adverse landscape impact arising from the proposed development is not anticipated.
- (d) In consideration that there is no prominent public frontage around the Site, should the application be approved, landscape condition in planning permission is not recommended as its effect on enhancing the quality of public realm is not apparent.

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 a paved open space used for car parking. 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. As the Site possesses a potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) The subject address does not associate with any Boarding Establishment Licence granted by the Agriculture, Fisheries and Conservation Department (AFCD), nor have they received any application regarding this address.
- (c) 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.
- (d) The establishment and ancillary facilities which is licenced under the Cap. 139I Public Health (Animals) (Boarding Establishment) Regulation must always fulfill the criteria listed in the Regulations.
- (e) Cap. 169 Prevent of Cruelty to Animals Ordinance shall be observed 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, approval conditions requiring the submission of a revised drainage proposal, and implementation and maintenance of drainage proposal for the development should be included in the planning permission.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix IV**.

Fire Safety

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

- (a) He has no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed 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) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, 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 BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.

- (d) Before any new building works (including containers/open sheds as temporary buildings, 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 UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.
- (g) If the proposed development 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.

Environmental Hygiene

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

- (a) Any animal carcass/ parts shall be properly wrapped or bagged before disposal.
- (b) 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. Also, for any waste generated from the commercial / trading activities, the applicant should handle on their own / at their expenses.

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 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) Chief Engineer/Construction, Water Supplies Department;

- (c) Project Manager (West), Civil Engineering and Development Department;
and
- (d) Commissioner of Police.

10. Public Comment Received During Statutory Publication Period

- 10.1 On 26.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from the Hong Kong Bird Watching Society (**Appendix III**).
- 10.2 The comment objects to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; will generate adverse sewage impacts on the water quality of the nearby watercourse and habitats; the proposed use is not compatible with the surrounding rural environment; the Site is subject to suspected “destroy first, develop later” case; and approval of the application would set an undesirable precedent to the future development in the “AGR” zone.

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 use is considered not incompatible with the surrounding areas which are rural in character intermixed with active/fallow agricultural land, residential dwellings/structures and vacant/unused land. Although there are residential dwellings/developments in the vicinity of the Site (the nearest about 40m on the southwest) (**Plan A-2**), the applicant stated that all cats will be kept within enclosed structures with soundproofing materials and provided with mechanical ventilation and air-conditioning system. Also, no public announcement system will be used at the Site. DEP has no adverse comment on the application. Also, there is no local concerns on potential environmental nuisances received during the statutory public inspection period.
- 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 minimize any possible environmental nuisance, approval conditions restricting the operation hours, outdoor animal activities and prohibition of use of public announcement system at 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 at 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 30 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 29 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 One public comment was received during the statutory publication period objecting to the application mainly on the grounds as stated in paragraph 10 above. In this regard, the departmental comments as well as 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 taking into account the public comment in paragraph 10, the Planning Department has no objection to the proposed 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 13.12.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.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 loudspeaker, 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 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 13.6.2020;

- (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 13.9.2020;
- (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 13.6.2020;
- (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 13.9.2020;
- (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 to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form with planning statement and plans received on 18.7.2019
Appendix Ia	FI received on 1.11.2019
Appendix Ib	FI received on 4.12.2019
Appendix II	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendix III	Public comment received during the statutory publication period
Appendix IV	Advisory clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Plan
Drawing A-4	Vehicular Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2019**