

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/713

- Applicant** : Mr. TANG Yung represented by Mr. Yeung Yau-sing
- Site** : Lots 1471 S.A and 1468 in D.D. 107, Shui Mei Tsuen, Kam Tin, Yuen Long
- Site Area** : About 4,070 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, which requires planning permission from the Town Planning Board (the Board). The Site is partly vacant and partly occupied by temporary structures for storage.
- 1.2 The Site comprises two portions which is separated by a local track in the middle (**Plan A-1**). The western portion of the Site will be occupied by 5 single-storey structures (a total floor area of about 280.4m² and height not exceeding 4.5m) for dog kennel, office and canopy use. The eastern portion of the Site will be used for dog playground without any structure. No parking spaces will be provided on-site. The operation hours are from 9:00a.m. to 5:00p.m. daily (including public holidays), with 24 hours animal boarding services. Not more than 60 dogs will be accommodated at the Site. According to the applicant, no public announcement system and whistle blowing will be used at the Site. All dogs will be kept indoor between 7:00p.m. and 9:00a.m. 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 via 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 20.5.2020 **(Appendix I)**
- (b) Further Information (FI) received on 9.9.2020 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
- (c) FI received on 2.11.2020 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]

1.4 At the request of the applicant, the Committee on 10.7.2020 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 justification put forth by the applicant in support of the application is detailed in the application form at **Appendix I**, and is briefly summarized as follows:

The Site is a vacant and derelict pigsty. Rubbish disposed at the Site has affected the hygiene of the area. The current application will clear the rubbish at the Site and will provide a comfortable place for the animals to live, play and breed.

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 notice to the Pat Heung Rural Committee by hand. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to any planning enforcement action.

5. Previous Applications

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There are 34 similar applications for temporary animal boarding establishment involving 22 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 33 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.

33 Approved Applications

- 6.3 33 applications at 21 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 14 applications were revoked due to non-compliance with approval conditions.

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

- 7.1 The Site is:
- (a) divided into eastern and western portions by a local track;
 - (b) partly vacant and partly occupied by temporary structures for storage; and
 - (c) 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, ponds, residential structures/dwellings, dog training facility, open storage/storage yards and vacant/unused land:
- (a) to the north and east are fallow/active agricultural land, ponds, open storage/storage yards, residential structures/dwellings (nearest about 25m to its northeast), and a piece of vacant land with planning approval for temporary hobby farm; and
 - (b) to its south and west are a piece of land with planning approval for temporary hobby farm, dog training centre, storage yards, ponds 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 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) Should planning approval be given to the planning application, the lots owners 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):

Considering that there is neither parking provision nor vehicular access to the lots and the induced traffic impact is minimal, he has no comment on the application.

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 Chi Ho Road/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 7:00p.m. to 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 at any time during the planning approval period, as proposed by the applicant.
- (c) Moreover, the applicant is also reminded 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 to the application from landscape planning perspective.
- (b) Based on the aerial photo taken in 2019, the Site is situated in an

area of disturbed rural landscape character comprising of scattered tree groups, temporary structures, active and abandoned farmlands. The proposed use is considered not entirely incompatible with the surrounding environment. According to the site photos taken in June 2020, the western part of the Site is occupied with temporary structures, while eastern part of the Site is vacant. No existing tree is found within the Site. Significant adverse impact to landscape resources within the Site is not anticipated. Moreover, a number of applications of similar use adjacent to the Site were approved.

Agriculture

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

- (a) The Site is currently composed of an 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 open-field cultivation, greenhouses, etc. As such, he does not support the application from agricultural point of view as the Site possess potential for agricultural rehabilitation.
- (b) The subject address does not associate with any license granted by his department. They have not 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. 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, approval conditions requiring the submission of a drainage proposal with confirmation that no pond filling will be carried out, and the

implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Building Matters

9.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW of 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 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.
- (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 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) The two sites shall be considered as two separate sites and 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) The two sites do not abut on a specified street of not less than 4.5m wide and the permitted development intensity of each site shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.
- (g) 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.

Water Supplies

9.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing water mains will be affected (**Plan A-2**). A waterworks reserve within 1.5 metres from the center line of the water main shall be provided to WSD. No structure shall be built or materials stored within this waterworks reserve. Free access shall be made available at all time for staff of the Director of Water Supplies or their contractor to carry out construction, inspection, operation, maintenance and repair works.
- (c) No trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water main.
- (d) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

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 to the application:

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

10. Public Comments Received During the Statutory Publication Period

On 29.5.2020, the application was published for public inspection. During the three-week statutory publication period, six comments (**Appendices III-1 to III-6**) were received from the Hong Kong Bird Watching Society, Kadoore Farm & Botanic Garden Corporation, Designing Hong Kong Limited, villager of Shui Mei Village 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; it poses potential adverse impacts on a stream nearby; the proposed development will cause adverse traffic impacts and noise nuisance; the Site is close to residence and the wandered dogs will pose threat to the villagers; approval of this application would encourage “destroy first, development later” practice and set undesirable precedent; there are active farmland in the area; and the proposed use is to legitimize brownfield operation.

11. Planning Considerations and Assessments

- 11.1 The application is for a 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 possess 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 predominated by fallow/active agricultural land, ponds, residential structures/dwellings and vacant/unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest about 25m to its northeast) (**Plan A-2**), the applicant advises that all the dogs will be kept within the enclosed structures between 7:00p.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 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 (i) recommended in paragraph 12.2 below.

- 11.4 The Site is not subject to any previous application. 33 similar applications for temporary animal boarding establishment on 21 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 6.11.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00p.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 7:00p.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 6.5.2021;
- (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 6.8.2021;

- (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 6.5.2021;
- (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 6.8.2021;
- (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 20.5.2020
Appendix Ia	FI dated 9.9.2020
Appendix Ib	FI dated 2.11.2020
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-4a to 4c	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2020**