

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/789

<u>Applicant</u>	: Ms. Lin Siu Wai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 1697 (Part), 1698 S.B (Part) and 1699 (Part) in D.D. 106, Pat Heung, Yuen Long
<u>Site Area</u>	: About 1,142 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Drafted Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: 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 in “AGR” zone that requires planning permission from the Town Planning Board (the Board). The Site is currently fenced, mostly hard paved, partly occupied by structures for storage use and partly covered with vegetation¹ (**Plans A-2 to A-4b**). The Site is not subject to any previous application.
- 1.2 According to the applicant, the proposed temporary animal boarding establishment involves five 1-storey structures (not exceeding 4m in height) with a total floor area of about 264.2m² for animal boarding establishment and rain shelter uses. The applicant stated that the proposed animal boarding

¹ The Site is subject to unauthorized development for animal cremation establishment and storage use. Please refer to paragraph 4 for details.

establishment will accommodate not more than 20 dogs. All animal will be accommodated in the proposed structures installed with 24-hour mechanical ventilation system, air-conditioning and soundproofing insulation. No animal will be allowed out-door at all times and no public announcement system or dog training whistle will be used within the Site. There will be 1 private car parking space and 1 loading/unloading space for light goods vehicle provided on-site. The operation hours (for animal pick-up and drop off) are between 10 a.m. and 6 p.m. Mondays to Fridays and 11 a.m. to 5 p.m. Saturdays and Sundays including public holidays with 24-hour animal boarding services. The Site is accessible via local track from Kam Sheung Road. The layout plan, landscape plan and vehicular access plan submitted by the applicant are at **Drawings A-1 to A-3**.

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

- (a) Application form with supplementary information received on 31.5.2018 **(Appendix I)**
- (b) Further Information (FI) received on 28.6.2018 in response to departmental comments **(Appendix Ia)**
(Accepted and exempted from publishing requirements)
- (c) FI received on 29.6.2018 in response to departmental comments **(Appendix Ib)**
(Accepted and exempted from publishing requirements)
- (d) FI received on 10.7.2018 in response to departmental comments **(Appendix Ic)**
(Accepted and exempted from publishing requirements)
- (e) FI received on 20.9.2018 in response to departmental comments **(Appendix Id)**
(Accepted and exempted from publishing requirements)
- (f) FI received on 28.9.2018 providing clarifications and response to departmental comments **(Appendix Ie)**
(Accepted and exempted from publishing requirements)

1.4 As requested by the applicant, the Committee agreed to defer consideration of the application on 20.7.2018 to allow more time for the applicant to prepare FI to address departmental comments and provide clarifications. The applicant

submitted FIs providing responses to departmental comments to support the application.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary information in the application form and FIs at **Appendices I to Ie**. They can be summarized as follows:

- (a) The proposed development is compatible with the surrounding areas and no land filling/excavation work will be carried out to minimize the adverse impact on the surrounding areas. The approval of application will not set undesirable precedents as there is a similar application (No. A/YL-KTS/780) approved on 4.5.2018.
- (b) There will not be any animal corpse treatment activities and facilities within the Site at any time. No adverse environmental and traffic impact on the surrounding area will be brought by the proposed use.
- (c) The applicant will strictly follow the operation hours and minimize nuisance to the surrounding after obtaining approval. The applicant will submit fire services installations proposal and implement the accepted proposal to enhance fire safety.

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

The applicant is not a “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 section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) by posting site notice and sending notification letter to the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The current use in the Site includes use for animal cremation establishment and storage use which are unauthorized developments under the Town Planning Ordinance. Enforcement Notice was issued on 30.10.2018.

5. Previous Application

There is no previous application at the Site.

6. Similar Applications

- 6.1 There are four similar applications (Nos. A/YL-KTS/480, 532, 633 (involving one site) and 780) at two sites within the same “AGR” zone in the OZP. All the similar applications were approved with conditions by the Rural and New Town Planning Committee (the Committee). Details of these applications are summarized in **Appendix II** while their locations are shown on **Plan A-1**.
- 6.2 Applications No. A/YL-KTS/480, 532, 633 and 780 for animal boarding establishment were approved with conditions by the Committee on 18.12.2009, 15.4.2011, 21.3.2014 and 4.5.2018 respectively for a period of 3 years for similar reasons that the proposed development was not incompatible with the surrounding land uses, there was no adverse comment from the relevant government departments except the Director of Environmental Protection (DEP) and/or the Director of Agriculture, Fisheries and Conservation (DAFC); the environmental concerns could be addressed by appropriate approval conditions; and approval of the application was in line with the Committee’s previous decisions. Application No. A/YL-KTS/480 was revoked on 18.12.2010 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 fenced, mostly hard paved, partly occupied by structures for storage use and partly covered with vegetation; and
 - (b) accessible via a local track from Kam Sheung Road.
- 7.2 The surrounding areas are rural in character surrounded by residential structures/dwellings, cultivated/fallow agricultural land, vacant/unused land, parking of vehicles, hobby farm, temple and plant nursery (**Plan A-2**):
- (a) to its west across the local track are residential structures/dwellings, unused land, a hobby farm (with planning permission under application no. A/YL-KTS/733), and fallow agricultural land;
 - (b) to its north and east are residential structures/dwellings, parking of vehicles, storage yards, unused land and cultivated/fallow agricultural land. To its further north is a temporary animal boarding establishment (application No. A/YL-KTS/780) approved by the Committee on 4.5.2018; and
 - (c) to its south are residential structures/dwellings, cultivated agricultural land and a temple.

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 to Kam Sheung 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 planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Such application(s) 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 noting the traffic generated is off peak.
- (b) Should be planning be approved, the approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval should be included.
- (c) The Site is connected to the public road network via 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, HyD):

- (a) HyD does not and will not maintain any access connecting the Site and Kam Sheung Road.
- (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) According to the applicant, the proposed use will operate round the clock. The dogs will be kept inside the proposed structures at any time. The proposed structures will be enclosed with provision of 24-hour mechanical ventilation and air-conditioning (MVAC) system. Public announcement system and whistle blowing will not be allowed at the Site.
- (b) Based on the above, the applicant is advised that the facilities should be properly designed and maintained to minimize any potential environmental nuisance, e.g. the MVAC system should be located away from adjacent sensitive receivers and the proposed structures for animal boarding establishment should be enclosed with proper soundproofing materials.

- (c) Moreover, effluent discharges from the proposed use are subject to control under the Water Pollution Control Ordinance (WPCO). A discharge licence under the WPCO shall be obtained before a new discharge is commenced. If septic tank and soakaway system is proposed, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department”.
- (d) The applicant is also 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” (the COP) to minimize any potential environmental nuisances.

Landscape

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

- (a) He has no objection to the application from landscape planning perspective.
- (b) The surrounding area is rural in character with village houses, temporary structures and vacant land with tree groups. The proposed use is considered not incompatible with the landscape setting in proximity.
- (c) According to his site visit on 22.6.2018, the Site is fenced off, hard-paved and a landscape area with one existing tree in good condition is found at the centre of the Site. According to the proposed layout plan, the existing tree is not in conflict with the proposed structures and can be retained on site. Significant adverse landscape impact arising from the proposed use is not anticipated.
- (d) Should the application be approved, the approval condition on the submission and implementation of landscape and tree preservation proposal to the satisfaction of the Director of Planning or of the Board should be included.
- (e) His detailed comment is in **Appendix III**.

Agriculture

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

- (a) Upon his site visit, agricultural activities can be found in the vicinity. Agricultural infrastructures such as Vegetable Marketing Co-operating Society (VMCS) and road access are available. As the Site possesses a potentiality of agricultural rehabilitation, the application is not supported from agriculture point of view.
- (b) The subject address does not associate with any licence granted by his department, nor has he received any application regarding the concerned address. 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.

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 drainage proposal and the implementation and maintenance of the drainage proposal for the development should be included in the planning permission.

Fire Safety

9.1.8 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 (FSIs) 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 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) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (b) 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.
- (c) 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) under the BO. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with 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.

Environmental Hygiene

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

- (a) Animal boarding establishment itself is not a food business stipulated in Cap.132X. Hence, a mere animal boarding establishment without any food business mentioned in Cap.132X involved does not require a food business licence from Food and Environmental Hygiene Department (FEHD).
- (b) His detailed comment is at **Appendix III**.

District Officer's Comments

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

- (a) He has no particular comment on the application and his office has not received any comments from locals upon close of consultation.

9.2 The following Government department has no objection/no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/ Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

On 8.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 29.6.2018, 271 public comments were received from Tung Bin Road Concern Group, The Hong Kong Bird Watching Society, local residents and members of the public. Among the 271 public comments received, 8 have not provided any views on the application. The remaining 263 commenters object/ strongly object to the application mainly on the grounds that the proposed development is not in line with the planning intention; the local track is too narrow for additional traffic which may affect emergency access, pedestrian and road safety; insufficient parking space may lead to illegal parking; the proposed development is too close to residential area and will generate environmental nuisance including noise, odour, hygiene, mosquito problems and public safety issues and disturb the tranquil environment in the neighbourhood; the proposed development will cause adverse environmental, landscape, geotechnical and sewage impacts, flooding, water pollution

(including pollution to the water source for farm irrigation), fire safety issue and increase waste; no feasibility study is provided; the Site provided/provides animal cremation/funeral/corpse treatment services which would cause air pollution and bring adverse impacts on hygiene, feng shui and quality of life; it is difficult for government departments to monitor the proposed operation and number of animals; the animals may attack pedestrians; approval of the planning application will set an undesirable precedent for similar application within the “AGR” zone and the cumulative effect of approving the application would result in a general degradation of the rural environment of the area.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment. The Site falls within an area zoned “AGR” which is intended 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 in line with the planning intention of the “AGR” zone and DAFC does not support the application from the agriculture point of view as the Site possess a potentiality of agricultural rehabilitation. However, approval of the application on temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development comprises five 1-storey structures not exceeding 4m high with a total floor area of 264.2m² is considered not incompatible with the surrounding land uses which is rural in character predominated by residential structures/dwellings, cultivated/fallow agricultural land, vacant/unused land and parking of vehicles. Although there are residential dwellings adjoining the Site (**Plan A-2**), the applicant advised that all animals will be kept inside the proposed structures and the proposed animal boarding establishment will be provided with soundproofing insulation material with 24 hours mechanical ventilation and air conditioning. No public announcement system or whistle blowing will be used. DEP has no adverse comment on the application. Also, four similar applications (Nos. A/YL-KTS/480, 532, 633 and 780) located within the same “AGR” zone (**Plan A-1**) have been approved with conditions by the Committee. Application No. A/YL-KTS/780 located to the north of the Site was approved by the Committee on 8.5.2018. Approval of the current application is in line with the Committee’s previous decisions.
- 11.3 Relevant departments consulted, except DAFC, have no adverse comment on the application. To minimise the possible environmental nuisance, approval conditions on restricting the operation hours, prohibiting outdoor animal activities and public announcement system, portable loudspeaker, audio amplification system and whistle blowing are recommended in paragraph 12.2 (a) to (d) below. Any non-compliance with the approval condition will result in revocation of the planning permission and unauthorized development on-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' in order to alleviate any potential impact. The technical requirements of C for T, CE/MN of DSD, CTP/UD&L of PlanD and D of FS could be addressed by approval conditions (e) to (l) in paragraph 12.2 below.

- 11.4 271 public comments in which 8 have not provided any view and 263 comments object/strongly object to the application were received during the statutory publication period for the grounds as set out in paragraph 10 above. In this regard, relevant Government departments including DEP, C for T, DFEH and CE/MN, DSD have no objection to/adverse comments on the application. Approval conditions on traffic, drainage, fire safety, landscape aspects are recommended to be imposed. The proposed temporary use for a period of 3 years would not jeopardize the long-term planning intention of the "AGR" zone. There are also similar applications approved in the vicinity with one to the north of the Site (**Plan A-2**). The applicant also confirmed that there will be no 'animal corpse treatment' at the Site and any unauthorized development will be subject to enforcement action. The planning considerations and assessments above are also relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11, and having taken into account the public comments 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 2.11.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 10:00 a.m. (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 10:00 a.m. to 11:00 a.m. and 5:00 p.m. to 6:00 p.m. on Saturdays, Sundays, and public holidays (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) all animals shall be kept inside the enclosed structures, as proposed by the applicant, at all times during the planning approval period;
- (d) no public announcement system and whistle blowing, as proposed by the applicant, is allowed to be used on the Site during the planning approval period;

- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) 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 2.5.2019;
- (g) in relation to (f) 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 2.8.2019;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of landscape and tree preservation proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.5.2019;
- (j) in relation to (i) above, the implementation of landscape and tree preservation proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.8.2019;
- (k) the submission of fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.5.2019;
- (l) in relation to (k) 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 2.8.2019;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) 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;
- (n) if any of the above planning conditions (f), (g), (i), (j), (k) or (l) 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
- (o) upon the expiry of the planning permission, the reinstatement of the application 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 for a departure from the planning intention, even on 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

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| Appendix I | Application Form with supplementary information received on 31.5.2018 |
| Appendix Ia | FI received on 28.6.2018 in response to departmental comments |
| Appendix Ib | FI received on 29.6.2018 in response to departmental comments |
| Appendix Ic | FI received on 10.7.2018 in response to departmental comments |
| Appendix Id | FI received on 20.9.2018 in response to departmental comments |

Appendix Ie	FI received on 28.9.2018 providing clarifications and response to departmental comments
Appendix II	Similar applications within the adjoining “AGR” zone on the Kam Tin South OZP
Appendix III	Detailed Comments from DFEH and CTP/UD&L, PlanD
Appendices IV-1 to 271	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Vehicular Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2018**