

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTS/790**

<b><u>Applicant</u></b>	: House of Joy and Mercy Company Limited
<b><u>Site</u></b>	: Government Land in D.D. 103, Ko Po San Tsuen, Kam Tin, Yuen Long
<b><u>Site Area</u></b>	: 1,050 m <sup>2</sup>
<b><u>Lease</u></b>	: Government Land
<b><u>Plan</u></b>	: Draft Kam Tin South Outline Zoning Plan No. S/YL-KTS/14
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: 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 not the subject of any previous application and currently vacant (**Plans A-2 and A-4b**).
- 1.2 According to the applicant, the proposed temporary animal boarding establishment is for homeless animal shelter. The proposed development involves a one-storey temporary structure (about 4m in height) with a total floor area of 500m<sup>2</sup> for animal boarding establishment, ancillary office, staff/volunteer common room and toilet. The uncovered area will be outdoor activities area for animals. The proposed animal boarding establishment will accommodate not more than 50 animals. The applicant stated that the temporary structure will be enclosed with soundproofing and heat insulation materials. 24-hour air conditioning will be provided. The animals will be kept indoor between 9 p.m. and 9 a.m. The proposed operation hour is 9 a.m. to 9 p.m daily (except for overnight animal boarding). The number of persons (including staff and visitors) at the Site will not be more than 5 and 20 on Mondays to Fridays, and Saturdays, Sundays and public holidays respectively. A staff will stay at the Site during 9 p.m. to 9 a.m. There will not be public announcement system and whistle blowing used at the

Site. The Site is accessible from Kam Tin Road via a local track. One parking space for private car or light goods vehicle will be provided on-site. The layout plan and the access arrangement 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 statement and plans received on 5.6.2018 **(Appendix I)**
  - (b) Further information (FI) received on 9.7.2018 in response to departmental comments **(Appendix Ia)**  
*(accepted and exempted from publication and recounting requirements)*
  - (c) FI received on 25.7.2018 providing clarifications **(Appendix Ib)**  
*(accepted and exempted from publication and recounting requirements)*

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in supplementary statement of **Appendix I** and **Appendix Ia**. They can be summarized as follows:

- (a) The applicant is a charitable organization established in 2015, and is providing services including taking care and finding new homes for homeless animals, as well as providing educational activities and volunteer works with schools. The applicant is currently renting a site at Ma On Kong which is under high rent. He intends to continue the services at the Site under the current application.
- (b) To minimize nuisance to the nearby residents, measures such as soundproofing insulation and 24-hour air conditioning, restriction in operation hour and number of visitors and prohibiting public announcement system are proposed. Also, various activities such as ‘adoption day’ will be held to control the number of animal at the Site.
- (c) The proposed development will not affect the existing water mains and will not affect any works carried out by the Water Supplies Department.

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

As the Site involves Government land only, the “owner’s consent/notification” requirement 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. 31) is not applicable to the application.

**4. Background**

The Site is not the subject of action enforcement cases and there is currently no enforcement action against it.

**5. Previous Application**

There is no previous application at the Site.

**6. Similar Application**

There is no similar application within the same “AGR” zone on the OZP. An application No. A/YL-KTS/791 for proposed temporary animal boarding establishment located at the further northeast of the Site (**Plan A-1**) is scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

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

- 7.1 The Site is currently vacant and accessible from Kam Tin Road via a local track.
- 7.2 The surrounding areas are predominately rural in character surrounded by residential dwellings/structures, parking of vehicles, open storage yards, Au Tau Water Treatment Works and unused/vacant land:
- (a) to its north and west are residential dwellings/structures, storage/ open storage yards (subject to approved planning applications Nos. A/YL-KTS/675 and 707), parking of vehicles, and vacant/unused land; and
  - (b) to its east and south is the Au Tau Water Treatment Works.

**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 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 is located on unleased Government Land (GL).
- (b) No permission is given for occupation of GL (about 1,050 m<sup>2</sup> subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government's prior approval is not allowed.
- (c) The Site is accessible to Kam Tin Road via 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.
- (d) The Site falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within the SKAHRA.
- (e) Should the application be approved, the applicant has to apply for a formal approval prior to the actual occupation of the GL. 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):

He has no comment on the application with inclusion of the following approval condition and advisory clause respectively:

- (i) No vehicle is allowed to queue back to or reverse on/from public road at any time during the planning approval period.
- (ii) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) HyD does not and will not maintain any access connecting the Site and Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to 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 animals will be kept inside the proposed structures between 9 p.m. and 9 a.m. 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 information provided, 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) 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) Should the application be approved, 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" to minimize any potential environmental nuisances.
- (e) The Site falls within the Consultation Zone of Au Tau Water Treatment Works (WTW) which is a Potential Hazardous Installation. Based on the information provided, he has no adverse comment from chlorine risk point of view.

## **Agriculture**

### 9.1.5 Comments of Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) As the Site possesses high potentiality of agricultural rehabilitation, which can be used for greenhouse cultivation and plant nursery, the application is not supported from agriculture point of view.
- (b) Carrying on a business of providing of food and accommodation for animals in return for a fee or other money consideration requires a licence from his department in accordance with the Public Health (Animals) (Boarding Establishment) Regulations Cap. 139I. His department has not received any application from the applicant for any Boarding Establishment Licence as at 28.6.2018.
- (c) However, the proposed use seems to be a shelter for stray animals rather than a 'Boarding Establishment' regulated under Cap. 139I. Setting up and running of a shelter for stray animals does not require a licence or any approval from his department. Having said that, the conditions in which animals are kept must meet the minimum requirements of the Prevention of Cruelty to Animals Ordinance (Cap. 169) and its subsidiary regulations.
- (d) The rehoming of animals in return for an adoption or rehoming fee may require a licence or exemption from his department in accordance with the Public Health (Animal and Birds) (Trading and Breeding) Regulations, Cap 139B. The applicant has not applied for any exemption from Holding an Animal Trader Licence under the above legislation.
- (e) It should be noted that housing for animals will require, amongst other things, provision of electricity supply, ample fresh water and proper treatment/disposal of sewage that will be generated.

## **Landscape**

### 9.1.6 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 the landscape planning point of view.
- (b) The landscape quality of the surrounding area is generally not high, which is composed of open storages and workshops with cluster of tree groups. The proposed use is not incompatible with the surrounding landscape context.

- (c) According to site inspection taken on 22.6.2018, the Site is currently vacant without signification vegetation. A few young trees (*Leucaena leucocephala* 銀合歡) are found along the site boundary. Given *Leucaena leucocephala* is an invasive, exotic small tree which grows vigorously and forms dense thickets that prevent natural succession of native species, the applicant should clear up all the *Leucaena leucocephala* once the application is approved by the Board. Further adverse impact on existing landscape resources due to the proposed use is not anticipated.
- (d) Should the application be approved, it is recommended that the condition on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board be included in the permission.

### **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.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of the drainage proposal for the development should be incorporated.

### **Fire Safety**

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

- (a) He has no in-principle objection to the proposal subject to 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.

### **Water Supply**

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

He has no objection to the application. His detailed comment is at **Appendix II**.

### **Electricity**

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from the electricity supply safety aspect.
- (b) In the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with the planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

### **Environmental Hygiene**

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

- (a) No Food and Environmental Hygiene Department (FEHD)’s facilities shall be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the commercial / trading activities, the applicant should arrange disposal properly at her own expenses.

### **District Officer’s Comments**

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

He has not received any locals’ comment on the application.



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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD) ; and
- (c) Commissioner of Police (C of P).

## **10. Public Comments Received During the Statutory Publication Period**

10.1 On 12.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.7.2018, 3 public comments from local residents and general public were received (**Appendices III-1 to III-3**).

10.2 All of them object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; no strong planning justification for a departure from the planning intention; approval of the application will set an undesirable precedent for similar applications and result in degradation of the rural environment in the area; there are many unauthorized animal breeding; the proposed development will cause nuisance to the living environment of the nearby residents as it will generate adverse environmental impacts especially on hygiene, odour, waste and noise aspects.

## **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 could be used for green house cultivation and plant nursery. Nevertheless, it is considered that approval of the application on temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the area.

11.2 The proposed development comprises of a 1-storey structure (about 4m in height) with a total floor area of about 500m<sup>2</sup> is considered not incompatible with the surrounding land uses which is mainly rural in character predominated by residential structures/ dwellings, parking of vehicles, open storage yards, Au Tau Water Treatment Works and vacant/unused land. Although there is a residential dwelling adjoining the Site (**Plan A-2**), the applicant advised that all animals will be kept inside the proposed structures between 9 p.m. and 9 a.m. and the proposed temporary animal boarding establishment will be enclosed and provided with soundproofing insulation material with 24 hours air conditioning. DEP has no adverse comment on the application.

- 11.3 Relevant departments consulted, except DAFC, have no adverse comment on the application. To minimize the possible environmental nuisance, approval conditions restricting the operation and outdoor animal activities hours and prohibiting 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 There are 3 public comments objecting to the application received during the statutory publication period for the grounds as set out in paragraph 10 above. In this regard, temporary approval would not frustrate the long term planning intention. Relevant departments including DEP and DFEH have no adverse comment on the application. 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 considers that the proposed temporary animal boarding establishment could be tolerated 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 3.8.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m. (except for 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 structure between 9:00 p.m. and 9:00 a.m, as proposed by the applicant, during the planning approval period;
- (c) no public announcement system, portable loudspeaker or any form of amplification system, and whistle blowing, as proposed by the applicant, is allowed to be used on the Site during the planning approval period;
- (d) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time 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 3.2.2019;
- (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 3.5.2019;
- (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 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 3.2.2019;
- (j) in relation to (i) above, the implementation of landscape 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 3.5.2019;
- (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 3.2.2019;
- (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 3.5.2019;
- (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 IV**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

The 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**

<b>Appendix I</b>	Application form received on 5.6.2018
<b>Appendix Ia</b>	FI received on 9.7.2018 in response to departmental comments
<b>Appendix Ib</b>	FI received on 25.7.2018 providing clarifications
<b>Appendix II</b>	Detailed comments of CE/C, WSD
<b>Appendices III-1 to III-3</b>	Public comments received during the statutory publication period
<b>Appendix IV</b>	Advisory clauses
<b>Drawing A-1 to A-2</b>	Layout plans
<b>Drawing A-3</b>	Vehicular access arrangement
<b>Plan A-1</b>	Location plan
<b>Plan A-2</b>	Site plan
<b>Plan A-3</b>	Aerial photo
<b>Plan A-4a to 4b</b>	Site photos

**PLANNING DEPARTMENT  
AUGUST 2018**