

RNTPC Paper No. A/YL-SK/263A
For Consideration by
the Rural and New Town
Planning Committee
on 17.1.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/263

- Applicant** : Mr. CHAI Chee Chueng James
- Site** : Lots 383 (Part), 384 S.D (Part), 385 S.A-S.C (Part) and 386 (Part) in D.D. 112, Kam Sheung Road, Shek Kong, Yuen Long
- Site Area** : About 1,618.97m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Animal Boarding Establishment with Hospice Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary animal boarding establishment with hospice services at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “AGR” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘animal boarding establishment’ is a Column 2 use within “AGR” zone which requires planning permission from the Town Planning Board (the Board), whereas ‘animal hospice services’ is neither a Column 1 nor Column 2 use within “AGR” zone. Notwithstanding this, temporary use or development of any land or building not exceeding a period of 3 years may be allowed with permission from the Board. The Site is currently occupied by a number of temporary structures used for the applied use without valid planning permission and not the subject of any previous application.
- 1.2 According to the applicant, the applied temporary animal boarding establishment with hospice services involves a total of 10 single-storey structures with building heights ranging from 1.9m to 4m and a total floor area of about 866.39m² for animal boarding, animal cremation, storage, office, common room and memorial

room for storing cremated ashes uses (**Drawing A-1**). There are also two memorial gardens at the Site for scattering cremated ashes. The operation hours are between 8:00 a.m. and 10:00 p.m. daily with 24-hour animal boarding services. The Site is accessible via a local track from Kam Sheung Road, and no parking and loading/unloading spaces are provided at the Site. The layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 The application was originally scheduled for consideration by the Rural and New Town Planning Committee (the Committee) on 18.10.2019. On 18.10.2019, the Committee decided to defer the consideration of the application upon the request of the applicant in order to allow time for the applicant to prepare further information (FI) to address departmental comments. Upon receipt of FI on 17.12.2019, the application is scheduled for consideration by the Committee at this meeting.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 30.8.2019 (**Appendix I**)
 - (b) Further information (FI) received on 17.12.2019 (**Appendix Ia**)
(exempted from publication)
 - (c) FI received on 10.1.2020 (**Appendix Ib**)
(exempted from publication)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I to Ib**, and are briefly summarized as follows:

- (a) There is increasing demand for animal boarding and hospice services. There are two uses operated within the Site, animal boarding and hospice services. For fee-charging hospice services, the applicant helps customers to cremate their pets, provides memorable products and scatters the bone ashes to the garden. For animal boarding which is not for generating income, the applicant aims to provide a home for a variety kind of abandoned animals which includes birds, turtles, goat, guinea pigs and others until they die or being rehomed. The animals are not for breeding purpose. They rely on the cremation business to support the animals.
- (b) The structures of the Site have been built for a long time. The applicant has used the Site for animal boarding establishment with hospice services for eight years.
- (c) While it is difficult to identify suitable site in Hong Kong for development of animal boarding establishment with hospice services, “AGR” is considered a suitable zoning for these uses. Temporary use will not jeopardize the long-term planning intention of “AGR” zone.

- (d) The animals kept on the Site are quiet and no barking or noise are created normally. No public announcement system would be installed at the Site. Besides, there are only small unit incinerators with its maximum capacity complying with the requirements of the Environmental Protection Department (EPD). The frequency of the furnace operation is 1–10 times per week on average, and the average operation duration is 20–40mins each time. No odor or color can be smelt or seen from the emission due to the appropriate design of the incinerators. There is no environmental complaint concerning the Site received before.
- (e) Adequate drainage facilities are provided on the Site, and there is no parking and loading/unloading spaces within the Site. No adverse drainage and traffic impacts to the surrounding areas and nearby residents are created.

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 Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

At present, the Site is not subject to any outstanding planning enforcement case. However, if the applied development takes place without prior planning approval obtained, or should there be sufficient evidence to prove that the said uses are an unauthorized development (UD) under the Town Planning Ordinance, appropriate enforcement action will be instigated.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Application

- 6.1 There is one similar application No. A/YL-SK/226 for proposed temporary animal boarding establishment (without provision of animal hospice services) within the same “AGR” zone, which was rejected by the Committee on 10.11.2017 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; the applicant failed to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding areas; and the approval of application would set an undesirable

precedent for similar applications. Details of this application are summarized in **Appendix II** and the location of this application is shown on **Plan A-1**.

- 6.2 Application No. A/YL-SK/273 for temporary animal boarding establishment and dog training facility for a period of 3 years within the adjacent “Village Type Development” (“V”) zone on the Shek Kong OZP will be also considered at this meeting.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3, and site photos on Plans A-4a to A-4d)

7.1 The Site is:

- (a) currently occupied by a number of temporary structures used for the applied use without valid planning permission; and
- (b) accessible via a local track from Kam Sheung Road which passes through the “V” zone.

7.2 The surrounding areas are predominantly rural in character mixed with residential structures/dwellings, active/fallow agricultural land, open storage/storage yards, workshops, plant nursery and pet training centre;

- (a) to its southwest, west and northwest are clusters of residential structures/dwellings (with the nearest distance of about 50m within the “V” zone);
- (b) to its north and northeast are mainly active/ fallow agricultural land with a few residential structures/dwellings;
- (c) to its east are vacant land, fallow agricultural land and gardening; and
- (d) to its south are a vehicle repair workshop, open storage of vehicles, a plant nursery and a pet training centre.

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 of 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 Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for GL involved and does not guarantee any right-of-way over GL to the Site;
- (c) the Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA;
- (d) according to the prevailing guidelines of LandsD, application for Short Term Waiver (STW) of the undertaking must not be an offensive trade and must not give rise to environmental pollution. Referring to the applicant's proposal, Structure Nos. 2 and 9 would be used for animal cremation purposes; and
- (e) 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, if any. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) he has reservation on the application from traffic engineering perspective due to insufficient information, as the applicant has not provided the trip generation and attraction arising from the applied development to demonstrate that there is no adverse traffic impact to Kam Sheung Road; and
- (b) the local access between Kam Sheung Road and the Site is not managed by Transport Department (TD). The land status of the local access road should be checked with 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 of HyD):

- (a) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (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.

Agriculture and Nature Conservation

9.1.4 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 occupied by some temporary structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view;
- (b) noting that the Site has been paved and occupied by some temporary structures, he has no comment on the application from nature conservation perspective;
- (c) the Site and the applicant are associated with a valid animal trading license granted by his department. However, there is no

valid boarding license associated with the Site and the applicant at this juncture; and

- (d) 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. Should the application be approved, the applicant is reminded that the establishment and ancillary facilities which is licensed under the said Regulations must always fulfil the criteria listed in the said 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.

Environment

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

- (a) he has no adverse comment on the application from environmental protection point of view.
- (b) should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”; and
- (c) there was no substantiated environmental complaint at the Site received by DEP in the past three years.

Landscape

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

- (a) he has no objection to the application from the landscape planning perspective;
- (b) referring to the aerial photo dated 13.3.2018, the Site is situated in an area of rural landscape character comprising scattered tree groups, abandoned farmland and village houses. Although similar development cannot be found in the proximity, considering the building height of the applied development (from 1.9m to 4m), it is considered not incompatible with the surrounding environment; and

- (c) based on the site visit dated 24.6.2019, the applied development is already in place and in operation. Numbers of existing trees including *Ficus superba* var. *japonica* (筆管榕), *Ficus benjamina* (垂葉榕), *Macaranga tanarius* (血桐), *Michelia X alba* (白蘭) and *Plumeria rubra* (雞蛋花) in good condition are found within the Site. Referring to the layout plan (**Drawing A-1**), the existing trees are not in conflict with the applied development. Further significant adverse impact on landscape resources is not anticipated.

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 applied development from the public drainage point of view; and
- (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 to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

Water Supplies

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

he has no objection to the application, and his detailed comments are at **Appendix IV**.

Building Matters

9.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW of BD):

- (a) if the existing structures (not being a New Territories Exempted Houses) are erected on leased land without approval of the Building Authority (BA), they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any applied use under the application;
- (b) for UBW erected on leased land, enforcement action may be taken by 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 BO;

- (c) 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 under BO. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with 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 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 Building (Planning) Regulations at the building plan submission stage; and
- (f) if the applied use under the application is subject to issue of a license, the applicant is 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

9.1.10 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 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 where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Environmental Hygiene

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

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

District Officer's Comments

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

- (a) he has no comment on the application; and
- (b) he has received a letter from the vice-chairperson of Pat Heung Rural Committee cum resident representative of Lin Fa Tei Village, and two indigenous inhabitant representatives of the same village objecting to the application mainly on the grounds that the applied use is an UD without valid planning permission; and the development generates adverse environmental and hygiene impacts. The same comment was also submitted to the Board during the public consultation period (**Appendix III-2**).

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

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

10. Public Comments Received During Statutory Publication Period

On 6.9.2019, the application was published for public inspection. During the three-week statutory public inspection period, a total of five public comments were received from a Yuen Long District Council Member; the vice-chairperson of Pat Heung Rural Committee cum resident representative of Lin Fa Tei Village and two indigenous inhabitant representatives of the same village; The Hong Kong Bird Watching Society; The World Wide Fund For Nature Hong Kong; and a member of public (**Appendices**

III-1 to III-5). They object to the application mainly on the grounds that the applied use is not in line with the planning intention of “AGR” zone; the Site has been used for UD and approval of the application may encourage “develop first, apply later”; it will set an undesirable precedent for similar development in the future; and the development causes adverse environmental and hygiene impacts to the surrounding areas and nearby residents.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary animal boarding establishment with hospice services for a period of 3 years at the Site zoned “AGR” on the approved Shek Kong OZP (**Plan A-1**). Apart from animal boarding facilities, the applied development would provide hospice services including animal crematorium facilities, memorial rooms, memorial garden, storage of cremated ashes, etc (**Plans A-4a to A-4d**). According to the OZP, “AGR” zone is primarily 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 applied use is not 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 uses such as greenhouses and plant nurseries, and active agricultural activities are found in the vicinity. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 11.2 The animal boarding establishment with hospice services and cremation of animal dead bodies is considered incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land (**Plan A-2**). Residential dwellings are found within the immediate vicinity (within 50m from the Site). In addition, C for T has reservation on the application as the applicant fails to provide sufficient traffic-related information to demonstrate that the applied development would not cause adverse traffic impact to Kam Sheung Road. Other relevant departments including DEP, CTP/UD&L of PlanD, CE/MN of DSD, CE/C of WSD and DFEH have no objection to/adverse comment on the application.
- 11.3 There is one similar application No. A/YL-SK/226 for proposed temporary animal boarding establishment (without provision of animal hospice services) in the same “AGR” zone, which was rejected by the Committee on 10.11.2017 on the grounds as stated in paragraph 6. The Committee’s considerations on the above application are generally applicable to the current application. Rejecting the subject application is in line with the Committee’s previous decision. The applied development, if approved, would set an undesirable precedent for similar applications within the “AGR” zone; and encourage similar application in the area and further encroachment of development onto the “AGR” zone. The cumulative impact would result in general degradation of the landscape quality of the area.

- 11.4 Regarding one local objection conveyed by DO/YL of HAD and five objecting public comments received during the statutory publication period as stated in paragraphs 9.1.12 and 10 above, relevant Government departments' comments and planning considerations set out in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the local views conveyed by DO/YL of HAD and public comments in paragraphs 9.1.12 and 10 above, the Planning Department does not support the application for the following reasons:

- (a) the applied development is not in line with the planning intention of the "AGR" zone which is primarily 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. There are no strong planning justifications in the submission to merit a departure from the planning intention of "AGR" zone, even on a temporary basis;
- (b) the applied development is incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land;
- (c) the applicant fails to demonstrate that the applied development would not cause adverse traffic impacts to the surrounding area; and
- (d) approval of the application would set an undesirable precedent for similar applications in the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

- 12.2 Alternatively, 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 17.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:00 p.m. and 8:00 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 structures on the Site between 10:00 p.m. and 8:00 a.m. during the planning approval period;

- (c) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used, as proposed by the applicant, 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 trip generation and attraction from/to the Site within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 17.7.2020;
- (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 17.7.2020;
- (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 17.10.2020;
- (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 proposal for fire service installations and water supplies for fire-fighting 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 17.7.2020;
- (j) in relation to (i) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 17.10.2020;
- (k) if any of the above planning conditions (a), (b), (c), (d) 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;
- (l) if any of the above planning conditions (e), (f), (g), (i) or (j) 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
- (m) upon the 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**.

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

14. Attachments

Appendix I	Application Form with attachments received on 30.8.2019
Appendix Ia	Further information (FI) received on 17.12.2019
Appendix Ib	FI received on 10.1.2020
Appendix II	Similar Application
Appendix III	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4d	Site Photos