

RNTPC Paper No. A/YL-KTN/651
For Consideration by
the Rural and New Town
Planning Committee
on 17.5.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/651

- Applicant** : Mr. LAM Tung Man represented by R-riches Property Consultants Limited
- Site** : Lot 920 RP in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long
- Site Area** : About 164m²
- 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 5 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 5 years. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is not the subject of any previous application and is currently vacant and covered by sands (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development involves a two-storey temporary structure with a total floor area of about 72m² and building height of about 7m for animal boarding establishment use. The applicant stated that there will be not more than 15 dogs within the Site. The structures for animal boarding establishment will be enclosed with steel sheets and cotton acoustic panels and provided with 24-hour air conditioning and ventilation system. No animal will be allowed outdoor at all times and no public announcement system and whistle blowing will be used at the Site. The business hours (for animal pick-up and drop-off) are from 10 a.m. to 6 p.m. daily including public holidays with 24-hour animal boarding services (at least one staff will stay at the Site). Septic tank will be

used. A parking space for private car will be provided at the Site. The Site is accessible from Fung Kat Heung Road via a local track. The site layout plan and vehicular access plan submitted by the applicant are at **Drawings A-1 to A-2**.

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

- (a) Application Form with supplementary planning statement and plans received on 18.3.2019 (**Appendix I**)
- (b) FI received on 8.5.2019 clarifying the traffic arrangement and operation details (**Appendix Ia**)

2. Justifications from the Applicant

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

- (a) The proposed use is compatible with the nearby development and will not involve land filling and excavation works to minimize the impact on the surrounding environment.
- (b) Sufficient manoeuvring space will be provided at the Site and no vehicle will allow to queue back to or reverse onto the public road. Traffic impact will be minimized.
- (c) The proposed temporary development for 5 years will not frustrate the long-term planning intention of the “AGR” zone. The applicant will reinstate the Site to an amenity area upon expiry of the planning permission. Approval of the current application will not set an undesirable precedent. Should the application be approved, the applicant will provide landscape, drainage and fire service installations (FSIs) facilities to the satisfaction of relevant departments. The proposed septic tank will comply with the relevant regulations.

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. 31A) by posting site notice and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is subject to on-going planning enforcement action (No. E/YL-KTN/490) against an unauthorized development (UD) involving filling of land. Enforcement Notice (EN) was issued on 9.5.2019 to the concerned party requiring discontinuation of the UD. If the requirement of the EN is not complied with upon expiry of the compliance period of the notice, the concerned party will be subject to further planning enforcement action.

5. **Previous Application**

There is no previous application at the Site.

6. **Similar Applications**

- 6.1 There are 26 similar applications for temporary animal boarding establishment (No. A/YL-KTN/156, 232, 251, 253, 304, 308, 324, 377, 410, 478, 489, 519, 543, 556, 562, 577, 588, 590, 605, 616, 617, 623, 638, 639, 642 and 645) within the same “AGR” zone on the OZP. Except application No. A/YL-KTN/156 which was rejected by the Committee on 8.11.2002, the remaining 25 applications were approved with conditions by the Committee for 2 to 5 years from 2005 to 2019. Details of these applications are summarized in **Appendix II** while their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTN/156 for proposed dog kennel for a period of 3 years was rejected by the Committee on 8.11.2002 on the ground that the proposed development was not in line with the planning intention of the “AGR” zone; not compatible with the adjacent residential dwellings which would be susceptible to adverse environmental nuisances and Director of Environmental Protection did not support the application as noise nuisances would be imposed to nearby residents; and there was no information in the submission to demonstrate that the proposed development would not cause adverse environmental and drainage impacts on the surrounding areas.
- 6.3 Ten applications No. A/YL-KTN/232, 251, 304, 377, 410, 489 and 639 at a site and Nos. A/YL-KTN/253, 308 and 324 at another site to the south of the Site were approved with conditions by the Committee for 2 or 3 years between 2005 to 2019 for similar reasons that temporary developments would not frustrate the long-term planning intention of the “AGR” zone; not incompatible with the surrounding land uses; the developments would mainly involve existing on-site structures for animal boarding; previous approvals were granted and the applicants had made effort to comply with the approval conditions; and/or the relevant government departments had no adverse comments on the developments. However, applications No. A/YL-KTN/232, 304, 308, 324, 377 and 410 were revoked on 29.1.2006, 19.3.2010, 5.3.2009, 22.5.2011, 30.9.2012 and 17.7.2014 respectively due to non-compliance with approval conditions.

- 6.4 The remaining 15 applications (No. A/YL-KTN/478, 519, 543, 556, 562, 577, 588, 590, 605, 616, 617, 623, 624, 638 and 645) were approved with conditions by the Committee between 2015 and 2019 for a period of 3 years or 5 years (for A/YL-KTN/638 only) on similar considerations that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; and the developments were not incompatible with the surrounding land uses. Applications No. A/YL-KTN/478, 543, 588 and 590 were revoked on 6.5.2016, 23.12.2017 and 16.9.2018 (for both No. A/YL-KTN/588 and 590) respectively due to non-compliance with approval conditions.
- 6.5 Application No. A/YL-KTN/652 for renewal of planning approval for temporary animal boarding establishment (cattery) for a period of 3 years located at the further east of the Site (**Plan A-1**) is scheduled for consideration by the Committee at this meeting.

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

7.1 The Site is:

- (a) vacant and covered by sands; and
- (b) accessible to Fung Kat Heung Road via a local track.

7.2 The surrounding land uses are rural in character with a mixture of residential dwellings/structures, plant nurseries, cultivated/fallow agricultural land, hobby farms, restaurant, storage/open storage yards, and vacant/unused land. The storage/open storage yards and restaurant are suspected unauthorized developments subject to enforcement action by the Planning Authority:

- (a) to its north and east are scattered residential dwellings/structures (the nearest about 30m on the northeast), storage/open storage yards, a restaurant and unused/vacant land. To its immediate southeast is a hobby farm with planning permission (No. A/YL-KTN/520);
- (b) to its south are cultivated agricultural land, open storage yards and vacant land; and
- (c) to its west across a local track are storage/open storage yards, residential dwellings/ structures, cultivated/fallow agricultural land, plant nurseries and unused/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 Departments

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

9.1.1 Comments of the District Lands Officer, Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The Site is accessible from Fung Kat Heung 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 the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no

vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.

- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department does not and will not maintain any access connecting the Site and San Tam Road (Fung Kat Heung Road is not maintained by HyD).
- (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 received in the past 3 years.
- (b) According to the applicant, the proposed use will operate round the clock. The dogs will be kept inside the proposed structure at any time. The proposed structure 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.
- (c) Based on the above, the applicant is advised to properly design and maintain the facilities, e.g. the proposed structure for animal boarding establishment should be enclosed with proper soundproofing materials, and 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” to minimize any potential environmental nuisances. Suitable mitigation measures should also be implemented to minimize potential odour nuisance.

- (d) 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. For the proposed septic tank and soakaway system, 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”.

Landscape

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

- (a) She has some reservation to the application from the landscape planning perspective.
- (b) According to the aerial photos taken from 2009 to 2018, vegetation clearance was made and some structures were created and then demolished within the Site. Based on the latest aerial photo of 2018, the surrounding area of the Site is predominately in rural fringe landscape character, composed of agricultural land, temporary structures, vacant land and scatter tree groups. The proposed use is considered not incompatible with existing landscape setting.
- (c) Based on the site visit in April 2019, part of the Site was covered by sand and bitumen. No existing tree was found within the Site. The proposed development, if approved, would set an undesirable precedent for site modification within “AGR” zone prior to application, and the cumulative effect of which would result in a general degradation of the agricultural land and rural environment of the area.
- (d) In view that there is inadequate space for meaningful landscape, it is considered not necessary to impose landscape condition, should the application be approved by the Board.

Agriculture

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

- (a) Upon site inspection, active agricultural activities are found in the vicinity and agricultural infrastructures are available. The Site can be used for agricultural activities such as greenhouses, plant

nurseries, etc. As the Site possess potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

- (b) The address of the Site does not associate with any license granted by his department, nor his department received any application regarding the address. Should the application be approved, the applicant is reminded that 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 License from his department.

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 from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission and implementation of a 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 in-principle objection 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 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 the 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 and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person 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) If any Food and Environmental Hygiene Department (FEHD)'s facility is affected by the development, FEHD's prior consent must be obtained. Re provisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. Besides, the project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the re provisioned facilities to FEHD.

- (b) Proper licence / permit issued by his department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public and the operation of any business should not cause any obstruction.
- (c) If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/ trading activities, the applicant should handle on their own/at their expenses.
- (d) Any animal carcass/ parts shall be properly wrapped or bagged before disposal.

District Officer's Comments

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

His office has not received any locals' comment on the application and he has no comment from departmental point of view.

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

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

10. Public Comments Received During Statutory Publication Period

On 26.3.2019, the application was published for public inspection. During the first three weeks of the public inspection period, which ended on 16.4.2019, six comments from The Hong Kong Bird Watching Society, World Wide Fund For Nature Hong Kong, Designing Hong Kong and three individuals (**Appendices III-1 and III-6**) objecting to the application were received mainly on the grounds that the proposed development is not in line with the planning intention of the "AGR" zone; the Site is subject to enforcement action and may involve "destroy first, develop later" case; approval of the application would set undesirable precedent to future development and result in degradation of the quality of agricultural land; there is no information on traffic, noise and sewerage aspects for the proposal; the Site is too small for animal boarding establishment and will not be used for the proposed use; and there is no demand for animal boarding establishment and such use should be controlled.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 5 years at a Site zoned “AGR”. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not entirely 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 possesses potential for agricultural rehabilitation. However, the proposed animal boarding establishment is temporary in nature, approval of the application on a temporary basis for a period of 5 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development comprising a two-storey structures with a total floor area of about 72m² and is considered not incompatible with the surrounding areas which are mixed with residential dwellings/structures, plant nurseries, cultivated/ fallow agricultural land, hobby farms, open storage/storage yards, and vacant/unused land. Although there are sensitive receivers, i.e. residential structures/dwellings in the vicinity of the Site (the nearest is 30m on its northeast) (**Plan A-2**), the applicant stated that all dogs will be kept inside the temporary structure which are enclosed by steel sheets with cotton acoustic panels and provided with 24-hour air condition and ventilation system, and no public announcement system and whistle blowing will be used at the Site. DEP has no objection to the application.
- 11.3 Relevant departments consulted, including C for T, CE/MN of DSD, D of FS and DEP (except DAFC and CTP/UD&L of PlanD) have no adverse comment on the application. CTP/UD&L, PlanD has reservation as approval of the application would set an undesirable precedent for site modification within “AGR” zone prior to application, and the cumulative effect of which would result in a general degradation of the agricultural land and rural environment of the area. Nevertheless, she considered that the proposed development is not incompatible with the existing landscape setting. To minimise any possible environmental nuisance, approval conditions restricting the operation hours, outdoor animal activities and the use of public announcement system or whistle blowing on the Site are recommended in paragraph 13.2 (a) to (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to adopt the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. To address the technical requirements of C for T, CE/MN of DSD and D of FS, approval conditions in paragraph 13.2 (d) to (h) below are recommended.
- 11.4 There are 26 similar applications within the same “AGR” zone. Only one application was rejected by the Committee mainly on the grounds that concerned

departments including DEP did not support the application and there was no information to demonstrate the proposed development would not cause adverse environmental and drainage impacts on the surrounding areas. The other 25 similar applications were approved with conditions by the Committee from 2005 to 2019 mainly on similar reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; and the developments were not incompatible with surrounding land uses. In the current application, DEP does not raise adverse comment on the proposed development. In this regard, approval of the current application is in line with the Committee’s previous decisions.

- 11.5 Six public comments were received during the statutory publication period objecting to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone and will have adverse impacts on traffic, noise and sewerage aspects and setting undesirable precedent. In this regard, temporary approval would not jeopardize the long-term planning intention and C for T and DEP have no adverse comment on the application. The planning assessments and considerations 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 5 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 5 years until 17.5.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 10:00a.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, as proposed by the applicant, at all times during the planning approval period;
- (c) no public announcement system, portable loud speaker, or 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) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the submission of drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.11.2019;
- (f) in relation to (e) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.2.2020;
- (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 17.11.2019;
- (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 17.2.2020;
- (i) if any of the above planning conditions (a), (b), (c) or (d) 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 conditions (e), (f), (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 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**.

- 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 a temporary basis.

13. Decision Sought

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

14. Attachments

Appendix I	Application Form with supplementary planning statement and plans received on 18.3.2019
Appendix Ia	FI received on 8.5.2019
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 statutory publication period
Appendix IV	Advisory clauses
Drawing A-1	Layout plan
Drawing A-2	Vehicular access plan
Plan A-1	Location plan with similar applications
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MAY 2019**