

APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/652

<u>Applicant</u>	: Mr. LEUNG Tsun Kit Jacky represented by Mr. LEUNG Kin Kwong
<u>Site</u>	: Lots 4 (Part), 5 S.AP and 5 S.BA in D.D. 110, Tai Kong Po, Kam Tin, Yuen Long
<u>Site Area</u>	: 86 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Animal Boarding Establishment (Cattery) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary animal boarding establishment (cattery) for a period of 3 years. According to the OZP, ‘Animal Boarding Establishment’ is a Column 2 use under “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is subject to a previous application for proposed animal boarding establishment which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 24.6.2016 and the planning permission is valid until 24.6.2019. The Site is currently used for the applied use with valid planning permission (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the development involves a two-storey structure with a total floor area of about 55m² for cattery and caretaker’s office with building height not exceeding 6.5m. A private car parking space and mechanical turn table for manoeuvring of car are provided within the Site. No more than 6 cats are accommodated within the Site. The cattery will be enclosed with soundproofing materials with mechanical ventilation and air-conditioning. The cats will be kept inside the enclosed cattery and no cats will stay in the cattery after the operation hours. No sewage will be discharged from the cattery. The operation hours are between 9:00 am and 7:00 pm daily. The applicant advised that no public

announcement system will be used at the Site. The Site is accessible via a local track branching off Kong Tai Road to the south (**Plan A-2**). The site layout plan submitted by the applicant is in **Drawing A-1**.

- 1.3 The current application is same as the last approved application (No. A/YL-KTN/519) in terms of applied use, numbers of structure, total floor area and site layout but with the site area reduced from about 90.5m² to 86m² (i.e. -4.5m²/ -5%).
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form and plans received on 19.3.2019 **(Appendix I)**
 - (b) Supplementary Information (SI) received on 25.3.2019 **(Appendix Ia)** and 27.3.2019 clarifying the site area
 - (c) Further Information (FI) received on 18.4.2019 clarifying **(Appendix Ib)** the traffic arrangement to the Site and fire services installation details
 - (d) FIs received on 6.5.2019 and 7.5.2019 clarifying the **(Appendix Ic)** operation details and in response to departmental comments

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Section 8 of the application form in **Appendix I**. They can be summarized as follows:

The applicant intends to continue to use the Site as cattery and the current application is a renewal of the last approved application No. A/YL-KTN/519. All the approval conditions in the last approved application have been complied with and remain no change.

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

The applicant is one of the “current land owners” and has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting a site notice and notifying the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guideline

The Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. **Background**

The use is not subject to planning enforcement action. Follow-up investigation will be taken upon expiry of the current planning permission if the application is not approved by the Board.

6. **Previous Application**

The Site is the subject of a previous application No. A/YL-KTN/519 for the same use submitted by a different applicant as the current application for a period of 3 years. The application was approved with conditions by the Committee on 24.6.2016 for the reasons that the cattery is small in scale and temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding areas; there was no adverse departmental comment except the Director of Agriculture, Fisheries and Conservation (DAFC) and the Chief Town Planner/Urban Design & Landscape of Planning Department (CTP/UD&L, PlanD); and the technical concerns could be addressed by appropriate approval conditions. Details of the application and its location is shown in **Appendix III** and **Plan A-1**.

7. **Similar Applications**

- 7.1 There are 25 similar applications for temporary animal boarding establishment (No. A/YL-KTN/156, 232, 251, 253, 304, 308, 324, 377, 410, 478, 489, 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 24 applications were approved with conditions by the Committee for 2 to 5 years between 2005 and 2019. Details of these applications are summarized in **Appendix II** while their locations are shown on **Plan A-1**.
- 7.2 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.
- 7.3 Ten applications including 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 further west of the Site were approved with conditions by the Committee for 2 or 3 years between 2005 and 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 applicant 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.

- 7.4 The remaining 14 applications (No. A/YL-KTN/478, 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) for similar reasons 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.
- 7.5 Application No. A/YL-KTN/651 for proposed temporary animal boarding establishment for a period of 5 years located at the further west of the Site (**Plan A-1**) is scheduled for consideration by the Committee at this meeting.

8. The Site and Its Surrounding Area (Plans A-1a to A-4)

8.1 The Site is:

- (a) currently used for the applied use covered by valid planning permission under Application No. A/YL-KTN/519; and
- (b) accessible from Kong Tai Road via a local track.

8.2 The surrounding areas are rural in character predominated by residential structures/dwellings, hobby farms, an animal boarding establishment, open storage yards, workshop and vacant/unused land. The open storage yards, workshop and parking of vehicles are suspected unauthorized developments subject to enforcement action by the Planning Authority (**Plan A-2**):

- (a) to its north (about 50m) is unused land zoned “Conservation Area”;
- (b) to its east and south are farms, hobby farms, open storage yards, residential dwellings/structures and vacant/unused land. Further south is a vegetated knoll; and
- (c) to its west and south-west is an animal boarding establishment with planning permission under Application No. A/YL-KTN/577 and a hobby farm with planning permission under Application No. A/YL-KTN/571. To its further west and southwest are residential structures/dwellings (the nearest about 30m on the west), open storage yard, workshop and vacant/unused land.

9. 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.

10. Comments from Relevant Government Departments

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

Land Administration

10.1.1 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) Within the Site, Lot No, 5 S.AP in D.D. 110 is covered by Short Term Waiver (STW) No. 4851 to permit structures erected thereon for the purpose of “Temporary Animal Boarding Establishment (Cattery)”.
- (c) The Site is accessible from Kong Tai Road via Government Land (GL) and private land. 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 Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should the application be approved, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. The owner(s) of the lot(s) without STW 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 the landlord or lessor at its sole discretion and there is no guarantee that such application(s) 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

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

- (a) He has no comment on the renewal 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 incorporated.
- (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 (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.

10.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) HyD does not and will not maintain any access (including Kong Tai Road) connecting the Site and Chi Ho Road or Kam Tai Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint received concerning the Site in the past three years.
- (b) According to the information provided by the applicant, the cattery will be enclosed by soundproofing materials and provided with mechanical ventilation and air-condition system. The cats will be kept inside the cattery during the operation hours. The cats will not stay in the cattery after operation hours. Public announcement system will not be allowed at the Site and no sewage will be discharged from the cattery.
- (c) Should the application be approved, the applicant is advised to properly design and maintain the facilities 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) The applicant is also reminded to observe the requirements under the Water Pollution Control Ordinance if there is any effluent discharge from the proposed use. It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.

Landscape

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

- (a) She has no objection to the application from the landscape planning perspective.
- (b) The Site is located to the northeast of Tai Kong Po and Kong Tai Road, and at the foothills to the southwest of Lam Tsuen Country Park.
- (c) By comparing the aerial photos taken in 2016 and 2018, there is no significant change in the rural landscape characters where the Site is located. The surrounding area of the Site is composed of temporary structures, open storage yards, and agricultural land and tree groups. The applied use is considered not incompatible with existing landscape setting.
- (d) According to the site visit in April 2019, two nos. of existing trees in good condition were found within the Site. Existing trees and vegetation were observed along the footpaths outside the site boundary. Further adverse landscape impact arising from the renewal of the applied use is not anticipated.
- (e) Should the application be approved, approval condition on maintenance of the existing trees within the Site in healthy condition at all times during the planning approval period should be included.

Agriculture

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

- (a) Considering that the previous application for the same use as the current application was approved, he has no strong view against the application for renewal of planning approval from agricultural point of view.
- (b) The address of the Site does not associate with any license granted by his department, nor have they received any application regarding the Site. 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 Licence from his department.

Drainage

10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) Presumably, the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-KTN/519. He has no in-principle objection to the development.
- (b) Should the application be approved, approval conditions requiring the applicant to maintain the drainage facilities implemented under the previous planning application and to submit record of existing drainage facilities on site should be incorporated in the planning permission.

Fire Safety

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

He has no objection in principle to the application subject to the existing Fire Services Installations and Equipment (FSIs) implemented on the Site be maintained in efficient working order at all times.

Building Matters

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

- (a) 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). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (b) If the existing structures (not being New Territories Exempted House) are erected on leased land without the approval of the BD, they are UBW under the BO and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with 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.

- (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.

Food and Environmental Hygiene

10.1.10 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. Reprovisioning 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 reprovisioned 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

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

He has not received any comments from locals upon close of consultation and has no particular comments on the application.

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

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

11. Public Comment Received During Statutory Publication Period

On 2.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 23.4.2019, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning permission of temporary animal boarding establishment (cattery) for a period of three years at the 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 development is not entirely in line with the planning intention of the “AGR” zone. Nevertheless, the applied cattery is small in scale with a site area of 86m² and DAFC has no strong view on the renewal application. It is considered that temporary approval of application would not jeopardise the long-term planning intention of the “AGR” zone.
- 12.2 The development comprises a two-storey structure of 6.5m with a total floor area of 55m² and is considered not incompatible with the surrounding areas which are rural in character predominated by residential structures/dwellings, hobby farms, an animal boarding establishment, open storage yards, workshops and vacant/unused land. Although there are residential dwellings/ developments in the vicinity of the Site (the nearest about 30m on the west) (**Plan A-2**), the applicant stated that the cats will be kept inside the cattery which is enclosed with soundproofing material and air-conditions and mechanical ventilation. Also, no cats will stay in the cattery after the operation hours and no public announcement system will be used at the Site. Besides, there is no public comment on the application received during the statutory publication period and no environmental complaint concerning the Site was received by DEP in the past three years. DEP has no adverse comment on the application.
- 12.3 The application is in line with the TPB PG-No. 34C in that all the approval conditions under the last approved application No. A/YL-KTN/519 have been complied with. The current application is same as the last application in terms of applied use, numbers of structure, total floor area and site layout but with the site area reduced from about 90.5m² to 86m² (i.e. 4.5m²/ -5%). There is also no major change in planning circumstances since the last approval. In this regard, favourable consideration can be given to the renewal application.
- 12.4 Relevant departments consulted including C for T, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours, outdoor animal activities and prohibition of use of public announcement system on the Site are recommended in paragraphs 13.2 (a) and (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'. The technical requirements of C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions (d) to (h) in paragraph 13.2 below.

- 12.5 There are 25 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 24 similar applications were approved with conditions by the Committee between 2005 and 2019 mainly for 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 development. In this regard, approval of the current application is in line with the Committee's previous decisions.
- 12.6 No public comment was received during the statutory publication period.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department has no objection to the temporary animal boarding establishment (cattery) for a period of 3 years.
- 13.2 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, and be renewed from 25.6.2019 until 24.6.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00p.m. and 9:00a.m., 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 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 existing trees within the Site shall be maintained at all times during the planning approval period;

- (f) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the existing fire services installations and equipment implemented on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of records of the existing drainage facilities on the Site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 25.9.2019;
- (i) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) 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 the above planning condition (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

[The above approval conditions are the same as those under planning permission for pervious application No. A/YL-KTN/519, except replacements of approval conditions regarding submission and implementation of the landscape, drainage and FSIs proposals by maintenance of existing trees, drainage and FSIs facilities and submission of record of existing drainage facilities according to CTP/UD&L of PlanD's, D of FS's and CE/MN, DSD's comments, and addition of conditions (b) and (c) to minimize possible environmental nuisances.]

Advisory Clauses

The recommended advisory clauses are attached at **Appendix V**.

- 13.3 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 to justify a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant renewal of the planning approval.

- 14.2 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.
- 14.3 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.

15. Attachments

Appendix I	Application form with plans received on 19.3.2019
Appendix Ia	SIs received on 25.3.2019 and 27.3.2019
Appendix Ib	FI received on 18.4.2019
Appendix Ic	FIs received on 6.5.2019 and 7.5.2019
Appendix II	Relevant extracts of Town Planning Board Guidelines for ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB PG-No. 34C)
Appendix III	Previous application covering the Site
Appendix IV	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with Similar and Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**