

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/32

- Applicant** : Mr. YU Kim-ming represented by Mr. WONG Sun-wo William
- Site** : Lot 268 S.A in D.D. 80 and Adjoining Government Land, Lin Ma Hang Road, Ta Kwu Ling North, New Territories
- Site Area** : 1,052 m² (about) (including Government land of about 220 m²)
- Land Lease** : (i) Block Government lease (demised for agricultural use) (about 79.1% of the Site)
(ii) Government land (about 20.9% of the Site)
- Plan** : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
- Zoning** : “Recreation” (“REC”)
- Application** : Proposed Temporary Animal Boarding Establishment with Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary animal boarding establishment with ancillary office for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “REC” on the approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “REC” zone requiring planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant, the proposed development involves two structures with a total floor area of about 610m² (**Drawing A-1**). The 1-storey structure (with a floor area of about 580m² and 6m in height) would be used for temporary animal boarding establishment purpose. The 2-storey structure (with a floor area of about 30m² and 4.5m in height) located at the north-eastern part of the Site near the entrance would be used as a temporary ancillary office. Two private car parking spaces and one loading/unloading space for light goods vehicle are provided within the Site. The Site is accessible via Lin Ma Hang Road (**Plan A-2**). The kennel can accommodate a maximum of 90 dogs. The proposed operation hours are from 8:00 a.m. to 8:00 p.m. daily. The site layout plan, drainage proposal and landscape proposal submitted by the applicant are at **Drawings A-1 to A-3** respectively. The Site is currently largely covered by vacant structures (**Plans A-2 and A-4b**).

- 1.3 In support of the application, the applicant has submitted the application form with attachments on 3.2.2020 (**Appendix I**).
- 1.4 In light of the special work arrangement for Government departments due to the novel coronavirus infection, the meeting originally scheduled for 3.4.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 7 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) the applicant is a volunteer to support stray dogs. The kennel currently used for accommodating the dogs is no longer available as it is considered as an unauthorized development subject to enforcement/reinstatement action;
- (b) the Site falls within an area zoned “REC” and ‘Animal Boarding Establishment’ use is a Column 2 use requiring planning permission from the Board; and
- (c) a maximum of 90 dogs will be accommodated within the Site. The Site is far away from residential area and therefore it is suitable for animal boarding establishment use.

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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by taking reasonable steps to obtain the consent of or give notification to the owner. For the adjoining Government land, TPB GB-No.31A is not applicable. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advises that the Site is currently not subject to any active enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorised development under the Town Planning Ordinance, enforcement action will be taken.

5. Previous Application

- 5.1 The Site is the subject of a previous application No. A/NE-TKLN/20 for temporary recycling centre for scrap metal and stainless steel with ancillary office for a period of 3 years which was rejected by the Committee on 31.5.2019 on the consideration that the proposed development was not in line with the planning intention of the “REC” zone; the applicant failed to demonstrate that the proposed development would not cause

adverse traffic impact on the surrounding areas; and the setting of undesirable precedent.

5.2 Details of the previous application is summarized at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application for temporary animal boarding establishment within the “REC” zone.

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 and A-4b)

7.1 The Site:

- (a) comprises two adjoining temporary structures, including a 1-storey largely vacant temporary structure and a 2-storey converted container structure used as office (**Plans A-4a and A-4b**); and
- (b) is accessible via Lin Ma Hang Road (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate northwest is an area used for storage with a converted container located in close proximity to the Site (**Plan A-4b**);
- (b) to its further north and northwest are some unused land and fallow agricultural land; and
- (c) to its southeast and beyond are Lin Ma Hang Road and some vacant and fallow agricultural land. A vacant domestic structure is located to the southeast of the Site (**Plan A-2**).

8. Planning Intention

The planning intention of the “REC” zone is intended primarily for low-density recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the low-density recreational developments may be permitted subject to planning permission.

9. Comments from Relevant Government Departments

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

Land Administration

- 9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD)
- (a) the Site comprises private Lot 268 S.A in D.D. 80 and adjoining Government land (GL) which is an Old Schedule lot held under the Block Government lease (demised for agricultural use) without any guarantee of right of access. The applicant should make its own arrangement, and there is no guarantee that any adjoining GL will be allowed for the vehicular access of the proposed use;
 - (b) the existing structures on Site were erected without approval from his office and are not acceptable under the lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
 - (c) the GL adjoining the Site is occupied without approval from his office. His office reserves the right to take necessary land control actions against the unauthorized occupation of GL; and
 - (d) should the application be approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW and STT are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by his office.

Traffic

- 9.1.2 Comments of the Commissioner for Transport (C for T):
- (a) he does not support the application from the traffic engineering perspective;
 - (b) the applicant shall justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site;
 - (c) the applicant should advise the width of the vehicular access;
 - (d) the vehicular access should be no less than 7.3m wide;
 - (e) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis;
 - (f) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site;

- (g) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (h) the vehicular access between the Site and Lin Ma Hang Road is not managed by his department. The applicant should seek comment from the responsible party.

Project Interface

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

- (a) he has reservation on the application;
- (b) based on the information submitted, the Site would encroach onto the project limit of the PWP Item No. 854TH “Widening of Eastern Section of Lin Ma Hang Road (LMHR) between Tsung Yuen Ha and Lin Ma Hang” undertaken by his department;
- (c) the construction works for PWP Item No. 863TH “Widening of Western Section of LMHR between Ping Yuen River and Ping Che Road” has commenced in February 2020 and is anticipated to be completed by end of 2023. Whilst the proposed development may attract traffic travelling along the Western Section of the LMHR, the applicant should advise if it will cause any adverse traffic impact to both sections of LMHR; and
- (d) adequate drainage measures should be provided to prevent surface water running from the application site to the nearby public roads and drains.

Environment

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

- (a) he has reservation on the application;
- (b) it is noted that a vacant domestic structure is about 52m to the southeast of the Site. As potential noise nuisance from dog barking, whistle-blowing, or when giving orders to pets, etc. at the outdoor areas and/ or during sensitive hours would be a concern to nearby sensitive receivers, the applicant has not provided information about the time period that the dogs would stay in the kennels and whether public announcement system and whistle blowing would be allowed at the Site;
- (c) should the application be approved, an approval condition on the submission and implementation of noise mitigation measures is recommended, e.g. the kennels should be enclosed with proper soundproofing materials and provided with 24-hour mechanical ventilation and air-conditioning (MVAC) system, which should be located away from adjacent sensitive receivers and the proposed structures;

- (d) it is noted that there is no existing public sewer in the vicinity of the Site at this stage. Should there be any sewage/wastewater arising from the operation of the applied use, effective sewage/wastewater treatment and disposal measures should be proposed. If septic tank and soakaway is proposed, its design and construction should follow the requirements of ProPECC 5/93. The Precolation Test and Minimum clearance requirements stated in ProPECC 5/93 should be fully complied with and duly certified by consulting engineer/ Authorised Person (AP); and
- (e) given the subject application is for temporary use, the applicant is advised to follow the EPD's latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)" to minimize any potential environmental and odour nuisance.

Landscape

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

- (a) she has some reservations on the application from the landscape planning perspective;
- (b) based on aerial photo of 2018 (**Plan A-3**), the Site is situated in an area of rural inland plains landscape character surrounded by undisturbed grassland and clusters of trees. Majority of the Site and its surroundings were observed to be hard paved with a structure erected within the Site, the proposed use is considered not entirely incompatible with the surrounding environment. However, according to record, no similar application had previously been approved by the Board within the same "REC" zone. The proposed development if approved, would set an undesirable precedent of landscape character alteration, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment; and
- (c) it is noted that vegetation buffer is observed between Lin Ma Hang Road and the Site, should the application be approved, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Agriculture and Licensing

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

- (a) the subject address does not associate with any licence granted by his department, nor has he received any application regarding this address. 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. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap. 139I Public Health (Animals) (Boarding Establishment)

Regulations must always fulfil the criteria listed in the Regulations. The dogs kept by the applicant should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and the applicant is reminded to observe Cap 169 Prevention of Cruelty to Animals Ordinance at all time; and

- (b) he has no comment on the application from nature conservation point of view as the Site is paved.

Drainage

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

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, an approval condition for the submission and implementation of a drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent area. In their submission, the applicant requires assessing and identifying the project's potential drainage impacts and demonstrate in their submission with the implementation of necessary mitigation measures, the project will not cause an unacceptable increase in the risk of flooding in areas upstream of, adjacent to or downstream of the development; and
- (c) the Site is in an area where no public sewerage connection is available.

Fire Safety

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

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) being provided to satisfaction of his department;
- (b) in consideration of the design/ nature of the proposal, FSIs are anticipated to be required. The applicant should be advised that 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; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (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):

- (a) he has no objection to the application;

- (b) existing water mains inside the Site will be affected (**Plan A-2**). The applicant should be advised to either divert or protect the water mains found on Site. His detailed comments are at **Appendix IV**; and
- (c) for provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Environmental Hygiene

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

- (a) he has no objection to the application;
- (b) the operation of the proposed temporary animal boarding establishment and ancillary office should not cause any environmental hygiene problems at and in the vicinities of the Site; and
- (e) the operator of the Site is responsible for the removal and disposal of any trade waste generated from the commercial activities at their expenses.

Building Matters

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

- (a) there is no record of approval by the Building Authority (BA) for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the proposed use; and
- (b) there is also no record of submission of the proposed building/ structure to the BA for approval. For any new proposed buildings, his advisory comments are at **Appendix IV**.

District Officer's Comments

9.1.12 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) he has consulted the locals regarding the application. The 1st Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIR) of Heung Yuen Wai and Resident Representative (RR) of Tsung Tuen Ha object to the application mainly on the grounds that the proposed development is not in line with the planning intention of "REC" zone; the proposal would cause interface problem with Lin Ma Hang Road widening project; the proposed development would cause adverse impacts on noise, traffic, road safety and environmental hygiene to the surrounding areas; and the proposed development would

affect the fung shui of the Permitted Burial Ground located to the northwest of the Site;

- (b) the incumbent North District Council (NDC) member of the subject constituency has no comment on the application; and
- (c) the RR of Heung Yuen Wai does not reply to the consultation.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (b) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (c) Division Commander (Ta Kwu Ling), Hong Kong Police Force (DVC TKLDIV, HKPF).

10. Public Comments Received During Statutory Publication Period

On 18.2.2020, the application was published for public inspection. During the statutory public inspection period, three public comments were received (**Appendix III**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application while two public comments from the WWF-HK and an individual object to the application mainly on the grounds that it is a ‘destroy first, apply later’ case; the proposal is not in line with planning intention of “REC” zone; and the approval of application will set an undesirable precedent and will further degrade the surrounding environment.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary animal boarding establishment with ancillary office in an area zoned “REC”, which is intended primarily for low-density recreational developments for the use of the general public and the development of active and/or passive recreation and tourism/eco-tourism is encouraged. The development is not in line with the planning intention of the “REC” zone. The applicant has not provided strong planning justifications in the submission for a departure from the planning intention of the “REC” zone, even on a temporary basis.
- 11.2 The Site is situated in an area of rural inland plains landscape character surrounded by undisturbed grassland and clusters of trees. The Site is mainly hard paved and the proposed use is considered not entirely incompatible with the surrounding environment. CTP/UD&L of PlanD has reservation on the application from landscape planning perspective. Approval of this application will set an undesirable precedent of landscape character alteration and would encourage more similar development within the “REC” zone. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment.
- 11.3 C for T does not support the application as the applicant fails to justify the adequacy of the parking spaces and loading/unloading spaces and has not provided information on

the relevant satisfactory management/ control measures, traffic arrangement and vehicle manoeuvring within the Site, and provision and management of pedestrian facilities. Also, CHE/NTE of HyD has reservation on the application and advises that the Site would encroach onto the project limit of the proposed road widening of eastern section of Lin Ma Hang Road (LMHR). While the construction of the road widening of western section of LMHR has commenced in February 2020, the applicant has not provided any information to demonstrate that the proposed development would not cause adverse traffic impact to the whole section of LMHR. As such, the applicant fails to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding area.

- 11.4 DEP has reservation on the application as there is a vacant domestic structure located about 52m to the southeast of the Site (**Plan A-2**). There is no information in the submission regarding noise mitigation measures at the outdoor areas and/ or during sensitive hours. The applicant fails to demonstrate that the proposed development would not generate adverse environmental impact on the surrounding area.
- 11.5 Other relevant Government departments consulted, including DAFC, D of FS, CE/MN of DSD, CE/C of WSD and DFEH, have no adverse comment on/no objection to the application.
- 11.6 Regarding the adverse public comments as detailed in paragraph 10 and the local objections conveyed by DO(N) of HAD in paragraph 9.1.12 above, the relevant Government departments' comments and the planning assessment above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and taking into account the local objection conveyed by DO(N) of HAD and public comments in paragraphs 9.1.12 and 10 above respectively, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the "Recreation" zone, which is intended primarily for low-density recreational developments for the use of the general public and the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate in the submission that the proposed development would not cause adverse traffic impact on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the "REC" zone. The cumulative effect of approving such applications would result in a general degradation of the 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 **26.5.2023**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m. from Mondays to Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the submission of a 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 26.11.2020;
- (c) in relation to (b) 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 26.2.2021;
- (d) the submission of proposals for fire service installations and water supplies for firefighting 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 26.11.2020;
- (e) in relation to (d) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 26.2.2021;
- (f) the submission of traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 26.11.2020;
- (g) in relation to (f) above, the implementation of traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 26.2.2021;
- (h) the submission of noise mitigation measures within 6 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 26.11.2020;
- (i) in relation to (h) above, the implementation of noise mitigation measures identified therein within 9 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 26.2.2021;
- (j) if the planning condition (a) above 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; and
- (k) if any of the above planning conditions (b), (c), (d), (e), (f), (g), (h) or (i) are 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.

Advisory Clauses

The recommended advisory clauses are 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 the 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 3.2.2020
Appendix II	Previous Application
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Drainage Proposal
Drawing A-3	Landscape Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**