

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/465

- Applicant** : Ms. WONG So Yuk
- Site** : Lot 2030 in D.D. 117 and Adjoining Government Land (GL), Tai Tong, Yuen Long, New Territories
- Site Area** : 716 m² (about) (including about 159m² of GL)
- Lease** : New Grant Agricultural Lot
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Recreation” (“REC”)
- Application** : 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 temporary animal boarding establishment for a period of 5 years (**Plan A-1**). According to the Notes of the OZP for the “REC” zone, ‘Animal Boarding Establishment’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use without valid planning permission (**Plans A-2, A-4a to A-4c**).
- 1.2 According to the applicant, the animal boarding establishment is operated by HK Paws Guardian which provides temporary shelter for stray dogs. After being rescued, the dogs would undergo medical treatments on the Site to prepare them for adoption. About 6 to 8 volunteers would work on Site, while 1 to 2 volunteers may stay on Site overnight to tend to any emergencies. There are currently about 110 dogs on Site. Plans showing the vehicular access and site layout submitted by the applicant are at **Drawings A-1 to A-4**.
- 1.3 The major development parameters of the application are summarised as follows:

Site Area	716 m ² (about) (including about 159m ² of GL)
Total Floor Area (Non-domestic)	782 m ² (about)

No. and Height of Structures	4 - 2 for animal boarding with treatment/operation room and ancillary storage (4.8m, 2 storeys) - 1 for animal boarding and ancillary storage (4.8m, 1 storey) - 1 for rest area for volunteers (2.4m, 1 storey)
Maximum Capacity	150 Dogs
Parking Spaces	4 (for private cars)
Loading/ Unloading Spaces	--
Operation Hours (period when volunteers/dogs may enter/exit the Site)	24 hours (10:00 a.m. to 8:00 p.m. Mondays to Fridays, and 10:00 a.m. to 10:00 p.m. on Weekends and Public Holidays)

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

- (a) Application Form with plans received on 11.4.2019 (**Appendix I**)
- (b) Further Information dated 21.6.2019 providing clarification on the operation mode and responding to departmental comments
[accepted and exempted from publication and recounting requirements]
- (c) Further Information dated 6.8.2019 clarifying activities on Site
[accepted and exempted from publication and recounting requirements]

1.5 On 31.5.2019, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer a decision on the application for a period of two months, as requested by the applicant. On 21.6.2019, Further Information (**Appendix Ia**) was received and the application is submitted to the Committee for consideration at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in section 9 of the application form (**Appendix I**) and Further Information at **Appendices Ia and Ib**. They can be summarised as follows:

- (a) The animal boarding establishment, namely HK Paws Guardian, provides much needed temporary shelter for dogs that have been abandoned due to illness/injury, as well as abandoned when warehouses or open storage yards are closed down. Medical treatments will be provided to the dogs to prepare them for adoption. For those dogs that are not adopted, they will stay until they pass away. The volunteers have rescued many abandoned dogs in the past and would need the premises to continue their good deed.

- (b) Most of the volunteers will commute to and from the Site by minibus. The expected traffic generation will be 2-4 times per day. No volunteers and dogs are expected to enter/exit the Site between 8:00 p.m. to 10:00 a.m. from Mondays to Fridays and 10:00 p.m. to 10:00 a.m. on weekends and public holidays, except for emergencies. Only private cars will be parked on the Site.
- (c) The operation is well managed and the volunteers are well trained. The structures will be totally enclosed and equipped with exhaust fans, electric fans and air conditioners. The applicant pledges that no public announcement system and whistle blowing will be allowed at the Site. The dogs are not allowed to walk outside freely; each volunteer will walk one dog with leash at a time. Plastic bags will be used to collect any excrement.

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

The applicant is the sole “current land owner” of the non-GL part of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action against unauthorised development (UD) involving use for animal boarding establishment. Enforcement Notice (EN) was issued to the concerned parties on 14.12.2018 requiring discontinuation of the UD. Upon expiry of the EN, the UD on site has not been discontinued. Further enforcement action is being considered for the case.

5. Previous Application

The Site was the subject of one previous application (No. A/YL-TT/15) covering a much larger site for Rural Theme Park that was approved with conditions on review by the Board on 31.1.1997 for the reasons that the proposed development was compatible with the planning intention; a large portion of the vegetation was preserved and the agricultural activities will be retained; the proposed development was compatible with the surrounding area; there was no adverse traffic and environmental impact; and other technical issues and requirements were not insurmountable. The proposal had not commenced and the permission lapsed on 1.2.1999. Details of the application are summarised in **Appendix II** and the site boundary is shown on **Plan A-1**.

6. Similar Application

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

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

7.1 The Site is:

- (a) accessible from Tai Tong Shan Road to its east via a local track;
- (b) paved; and
- (c) occupied by the applied use without valid planning permission.

7.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) comprises predominately open storage yards intermixed with residential structures, parking of vehicles, a food factory, recreation facilities, agricultural land, ponds, greenhouses and vacant land;
- (b) there are residential structures in the vicinity of the Site with the nearest one located about 25m to the north (**Plan A-2**);
- (c) to the further south is the Tai Tong Organic EcoPark (also known as Tai Tong Lychee Valley) (**Plan A-3**); and
- (d) the open storage yards, food factory and parking of vehicles in the vicinity of the Site are mostly suspected UD subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “REC” zone is primarily for 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 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 and public comments, where relevant, are summarised as follows:

Land Administration

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

- (a) The Site comprises GL and Lot No. 2030 in D.D. 117 held under New Grant No. 19 for agricultural purpose.
- (b) No permission is given for occupation of GL (about 159m² subject to verification) included in the Site. Attention should be drawn to the fact that any occupation of GL without Government’s prior approval is not allowed.

- (c) The Site is accessible from Tai Tong Shan Road via GL and private land. Her 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 does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Her office will not consider to regularise the existing structures erected on the lot which are subject to the Building Authority's (BA) order dated 18.10.2018 under section 24(1) of Cap. 123 as the BA has ordered the lot owner to demolish two structures erected on and over the lot.
- (f) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a direct grant Short Term Tenancy for use of the Site. Applications for any of the above will be considered by her department 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 her department.

Traffic

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

- (a) He has no comment on the Further Information (**Appendix Ia**).
- (b) The applicant is reminded that sufficient space within the Site should be provided for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.
- (c) The land status of the access road/path/track leading from the Site from Tai Tong Shan Road should be checked with the lands authority.
- (d) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.

9.1.3 Comments of the Chief Highway Engineer/New Territories West,

Highways Department (CHE/NTW, HyD):

- (a) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Shan Road.

Licensing

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

- (a) The subject address does not associate with any licence granted by her department, and no application was received regarding this address.
- (b) 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 her department. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap 139I must always fulfil the criteria listed in the Regulations.
- (c) On the other hand, 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 times.
- (d) Should the application be approved, the applicant should adopt necessary measures to avoid causing pollution or disturbance to the adjacent watercourse during operation.

Environmental Hygiene

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

- (a) His department's facilities will not be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) Proper licence/permit issued by his department is required if there is any catering service/activities regulated by him under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.
- (c) For any waste generated from the such activity/operation, the

applicant should arrange disposal properly at their own expenses.

- (d) Any animal carcass/parts shall be properly wrapped or bagged before disposal.

Environment

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

- (a) There has been no substantiated environmental complaint concerning the Site received in the past 3 years.
- (b) Given the nature of the proposal, potential noise nuisance as well as odour from the proposed use could be a concern if there are sensitive receivers nearby and if the facilities are not properly designed and maintained.
- (c) 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” (Code of Practice) to minimise any potential environmental nuisance. Suitable mitigation measures should also be implemented to minimise potential noise and odour nuisance. In particular, to minimise potential noise nuisance, whistle blowing and public announcement system should not be allowed. The applicant should also be reminded of his obligation to meet all statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures.
- (d) Moreover, 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 PN 5/93 “*Drainage Plans subject to Comment by the Environmental Protection Department*”.
- (e) With respect to the public concerns on the environmental issues arising from the proposed development (**Appendix III-1**), he would like to remind that it is the obligation of the applicant to comply with all relevant pollution control ordinances in Hong Kong. In addition, the facilities should be properly designed and maintained to minimise any potential environmental nuisance, e.g. the proposed structures for animal boarding establishment should be enclosed with provision of 24-hour mechanical ventilation and air conditioning system.

Landscape

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

- (a) With reference to her site records and aerial photo of 2018 (**Plan A-3**), the Site is hard paved and mainly occupied by temporary structures. The Site is situated in an area of rural landscape character. The proposed use is not incompatible with the surrounding landscape character. Hence she has no objection from the landscape planning perspective.
- (b) In consideration that the Site is not facing any prominent public frontage and that there is limited space available for landscape planning, imposition of a landscape condition is considered not necessary should the application be approved by the Board.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions should be stipulated 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.

Fire Safety

9.1.9 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 (FSI) being provided to his satisfaction. He also has no comment on the public comment (**Appendix III-1**) received.
- (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. In addition, the applicant should be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) 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

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

- (a) As there is no record of approval by the BA for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorised building works (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) 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 Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (e) 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.
- (f) 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 B(P)R at the building plan submission stage.
- (g) If the proposed use under application is subject to issue of a license, the applicant should be 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.

District Officer's Comments

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

Local consultation had been completed. Her office has not received any comment from the village representatives in the vicinity regarding the application.

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

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

10. Public Comment Received During the Statutory Publication Period

On 23.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.5.2019, two public comments were received. The Shap Pat Heung Rural Committee (**Appendix III-1**) objected to the application on the grounds of noise disturbance from dog barking; air pollution/fire safety concerns due to alleged burning of waste at the Site; incompatibility with nearby recreational uses; public safety concerns due to alleged stray dogs without being kept on leash; hygiene concerns due to dog fouling; the vehicular access would trespass other private land (**Plan A-3**); and potential animal cruelty due to cramped conditions of the operation. One member of the public (**Appendix III-2**) raised concerns on the licencing arrangement of the operation and potential animal cruelty and water/land contamination arising from the operation.

11. Planning Considerations and Assessments

11.1 The subject application is for temporary animal boarding establishment for a period of 5 years at a site zoned "REC" on the OZP. Although the applied use is not entirely in line with the planning intention of the "REC" zone, which is primarily intended for recreational developments for the use of the general public and the development of active and/or passive recreation and tourism/eco-tourism, nevertheless, there is no known programme for long-term development on the Site. While there is one previous application for comprehensive rural theme park covering a much larger site at the subject "REC" zone (Application No. A/YL-TT/15), the development was not implemented and the permission has since lapsed on 1.2.1999. Besides, the Site is located at the northern part of the "REC" zone and would not affect the integrity of the "REC" zone. Approval of the current application on a temporary basis would not jeopardise the long-term planning intention of the "REC" zone.

11.2 The Site is accessible via a local track connecting to Tai Tong Shan Road to its

east. The proposed development is not entirely incompatible with the surrounding area which comprises mainly open storage yards intermixed with some scattered residential structures, food factory, parking of vehicles, agricultural land, and vacant land (**Plan A-2**). Although there are residential structures nearby (with the nearest one located about 25m to its north), the proposed animal boarding establishment would be fully enclosed and no adverse environmental impact on the surrounding area is envisaged.

- 11.3 Relevant government departments consulted, including DAFC, DFEH, DEP and C for T, have no adverse comment on the application. The proposed development is unlikely to cause significant adverse traffic and environmental impacts on the surrounding areas. Besides, no substantiated environmental complaints pertaining to the Site was received by DEP in the past three years and there is no prosecution or complaint regarding animal cruelty received by DAFC. To address the technical requirements of concerned government departments and public concerns, relevant approval conditions are recommended in paragraph 12.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the relevant mitigation measures and requirements in the latest Code of Practice in order to minimise any potential environmental impact, to keep the Site clean and tidy at all times and to note departments' comments regarding compliance with relevant ordinances.
- 11.4 Two public comments were received on the application during the statutory publication period as summarised in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11, and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 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 16.8.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation (except overnight animal boarding) is allowed on the Site between 8:00 p.m. and 10:00 a.m. from Mondays to Fridays, and 10:00 p.m. and 10:00 a.m. on Saturdays, Sundays and Public Holidays, as proposed by the applicant, during the planning approval period;
- (b) all animals shall be kept inside the enclosed animal boarding establishment on the Site between 8:00 p.m. and 10:00 a.m. from Mondays to Fridays, and 10:00 p.m. and 10:00 a.m. on Saturdays, Sundays and Public Holidays, as proposed by the applicant, during the

planning approval period;

- (c) no public announcement system and whistle blowing, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (d) only private cars, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of 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 16.2.2020;
- (g) in relation to (f) above, the implementation of the 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 16.5.2020;
- (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 a 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 16.2.2020;
- (j) in relation to (i) above, the implementation of the 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 16.5.2020;
- (k) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (l) if any of the above planning conditions (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.

Advisory clauses

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

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

the development is not in line with the planning intention of the “REC” zone which is primarily intended for recreational developments for the use of the general public and development of active and/or passive recreation and tourism/eco-tourism. No strong planning justification has been given in the submission to justify 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 received on 11.4.2019
Appendix Ia	Further Information dated 21.6.2019 providing clarification on the operation mode and responding to departmental comments
Appendix Ib	Further Information dated 6.8.2019 clarifying activities on Site
Appendix II	Previous Application covering the Application Site
Appendices III-1 to III-2	Public Comments Received During Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawings A-1 to A-2	Vehicular Access Plan
Drawing A-3	Site Layout Plan (Ground Floor)
Drawing A-4	Site Layout Plan (First Floor)
Plan A-1	Location Plan with Previous Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**