

REVIEW OF APPLICATION NO. A/YL-PN/55
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Animal Boarding Establishment for a Period of 3 Years
in “Agriculture” Zone and an area shown as ‘Road’,
Government Land in D.D. 135, Sheung Pak Nai, Yuen Long**

1. Background

- 1.1 On 7.6.2018, the applicant, Annie’s Lane Dog Sanctuary Association Limited represented by Harvest Surveyors Limited, sought planning permission for temporary animal boarding establishment for a period of three years under s.16 of the Town Planning Ordinance (the Ordinance) at the application site (the Site). The Site falls within an area zoned “AGR” (about 99.7%) with a minor portion straddling on an area shown as ‘Road’ (about 0.3%) on the approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9 (**Plan R-1**).
- 1.2 On 8.3.2019, the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and
 - (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications for other developments within the “AGR” zone, the cumulative effect of which will result in a general degradation of the rural environment.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-PN/55B **(Annex A)**
 - (b) Extract of minutes of the RNTPC Meeting held on 8.3.2019 **(Annex B)**
 - (c) Secretary of the Board’s letter dated 22.3.2019 **(Annex C)**

2. Application for Review

On 11.4.2019, the applicant, under section 17(1) of the Ordinance submitted a letter for a review of the Committee's decision to reject the application (**Annex D**). In support of the review, the applicant submitted the following documents:

- (a) Letter of 11.4.2019 from the applicant applying for review (**Annex D**)
- (b) Letter of 20.5.2019 from the representative of the applicant (**Annex E**) providing written justification for the review
[Further information (FI) accepted but not exempted from publication and recounting requirement]
- (c) Letter of 18.6.2019 from the applicant providing written (**Annex F**) justification for the review
[FI accepted and exempted from publication and recounting requirement]

3. Justifications from the Applicant

The justifications/responses put forward by the applicant in support of the review application are detailed in the letters at **Annexes E and F**. They are summarised as follows:

- (a) The Committee has approved three applications for temporary animal boarding establishment (nos. A/YL-KTN/324, A/YL-KTN/410 and A/YL-KTN/489) in "AGR" zone for which the planning intention is primarily to retain and safeguard agricultural land for agricultural purposes. It is unreasonable to consider that the approval of the subject application would set an undesirable precedent for similar applications for other developments within the "AGR" zone.
- (b) The development would not affect the surrounding fallow/active farmland as the Site is situated close to access road and surrounded by abandoned fish ponds.
- (c) The proposed septic tank and soakaway pit will be provided at the Site as shown on **Drawing R-1**.
- (d) He has adopted a filtration system for the discharge of sewage into nearby drainage channel. Storm-water would not be drained into the fish pond nearby because of the topography of the Site. There has been no complaint against the development since it began its operation in 2010.
- (e) The waste and dog excreta are packed and dumped at junk collection point daily without creating odour nuisance.
- (f) The dogs are kept in the inner part of the Site far from the access road so that the dogs would not create noise nuisance to the surroundings.
- (g) He does not operate the development commercially. He utilizes the Site for dog training and breeding purposes only for personal interest without receiving financial support from others. He donates dogs to the Hong Kong Police Force (HKPF).

4. The Section 16 Application

The Site and Its Surrounding Areas

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the Committee was described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no major change in the situation since then.
- 4.2 The Site is:
- (a) currently occupied for the applied use without valid planning permission (**Plan R-4a to R-4b**); and
 - (b) abuts and accessible from Nim Wan Road to its immediate northwest (**Plans R-2 and R-3**).
- 4.3 The surrounding areas have the following characteristics (**Plans R-2 and R-3**):
- (a) predominantly rural in character;
 - (b) to the north across Nim Wan Road are a residential dwelling, fishing ground covered by valid planning permission (No. A/YL-PN/50), storage yard and vacant land;
 - (c) to the east are two ponds and vacant structures; and
 - (d) to the immediate west are residential dwellings (with the nearest one about 11.3m), an orchard, a pond, open storage yards of construction materials and workshop, and cultivated agricultural land.

Planning Intention

- 4.4 There has been no change in planning intention of the concerned “AGR” zone as mentioned in paragraph 8 of **Annex A**. 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.

Previous Application

- 4.5 The Site is involved in 1 previous application No. A/YL-HT/414 covering a very large area of 52 ha with 79% of the concerned site falling within the “Green Belt” (“GB”) and “AGR” zones of the then Ha Tsuen OZP and 21% within the “AGR” zone of the Sheung Pak Nai and Ha Pak Nai OZP, for temporary racing circuit for a period of 3 years, was rejected by the Committee on 29.7.2005. The reasons were not in line with the planning intentions; insufficient information to demonstrate that it would not have adverse impacts on the concerned site and the adjacent areas; and setting an undesirable precedent. Details of the previous application are summarised at **Appendix II** of **Annex A** and its location is shown on **Plan R-1**.

Similar Application

- 4.6 There is no similar application for animal boarding establishment use within the “AGR” zone on the OZP.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 9.1 and 9.2 of **Annex A**.
- 5.2 For the review application, the following government departments have been further consulted and their comments are summarised as follows:

Environment

- 5.2.1 The Director of Environmental Protection (DEP) maintains his previous view of not supporting the application and has the following comments on the review application:

- (a) The applicant fails to fully address his concerns on noise and water quality impacts.
- (b) There are some temporary structures which are potentially noise sensitive uses in the close proximity to the Site (located at less than 20m away from the proposed dog kennels and the covered walkway of the proposed establishment) (**Plan R-2**). Noise arising from the proposed establishment such as dog barking will be a noise concern to the nearby noise sensitive receivers. The applicant should check and advise if there are any changes of the circumstances under the subject application such as the nearby noise sensitive receivers, layout and design of the proposed establishment and location of fixed noise sources associated with the proposed establishment. The applicant should provide more information about the operation mode (including operating hours and the management of dogs outside the operating hours, number of dog being kept outside) and noise mitigation measures being implemented/to be implemented to demonstrate that no adverse noise impact will be caused due to the proposed use.
- (c) The new septic tank and soakaway system is at close proximity to the stream located at the west side of the Site. He has reservation on whether the proposed septic tank and soakaway system could comply with the requirement as stipulated in Professional Persons Environmental Consultative Committee Practice Notes (ProPECC PN) 5/93. Should the application be approved, the applicant shall be reminded that the Authorized Person shall certify, during the preparation of drainage plans, that the design of the septic tank and soakaway system shall be able to comply with statutory environmental requirements including the minimum clearance distance requirement as stipulated in ProPECC PN 5/93.

Nature Conservation

5.2.2 The Director of Agriculture, Fisheries and Conservation (DAFC) has the following further comment on the review application:

The subject address is not associated with any licence granted by AFCD, nor have AFCD received any application regarding this address. 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 AFCD. If the proposed animal boarding establishment falls under the condition mentioned above, the applicant shall obtain a Boarding Establishment Licence from AFCD. Regarding the breeding activity, if a person keeps female dogs for breeding purpose and selling those dogs or their off-springs from a licensed premises, a Dog Breeding Licence (DBL) should also be obtained from AFCD.

5.2.3 The DAFC also maintains his previous view of not supporting the application from agricultural point of view and his previous comments on the s.16 application as stated in paragraph 9.1.5 of the **Annex A** are relevant as recapitulated below:

- (a) It was found that the Site is currently a cemented and enclosed area with several temporary structures. Agricultural lives are active in the vicinity. In addition, agricultural infrastructures such as vehicular access and water supply are available. The Site possesses potential for agricultural rehabilitation which can be used for greenhouse cultivation or plant nursery.
- (b) From ecological point of view, it is noted that the applicant claimed that the proposed development will not involve land/pond filling and tree felling. It is noted that the Site is located near to some fish ponds. From fisheries point of view, the applicant should ensure that no interference or surface runoff to nearby fish ponds is to be made upon operation. Since there is no surface runoff to the pond and the pond level is higher than the Site, he has no comment on the application from fisheries viewpoint.

Others

5.2.4 The Commissioner of Police (C of P) has the following comments on the review application:

- (a) After reviewing the record for receiving donation of dogs from the public, it is found that there is no record of donation from the applicant or the application address.
- (b) Any person who wishes to donate dogs to the Police Dog Unit (PDU) could complete a form providing personal information, contact method and dog documents and apply to PDU. PDU may contact the donor, visit the donor's residence and test the dog to decide whether it is suitable for police training. The PDU will provide written reply to the donor whether the donation is accepted or not.

Upon the retirement of the donated dog, the donor will have priority to claim the donated dog for reunion.

- 5.3 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as recapitulated below:

Land Administration

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

- (a) The Site falls entirely within Government Land (GL). No permission is given for occupation of GL (about 1,850m² subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.
- (b) The Site abuts Nim Wan Road and is considered capable for separate alienation. Hence, LandsD would not normally consider application for regularization of unlawful occupation of unleased GL which is capable for reasonable separate alienation even though approval of the Board is given.
- (c) The GL within the Site is being illegally occupied. There are unauthorised structures erected on the Site without prior approval from his office. His office reserves the rights to take necessary actions against the unauthorised structure and the illegal occupation of GL.

- 5.4 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A**.

- (a) Commissioner for Transport (C for T);
- (b) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (c) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (d) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (f) Director of Fire Services (D of FS);
- (g) Director of Electrical and Mechanical Services (DEMS);
- (h) Antiquities and Monument Office (AMO);
- (i) Director of Food and Environmental Hygiene (DFEH);
- (j) Director of Leisure and Cultural Services (DLCS); and
- (k) District Officer (Yuen Long) (DO(YL)).

- 5.5 The following government departments maintain their previous views of having no comment on the s.16 application as stated in paragraph 9.2 of **Annex A**.

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (c) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD).

6. Public Comments on the Review Application Received During Statutory Publication Periods

6.1 On 26.4.2019 and 31.5.2019, the review application and FI were published for public inspection for three weeks. During the statutory public inspection periods, which ended on 17.5.2019 and 21.6.2019 respectively, 7 public comments were received from the Hong Kong Bird Watching Society (HKBWS), Kadoorie Farm & Botanic Garden Corporation (KFBG), Designing Hong Kong and one individual objecting to the review application (**Annex G**). The main objecting reasons are summarized below:

- (a) the Site is located close to “Coastal Protection Area” zone and next to a watercourse which drains directly into the highly sensitive Deep Bay;
- (b) the proposed development is not in line with the planning intention of the “AGR” zone;
- (c) the Board should not encourage “destroy first, build later” of unauthorized development ~~of open storage uses~~;
- (d) the proposed development would generate adverse ecological, environmental, drainage and landscape impacts on the surrounding areas. There is potential adverse impacts on migratory birds and their habitats;
- (e) approval of the application would set an undesirable precedent for similar applications and cumulative effect of which would result in general degradation of the environment of the area; and
- (f) the development is illegally occupying Government Land with unauthorized structure.

6.2 Seven public comments were received at the s.16 application stage and are set out in paragraph 10 of the RNTPC Paper in **Annex A**.

7. Planning Considerations and Assessments

7.1 The application is for a review of the Committee’s decision on 8.3.2019 to reject the subject application for temporary animal boarding establishment for a period of three years at the Site zoned “AGR” on the OZP (**Plan R-1**). The application was rejected for the reasons that the proposed development was not in line with the planning intention of the “AGR” zone, the applicant failed to demonstrate the proposed development would not generate adverse environmental impact on the surrounding areas and approval of the application would set an undesirable precedent for similar applications for other developments.

7.2 To substantiate the review application, the applicant has submitted written responses

(Annexes E and F) to the rejection reasons in support of the review claiming that the Committee has approved three applications for temporary animal boarding establishment (nos. A/YL-KTN/324, A/YL-KTN/410 and A/YL-KTN/489) in “AGR” zone in Kam Tin North; the development would not affect the surrounding fallow/active farmland and would not have adverse environmental impacts; no complaint against the development was received; and he donates dogs from the development to the HKPF. Planning considerations and assessments on the review are appended below.

Planning Intention of “AGR” zone

- 7.3 The subject application is for temporary animal boarding establishment for a period of three years at the Site zoned “AGR” on the OZP. The planning intention of the “ARG” 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 temporary animal boarding establishment use is considered not in line with the planning intention of the “AGR” zone. In this regard, DAFC maintains his view of not supporting the application from agricultural point of view as the Site possesses high potential for agricultural rehabilitation. The applicant does not provide any supporting document to substantiate any strong planning justification to merit a departure from such planning intention, even on a temporary basis.

Planning Approval in “AGR” zone

- 7.4 The Board has not approved any application for similar use (i.e. animal boarding establishment) at the Site or within the subject “AGR” zone on the Sheung Pak Nai and Ha Pak Nai OZP. Approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area. As regards the applicant’s claim that three planning application nos. A/YL-KTN/324, A/YL-KTN/410 and A/YL-KTN/489 for temporary animal boarding establishment uses in “AGR” zone on the Kam Tin North (KTN) OZP have been approved by the Committee, it should be noted that each application is considered by the Committee on individual merits. The planning contexts and circumstances of the three applications in the KTN area are different from the current application in the Pak Nai area in that the developments in the KTN area were considered not incompatible with the surrounding land uses and DAFC had no objection to the applications. Relevant departments, including CTP/UD&L of PlanD, CE/MN, DSD, D of FS and DEP had no adverse comment on the applications. There were also previous approvals for similar temporary uses at the respective application sites. For the current application, relevant departments including DAFC and DEP maintain their views of not supporting the application.

Land Administration

- 7.5 The Site is currently occupied for the applied use which is located entirely within GL abutting Nim Wan Road. DLO/YL, LandsD considers that the Site is capable for separate alienation and application for regularization of unlawful occupation of unleased GL, which is capable for reasonable separate alienation, would not be normally considered even though approval of the Board is given. The GL within the

Site is being illegally occupied. There are unauthorised structures erected on the Site without prior approval from DLO/YL, LandsD. He reserves the rights to take necessary actions against the unauthorised structure and the illegal occupation of GL.

Compatibility with Surrounding Areas

- 7.6 The applied use is not entirely incompatible with the surrounding land uses which are rural in character mainly comprising ponds, farmland and orchard intermixed with rural settlements. The nearest residential dwelling is about 11m to its west.

Adverse Environmental Impacts

- 7.7 DEP maintains his view of not supporting the application. Although the applicant claims that septic tank and soakaway pit will be provided at the Site and dogs will be kept in the inner part of the Site to address EPD's concerns on the noise and sewerage aspect, DEP has reservation on whether the proposed septic tank and soakaway system could comply with the requirement as stipulated in ProPECC PN 5/93. The applicant also fails to address the potential noise nuisance to nearby NSRs by providing noise mitigation measures and administrative measures to avoid noise annoyance. The applicant fails to demonstrate that the applied use would not cause adverse noise and sewerage impacts to the surroundings.

Public Comments

- 7.8 Seven public comments were received during statutory public inspection periods objecting to the application. Their grounds are summarized in paragraph 6 above. The planning considerations and assessments in paragraphs 7.1 to 7.7 are relevant.

Others

- 7.9 The applicant claimed that he donates dogs to the HKPF. C of P clarified that there is no record of donation of dogs from the applicant or the Site.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments as mentioned in paragraph 6, and given that there is no major change in the planning circumstances since the consideration of the subject application by the Committee on 8.3.2019, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding areas; and

- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications for other developments within the “AGR” zone, the cumulative effect of which will result in a general degradation of the rural environment.

8.2 Alternatively, should the Committee decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **9.8.2022**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 pm and 9:00 am, except for the overnight animal boarding establishment, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, except for the overnight animal boarding establishment, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing boundary fencing at the Site shall be maintained at all times 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 landscape planting on the Site shall be maintained at all times during the approval period;
- (f) the submission of drainage proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.2.2020**;
- (g) in relation to (f) above, the implementation of drainage facilities 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 **9.5.2020**;
- (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 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 **9.2.2020**;
- (j) in relation to (i) above, the implementation of the fire service installations proposal with **9 months** from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **9.5.2020**;
- (k) the submission of a revised environmental assessment 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 **9.2.2020**;

- (l) in relation to (k) above, the implementation of environmental 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 **9.5.2020**;
- (m) if 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;
- (n) if any of the above planning conditions (f), (g), (i), (j), (k) or (l) 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
- (o) 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.

Advisory clauses

The recommended advisory clauses are attached at **Annex H**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Drawing R-1	Layout Plan
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to 4b	Site Photos
Annex A	RNTPC Paper No. A/YL-PN/55B
Annex B	Extract of minutes of the RNTPC Meeting held on 8.3.2019
Annex C	Secretary of the Board's letter dated 22.3.2019
Annex D	Letter of 11.4.2019 from the applicant applying for review
Annex E	Letter of 20.5.2019 from the representative of the applicant providing written justification for the review
Annex F	Letter of 18.6.2019 from the applicant providing written justification for the review
Annex G	Public comments received during statutory publication

Annex H

periods of the review application
Recommended advisory clauses

**PLANNING DEPARTMENT
AUGUST 2019**

TPB Paper No. 10567

**For Consideration by
the Town Planning Board on 9.8.2019**

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