

**REVIEW OF APPLICATION NO. A/YL-SK/263**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Temporary Animal Boarding Establishment with Hospice Services for a Period of 3 Years  
in “Agriculture” Zone, Lots 383 (Part), 384 S.D (Part), 385 S.A-S.C (Part) and 386 (Part) in  
D.D. 112, Kam Sheung Road, Shek Kong, Yuen Long**

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**1. Background**

- 1.1 On 30.8.2019, the applicant, Mr. CHAI Chee Cheung James, submitted the subject application under Section 16 of the Town Planning Ordinance (the Ordinance) to seek planning permission for temporary animal boarding establishment with hospice services for a period of 3 years. The application site (the Site), with an area of about 1,618.97m<sup>2</sup>, falls within an area zoned “Agriculture” (“AGR”) on the approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9 (**Plan R-1**). The development involves 10 single-storey structures for animal boarding, animal cremation, memorial room for storing cremated ashes etc. The layout plan submitted by the applicant and the photos showing the locations and proposed uses of the 10 structures are provided at Drawing A-1 of **Annex A** and **Plan R-4a to R-4d** respectively.
- 1.2 On 17.1.2020, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the applied development is not in line with the planning intention of the “AGR” zone which is primarily intended 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. There are no strong planning justifications in the submission to merit a departure from the planning intention, even on a temporary basis.
  - (b) the applied development is incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land;
  - (c) the applicant fails to demonstrate that the applied development would not cause adverse traffic impact on the surrounding areas; and
  - (d) approval of the application would set an undesirable precedent for similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-SK/263A **(Annex A)**
  - (b) Extract of minutes of the RNTPC Meeting held on 17.1.2020 **(Annex B)**

(c) Secretary of the Board's letter dated 7.2.2020

(Annex C)

## 2. Application for Review

On 27.2.2020, the applicant applied, under Section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). In support of the review application, the applicant submitted further information (FI) on 12.5.2020 which is exempted from publication (**Annex E**).

## 3. Justifications from the Applicant

The summary of the justifications put forth by the applicant in support of the Section 16 application is detailed in paragraph 2 of **Annex A**. In response to Commissioner for Transport (C for T)'s comments on the review application, the applicant submitted FI (**Annex E**) which is summarised as follows:

- 3.1 Visitors will take public transport to the Site and there is a bus stop outside Lotus Hill (錦上華巒) (**Plan R-3**).
- 3.2 The vacant land outside the Site is available for parking use of the staff.
- 3.3 Regarding the trip generation, the proposed use would have 2-4 times daily trips from/to Kam Sheung Road.

## 4. The Section 16 Application

The Site and Its Surrounding Areas (**Plans R-1** and **R-2**, aerial photo on **Plan R-3** and site photos on **Plan R-4a** to **Plan R-4d**)

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the Section 16 application by the RNTPC is described in paragraph 7 of **Annex A**. There has been no major change in the planning circumstances of the area since then (**Plans R-1** and **R-2**).
- 4.2 The Site is accessible via a local track from Kam Sheung Road which passes through the "V" zone to the west of the Site. It is currently occupied by a number of temporary structures used for the applied use without valid planning permission.
- 4.3 The surrounding areas are predominantly rural in character mixed with residential structures/dwellings, active/fallow agricultural land, open storage/storage yards, workshops, plant nursery and pet training centre. Some of the uses are suspected unauthorised development (UD) subject to enforcement action by the Planning Authority;
  - (a) to its southwest, west and northwest are clusters of residential structures/dwellings (with the nearest one of about 50m from the Site within the "V" zone);
  - (b) to its north and northeast are mainly active/fallow agricultural land with a few residential structures/dwellings;

- (c) to its east are vacant land, fallow agricultural land and gardening; and
- (d) to its south are a vehicle repair workshop, open storage of vehicles, a plant nursery and a pet training centre.

#### Planning Intention

- 4.4 There has been no change in the planning intention of the “AGR” zone, i.e. it 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 There is no previous application in respect of the Site.

#### Similar Application

- 4.6 There was one similar application (No. A/YL-SK/226) for proposed temporary animal boarding establishment (without animal hospice services) within the same “AGR” zone at the time of considering the Section 16 application, which is mentioned in paragraph 6 at **Annex A**. Since then, there has been no new similar application in the same “AGR”. Details of the application is summarised at Appendix II of **Annex A** and the location is shown on **Plan R-1**.
- 4.7 Application No. A/YL-SK/226 for proposed temporary animal boarding establishment for a period of 3 years was rejected by the RNTPC on 10.1.2017 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; the applicant failed to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding areas; and the approval of the application would set an undesirable precedent for similar applications.
- 4.8 Apart from the above similar application, there is a review application (No. A/YL-SK/273) for temporary animal boarding establishment and dog training facility for a period of 3 years within the adjacent “Village Type Development” (“V”) zone on the same OZP, which will also be considered at this meeting. The application was rejected by the RNTPC on 17.1.2020 mainly on the grounds that the applied development is not in line with the planning intention of the “V” zone; the applied development is incompatible with the surrounding areas which are rural in character with clusters of domestic dwellings/structures in village setting; and the approval of the application would set an undesirable precedent for similar applications in the “V” zone.

### **5. Comments from Relevant Government Departments**

- 5.1 Comments on the Section 16 application made by relevant Government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the following Government department has been further consulted and his comments are summarized as follows:

## **Traffic**

### 5.2.1 Comments of the C for T:

- (a) having considered the FI (**Annex E**), he has no further comment from traffic engineering point of view; and
- (b) the Site is connected to the public road network via a section of a local access road which is not managed by the Transport Department. The land status of the local access road should be checked with the Lands Department. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

5.3 The following Government departments have also been further consulted and they maintain their previous comments on the Section 16 application (**Annex A**) which are recapitulated below:

## **Land Administration**

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

- (a) the Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government;
- (b) the Site is accessible from Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for GL involved and does not guarantee any right-of-way over GL to the Site;
- (c) the Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA;
- (d) according to the prevailing guidelines of LandsD, application for Short Term Waiver (STW) of the undertaking must not be an offensive trade and must not give rise to environmental pollution. Referring to the applicant's proposal, Structure Nos. 2 and 9 would be used for animal cremation purposes; and
- (e) should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by

LandsD.

### **Traffic**

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

- (a) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (b) adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

### **Agriculture and Nature Conservation**

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

- (a) the Site falls within the “AGR” zone and is currently a paved open space occupied by some temporary structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view;
- (b) noting that the Site has been paved and occupied by some temporary structures, he has no comment on the application from nature conservation perspective;
- (c) the Site and the applicant are associated with a valid animal trading license granted by his department. However, there is no valid boarding license associated with the Site and the applicant at this juncture; and
- (d) 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. Should the application be approved, the applicant is reminded that the establishment and ancillary facilities which is licensed under the said Regulations must always fulfil the criteria listed in the said Regulations. The dogs kept by the applicant should also be properly licensed as in accordance with Cap. 421 Rabies Ordinance and he is reminded to observe Cap. 169 Prevention of Cruelty to Animals Ordinance at all times.

### **Environment**

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

- (a) he has no adverse comment on the application from environmental protection point of view;

- (b) should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”; and
- ~~(c) there was a substantiated environmental complaint related to air aspect of the Site received in the past 3 years.~~
- (c) there was no substantiated environmental complaint at the Site received by DEP in the past three years.

### **Landscape**

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

- (a) he has no objection to the application from the landscape planning perspective;
- (b) referring to the aerial photo dated 13.3.2018, the Site is situated in an area of rural landscape character comprising scattered tree groups, abandoned farmland and village houses. Although similar development cannot be found in the proximity, considering the building height of the applied development (from 1.9m to 4m), it is considered not incompatible with the surrounding environment; and
- (c) based on the site visit dated 24.6.2019, the applied development is already in place and in operation. A number of existing trees including *Ficus superba* var. *japonica* (筆管榕), *Ficus benjamina* (垂葉榕), *Macaranga tanarius* (血桐), *Michelia X alba* (白蘭) and *Plumeria rubra* (雞蛋花) in good condition are found within the Site. Referring to the layout plan (**Drawing A-1 of Annex A**), the existing trees are not in conflict with the applied development. Further significant adverse impact on landscape resources is not anticipated.

### **Drainage**

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

- (a) he has no objection in-principle to the applied development from the public drainage point of view; and
- (b) should the application be approved, approval conditions 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 should be included in the planning approval.

### **Water Supplies**

5.3.7 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

he has no objection to the application, and his detailed comments are at **Appendix IV of Annex A.**

### **Building Matters**

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

- (a) if the existing structures (not being a New Territories Exempted Houses) are erected on leased land without approval of the Building Authority (BA), they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any applied use under the application;
- (b) for UBW erected on leased land, enforcement action may be taken by 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 BO;
- (c) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW under BO. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with 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 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 Building (Planning) Regulations at the building plan submission stage; and
- (f) if the applied use under the application is subject to issue of a license, the applicant is 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.

### **Fire Safety**

5.3.9 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 (FSIs) being provided to his satisfaction;

- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location 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 BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Environmental Hygiene**

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

- (a) if the proposal involves any commercial/trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. The proposal should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the related commercial/trading activities, the applicant should handle on their own / at their expenses; and
- (b) any animal carcass/parts shall be properly wrapped or bagged before disposal.

### **District Officer's Comments**

5.3.11 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 he has no particular comment on the application.

5.4 The following Government departments have no further comment on the review application and maintain their previous views of having no objection to or no comment on the Section 16 application as stated in paragraph 9.2 of **Annex A**:

- (a) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (b) Director of Electrical and Mechanical Services (DEMS); and
- (c) Commissioner of Police (C of P).

## **6. Public Comments Received During Statutory Publication Period**

6.1 On 6.3.2020, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of five public comments were received from a Yuen Long District Council member, the



vice-chairperson of Pat Heung Rural Committee cum resident representative of Lin Fa Tei Village, The Hong Kong Bird Watching Society, Designing Hong Kong Ltd, and an individual (**Annexes F-1 to F-5**). They all raised objection to the review application mainly on the grounds that the applied use is not in line with the planning intention of “AGR” zone; the Site has been used for UD and approval of the application may encourage “development first, apply later” and will set an undesirable precedent for similar development in the future; and the development causes adverse environmental, health and hygiene impacts to the surrounding areas and nearby residents.

- 6.2 At the stage of Section 16 application, five objecting comments were received on the application. Details of the comments are in paragraph 10 and Appendix III of **Annex A**.

## 7. Planning Considerations and Assessments

- 7.1 The application is for a review of RNTPC’s decision on 17.1.2020 to reject the application for temporary animal boarding establishment with hospice services for a period of 3 years at the Site which is zoned “AGR”. The application was rejected for the reasons that the applied use is not in line with the planning intention of the “AGR” zone; it is incompatible with the surrounding areas; the applicant fails to demonstrate that the applied development would not cause adverse traffic impact and approval of the application would set an undesirable precedent. The applicant submitted FI relating to trip generation and parking arrangement in response to the comments of C for T to support the review application (**Annex E**). C for T has no further comment on the review application from traffic engineering point of view. Nevertheless, apart from traffic concerns which have been addressed, the applicant has yet to address the following considerations raised at the Section 16 stage of the application which are still valid and they are appended below.
- 7.2 The Site falls within the “AGR” zone which is primarily intended 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 applied use is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural uses such as greenhouses and plant nurseries, and active agricultural activities are found in the vicinity. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 7.3 The animal boarding establishment with hospice services and cremation of animal dead bodies is considered incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land (**Plan R-2**). Residential dwellings are found within the immediate vicinity (within 50m from the Site). Other relevant departments including C for T, DEP, CTP/UD&L of PlanD, CE/MN of DSD, CE/C of WSD and DFEH have no objection to/adverse comment on the application.
- 7.4 There is one similar application No. A/YL-SK/226 for proposed temporary animal boarding establishment (without provision of animal hospice services) in the same “AGR” zone (**Plan R-1**), which was rejected by the RNTPC on 10.11.2017 on the grounds as stated in paragraph 4.7. The RNTPC’s considerations on the above

application are generally applicable to the current application. Rejecting the subject application is in line with the RNTPC's previous decision. The applied development, if approved, would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative impact would result in general degradation of the rural environment of the area.

- 7.5 Regarding the five objecting comments received on this review application as stated in paragraph 6.1 above, the planning assessments and departmental comments set out in paragraphs 7.1 to 7.4 above are relevant.

## **8. Planning Department's Views**

- 8.1 Based on the assessment made in paragraph 7 and having taken into account the public comments mentioned in paragraph 6, the Planning Department maintains its previous view of not supporting the review application for the following reasons:

- (a) the applied development is not in line with the planning intention of the "AGR" zone which is primarily intended 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. There are no strong planning justifications in the submission to merit a departure from the planning intention of "AGR" zone, even on a temporary basis;
- (b) the applied development is incompatible with the surrounding areas which are rural in character with clusters of residential structures/dwellings and active/fallow agricultural land; and
- (c) approval of the application would set an undesirable precedent for similar applications in the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

- 8.2 Alternatively, should the Board 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 22.5.2023. The following conditions of approval and advisory clauses are also suggested for Member's reference:

### Approval conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m. (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed structures on the Site between 10:00 p.m. and 8:00 a.m. during the planning approval period;
- (c) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used, as proposed by the applicant, on the Site at any time during the planning approval period;

- (d) 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 22.11.2020;
- (e) in relation to (d) 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 22.2.2021;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of proposal for fire service installations and water supplies for fire-fighting 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 22.11.2020;
- (h) in relation to (g) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 22.2.2021;
- (i) if any of the above planning conditions (a), (b), (c) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (d), (e) (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

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

## **9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the 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 period of which the permission should be valid on a temporary basis.

## **10. Attachments**

**Annex A**

RNTPC Paper No. A/YL-SK/263A

<b>Annex B</b>	Extract of minutes of the RNTPC Meeting held on 17.1.2020
<b>Annex C</b>	Secretary of the Town Planning Board's Letter dated 7.2.2020
<b>Annex D</b>	Applicant' Letters dated 27.2.2020 Applying for Review
<b>Annex E</b>	Further Information dated 12.5.2020
<b>Annexes F-1 to F-5</b>	Public Comments on the Review Application
<b>Annex G</b>	Advisory Clauses
<b>Plan R-1</b>	Location Plan
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Aerial Photo
<b>Plan R-4a to R-4d</b>	Site Photos

**PLANNING DEPARTMENT  
MAY 2020**