

REVIEW OF APPLICATION NO. A/YL-SK/273
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Animal Boarding Establishment and Dog Training Facility for a Period of 3
Years in “Village Type Development” Zone, G/F, Lots 1216 RP (Part), 1217 S.B (Part) and
1217 S.A (Part) in D.D. 114, Sheung Tsuen, Kam Sheung Road, Yuen Long**

1. Background

- 1.1 On 25.11.2019, the applicant, Miao Miao Doggie Home Co. Limited, submitted the subject application under Section 16 of the Town Planning Ordinance (the Ordinance) to seek planning permission for temporary animal boarding establishment and dog training facility for a period of 3 years. The application site (the Site), with an area of about 340m² falls within an area zoned “Village Type Development” (“V”) on the approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9 (**Plan R-1**). The Site covers the ground floor of an existing New Territories Exempted House (Small House) (with a floor area of about 65m² for boarding of dogs) and its adjoining outdoor area (with an area of 275m² for dog training). The layout plan submitted by the applicant and the photos are provided in Drawing A-1 in **Annex A** and **Plan R-4a** to **Plan R-4b** 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 “V” zone which is primarily to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. There are no strong planning justifications in the submission to merit a departure from the planning intention of “V” zone, even on a temporary basis;
 - (b) 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 applicant fails to demonstrate that the applied development would not cause adverse environmental impacts to the surrounding area; and
 - (c) approval of the application would set an undesirable precedent for similar applications in the “V” zone. The cumulative effect of approving such 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/273 **(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)

- 1.4 The Site is subject to planning enforcement action against unauthorized development (UD) (No. E/YL-SK/220) involving use for animal boarding establishment (**Plan R-2**). An Enforcement Notice (EN) was issued on 21.6.2019 requiring discontinuation of UD by 21.9.2019. Recent site inspection revealed that the UD still continued upon expiry of the EN, and further action may be followed.

2. Application for Review

On 24.2.2020, the applicant applied, under Section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any further information in support of the review application.

3. 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-4b**)

- 3.1 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**).
- 3.2 The Site is accessible via a local track leading to Nam Hing West Road, hard-paved, fenced and partly occupied by an NTEH (Small House). While the ground floor of the NTEH and the open area are being used for the applied use without valid planning permission, the second and third floors of the NTEH are currently being used for residential use.
- 3.3 The surrounding areas are predominantly rural in character with clusters of domestic dwellings/structures in village setting:
- (a) to its immediate north is a nullah, and to its further north across the nullah are mainly some domestic dwellings/structures intermixed with a sitting-out area, parking of vehicles, open storage yards, active/fallow agricultural land and vacant land. Some of the open storage yards and parking uses are suspected UD subject to enforcement action by the Planning Authority; and
 - (b) to its immediate east, south and west are mainly clusters of domestic dwellings/structures (with the nearest one of about 5m from the Site) with parking of vehicles.

Planning Intention

- 3.4 There has been no change of the planning intention of the "V" zone, i.e. it is primarily to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the "V" zone for a more orderly development pattern, and efficient

use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

Previous Application

3.5 There is no previous application in respect of the Site.

Similar Application

3.6 There is no similar application in the same “V” zone at the time of considering the Section 16 application. This remains unchanged.

3.7 There is however a review application (No. A/YL-SK/263) for temporary animal boarding establishment with hospice services for a period of 3 years within the adjacent “Agriculture” (“AGR”) 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 “AGR” zone; 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; the applicant fails to demonstrate that the applied development would not cause adverse traffic impacts to the surrounding area; and the approval of the application would set an undesirable precedent for similar applications in the “AGR” zone.

4. Comments from Relevant Government Departments

4.1 Comments on the Section 16 application made by relevant Government departments are stated in paragraph 9 of Annex A.

4.2 For the review application, the following Government departments have been further consulted and they maintain their previous comments which are recapitulated below:

Land Administration

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

- (a) the Site comprises an Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government;
- (b) within the Site, Building Licence No. 1604 was issued to Lot 1217 S.A in D.D. 114 to permit erection of a 3-storey building with a built-over area of 65.04 m² and a height of 7.62m for non-industrial purposes;
- (c) the Site is accessible from Nam Hing West 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.
- (d) 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; 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 structure(s) 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

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

- (a) he has no comment on the application from traffic engineering perspective, having regard to the applicant's FI (**Appendices Ib and Ic of Annex A**) that there is neither parking provision nor vehicular access to the Site and the induced traffic impact is minimal; and
- (b) the applicant should note that the local access between Nam Hing West Road and the Site is not managed by Transport Department (TD). The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

4.2.3 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 Nam Hing West 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.

Environment

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

- (a) the application is not supported from environmental planning perspective, noting from the site plan (**Plan R-2**) that some domestic dwellings are located within 5-30m from the Site. It is very likely that noise will be generated from dogs barking and people shouting at night and during the operation hours, causing noise nuisance and impact to the nearby residents; and

- (b) there was no substantiated environmental complaint on the Site received by DEP in the past three years.

Nature Conservation

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

- (a) he has no strong view on the application from nature conservation perspective, having regard to the applicant's FI (**Appendix Ic of Annex A**) that the access route will not encroach upon the planting site (established as ecological mitigation measures for the Main Drainage Channels for Yuen Long and Kam Tin) to the immediate north of the Site managed by his department (**Plan R-2**); and
- (b) the Site is associated with a valid boarding licence granted by his department.

Drainage

4.2.6 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.

Building Matters

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

- (a) if the existing structures (not being a NTEH) are erected on leased land without approval of the Building Authority (BA), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
- (b) for unauthorized building works (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; and
- (e) the Site does not abut on a specified street of not less than 4.5m wide, and its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.

Fire Safety

4.2.8 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

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

- (a) if the proposal involves any commercial/trading activities, 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

4.2.10 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.

4.3 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) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Chief Town Planner/Urban Design and Landscape (CTP/UD&L, PlanD); and
- (e) Commissioner of Police (C of P).

5. Public Comments Received During Statutory Publication Period

5.1 On 6.3.2020, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.3.2020, a total of 54 public comments from 51 local residents of Sheung Tsuen in standard format and three individuals were received (Annex E). They all raised objections to the review application mainly on the following grounds:

- (a) the Site is located amidst clusters of village dwellings. The premises on the Site is not equipped with soundproofing materials. Noise generated from dogs barking will create nuisance to the nearby residents. The use of public announcement system/loudspeaker and spotlights at the Site, especially after 7:00p.m., is posing environmental nuisances to the neighbouring residents;
- (b) the Site is close to a nullah (**Plan R-2**) and is not equipped with animal waste/hair/chemicals treatment facilities (e.g. large septic tank). The applied use would bring adverse impacts to the neighbouring environment, ecosystem and drainage system;
- (c) the Site is accessible via a local track leading to Nam Hing West Road (**Plan R-2**), which is the main and narrow vehicular access of Sheung Tsuen. The vehicles of the applicant and visitors have obstructed the village access, especially during weekends, creating inconvenience and safety issues to local residents and road users nearby;
- (d) the dogs not having adequate training may attack people, creating threats to the elderly and children;
- (e) the Site is also used for barbecue function posing fire risk;
- (f) the applicant has torn down the feng shui trees for widening the local track adjacent to the Site; and
- (g) the applied development has been in operation prior to obtaining the relevant licences.

5.2 At the stage of Section 16 application, 24 objecting comments on the application were received. Details of the comments are in paragraph 10 and Appendix II of **Annex A**.

6. **Planning Considerations and Assessments**

- 6.1 The application is for a review of RNTPC's decision on 17.1.2020 to reject the application for temporary animal boarding establishment and dog training facility for a period of 3 years at the Site which is zoned "V". The application was rejected for the reasons that the applied development is not in line with the planning intention of the "V" zone; it is incompatible with the surrounding areas and approval of the application would set an undesirable precedent. As the applicant has not submitted any further information in support of the review application and there is no change in the planning circumstances of the Site and its surrounding areas, the previous planning considerations and assessments in paragraph 11 of Annex A are still valid and are appended below.
- 6.2 The Site falls within the "V" zone which is primarily intended to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. The applied use is not in line with the planning intention of the "V" zone. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of "V" zone, even on a temporary basis.
- 6.3 The applied development is in the middle of a large "V" zone. It is considered incompatible with the surrounding areas which are rural in character with clusters of domestic dwellings/structures in village setting (Plan R-2). The second and third floors of the existing NTEH (Small House) on the Site are used for domestic purpose, and more residential dwellings are found in its immediate vicinity (within 5-30m from the Site). In view of the above, DEP does not support the application from environmental planning perspective since it is very likely that noise generated from dogs barking and people shouting at night and during the operation hours would cause noise nuisance and impact to the nearby residents. Other relevant departments including C for T, DAFC, CE/MN of DSD, CE/C of WSD and DFEH have no objection to/adverse comment on the application.
- 6.4 The Site is not subject to any previous application and there is no similar application within the same "V" zone on the OZP. The applied development, if approved, would set an undesirable precedent for similar applications within the "V" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 6.5 Regarding the 54 objecting comments received on this review application as stated in paragraph 5.1 above, the planning assessments and departmental comments set out in paragraph 6.1 to 6.4 above are relevant.

7. **Planning Department's Views**

- 7.1 Based on the assessment made in paragraph 6, having taken into account the public comments mentioned in paragraph 5, and given that there is no change in the planning circumstances since the consideration of the subject application by RNTPC on 17.1.2020, 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 “V” zone which is primarily to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. There are no strong planning justifications in the submission to merit a departure from the planning intention of “V” zone, even on a temporary basis;
- (b) 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 applicant fails to demonstrate that the applied development would not cause adverse environmental impacts to the surrounding area; and
- (c) approval of the application would set an undesirable precedent for similar applications in the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

7.2 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 7:00 p.m. and 9:00 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 kennel on the Site between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, 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; and
- (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.

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

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 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.
- 8.3 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.

9. Attachments

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| Annex A | RNTPC Paper No. A/YL-SK/273 |
| Annex B | Extract of minutes of the RNTPC Meeting held on 17.1.2020 |
| Annex C | Secretary of the Town Planning Board's Letter dated 7.2.2020 |
| Annex D | Applicant' Letters dated 24.2.2020 Applying for Review |
| Annexes E-1 to E-4 | Public Comments on the Review Application |
| Annex F | Advisory Clauses |
| Plan R-1 | Location Plan |
| Plan R-2 | Site Plan |
| Plan R-3 | Aerial Photo |
| Plan R-4a to R-4b | Site Photos |