

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/752

<u>Applicant</u>	: Mr. WONG Po Lim represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 1222 S.B, 1224 S.C and 1225 S.A in D.D. 107, Fung Kat Heung, Kam Tin
<u>Site Area</u>	: About 566m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Animal Boarding Establishment for a Period of 5 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of 5 years and filling of land. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use within the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). Filling of land in “AGR” zone also requires planning permission from the Board. The Site is currently vacant (**Plans A-2 and A-4**).
- 1.2 The proposed development involves a one-storey structure with building height of about 3.5m and a total floor area of about 216 m² for animal boarding establishment, site office and storage of pet goods. About 216m² (38%) of the Site is proposed to be filled by concrete by a maximum of 0.2m (from about 11.1mPD to 11.3mPD). The business hours will be from 9:00a.m. to 6:00p.m. daily (including public holidays) with 24-hour animal boarding services. Not more than 50 dogs will be accommodated at the Site. According to the applicant, no public announcement system and whistle blowing will be allowed on the Site. All dogs will be kept indoor from 6:00p.m. to 9:00a.m. and the structures for animal boarding will be enclosed with soundproofing materials and equipped with mechanical ventilation and air-conditioning systems. Two parking spaces for private car and a loading/unloading space for light goods vehicle will be provided at the Site. The Site is accessible from Castle Peak Road – Tam Mei via local track. The site layout plan and the land filling ratio plan submitted by the applicant are at **Drawings A-1 to A-2**.

1.3 In support of the application, the applicant has submitted the following document:

- (a) Application form with plans received on 26.1.2021 (Appendix I)
- (b) Further Information (FI) received on 16.3.2021 in response to departmental comments (Appendix Ia)
[exempted from publication requirement]

2. **Justifications from the Applicant**

The justification put forth by the applicant in support of the application is detailed in the application form and FI at **Appendices I to Ia**, and is briefly summarized as follows:

- (a) The proposed use is on a temporary basis and will not jeopardize the long-term planning intention of the “AGR” zone. The Site will be reinstated to a condition suitable for agricultural uses after the planning approval period.
- (b) The applicant will strictly follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by the Environmental Protection Department (EPD) to minimize adverse environmental impacts and nuisance to the surrounding area and the ‘Professional Persons Environmental Consultative Committee Practice Notes’ for sewerage treatment. No adverse traffic, environmental, landscape and drainage impacts will be induced to the surrounding areas. Medium or heavy goods vehicles exceeding 5.5 tonnes will be prohibited to park at the Site. The applicant claimed that he is not involved in the land filling work at the Site. Nevertheless, he will remove all existing filled material prior to the commencement of the proposed use.
- (c) As heavy loading of the proposed structure would compact the existing soil ground and weaken the ground surface, concrete site formation is required to provide stronger ground reinforcement to stabilize the existing soil ground and prevent erosion from surface run-off. The land filling area has been kept to minimal.

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

The applicant is not the “current land owner” of the Site but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting notice at the Site and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is subject to on-going planning enforcement action (No. E/YL-KTN/539) against an unauthorized development (UD) involving filling of land (**Plan A-2**). Reinstatement Notice (RN) was issued on 21.4.2020 requiring reinstatement of the concerned land including removal of the leftovers, debris and fill materials and grass the land. As the Site has not been reinstated upon expiry of the notice, prosecution action may be followed.

5. **Previous Application**

The Site is not subject to any previous application.

6. **Similar Applications**

Animal Boarding Establishment

- 6.1 There are 42 similar applications for temporary animal boarding establishment involving 29 sites within the same “AGR” zone. Except Application No. A/YL-KTN/156, which was rejected by the Rural and New Town Planning Committee (the Committee), the remaining 41 applications were approved with conditions by the Committee. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

One Rejected Application

- 6.2 Application No. A/YL-KTN/156 for proposed dog kennel for a period of 3 years was rejected by the Committee on 8.11.2002 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and there was no information in the submission to demonstrate that the proposed development would not cause adverse environmental and drainage impacts on the surrounding areas.

41 Approved Applications

- 6.3 41 applications at 28 sites were approved with conditions by the Committee for 2 to 5 years between 2005 and February 2021 for similar reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; previous approvals were granted and the applicants had made effort to comply with the approval conditions; and/or the relevant government departments generally had no adverse comments on the developments. However, planning permissions for 16 applications were revoked due to non-compliance with approval conditions.

Land Filling

- 6.4 There are six applications involving filling of land within the same “AGR” zone. Four are for temporary hobby farm and/ or caravan holiday camp (Applications No. A/YL-KTN/691, 693, 726 and 745), which involved filling of 10% to 29.8% of the site area and with a depth of 0.2 to 0.5m. The remaining two are for animal boarding establishment (Applications No. A/YL-KTN/723 and 716), which involved filling of the entire site ($734.7\text{m}^2/526.1\text{m}^2$) by about 0.5m. These applications were approved with conditions by the Committee in 2020 and 2021 for the reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; and/ or the relevant government departments generally had no adverse comments on the developments.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4)

7.1 The Site is:

- (a) vacant; and
- (b) accessible from Castle Peak Road – Tam Mei via a local track.

7.2 The surrounding area is rural in character predominated by residential structures/dwellings, open storage/ storage yards, orchard, plant nursery, animal boarding establishment and vacant/unused land:

- (a) to its immediate north, west and south is a piece of vacant land subject to planning permission for a temporary hobby farm;
- (b) to its further north are residential dwellings/ structures (the nearest about 70m away), open storage/ storage yards and unused/vacant land;
- (c) to its east and further south are a storage yard, a pond and vacant land;
- (d) to its further west are a stream course, plant nursery, orchard, animal boarding establishment and unused/ vacant land.

8. Planning Intention

8.1 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.

8.2 According to the Explanatory Statement of the OZP, as filling of land/pond may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Department

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

Land Administration

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

- (a) The Site comprises 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) Should planning approval be given to the planning application, the lots owners 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 proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. 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 rent or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road – Tam Mi.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past three years.
- (b) He notes that the proposed use will operate from 9:00a.m. to 6:00p.m. daily, including public holidays, up to 50 dogs will be kept at the Site, 2 parking spaces for private vehicle and 1 loading & unloading space for light goods vehicle will be provided on site,

all dogs shall be kept in cages and placed inside enclosed structures fitted with soundproofing materials and mechanical ventilation and air conditioning system between 6:00p.m. and 9:00a.m., and no public announcement system, whistle blowing, portable loudspeaker of any form of audio amplification system is allowed to be used on the Site

- (c) Provided that the facilities will be properly designed and maintained to minimize any potential environmental nuisance, he has no objection to the application subject to the following approval condition:
 - (i) The animals shall be kept inside the enclosed structures on the Site between 6:00p.m. and 9:00a.m., as proposed by the applicant, during the planning approval period.
 - (ii) No public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site, as proposed by the applicant, during the planning approval period.
- (d) Moreover, the applicant is also advised to (a) properly design and maintain the facilities to minimize any potential environmental nuisance, e.g. the proposed structures for animal boarding establishment should be enclosed with soundproofing materials with provision of 24-hour mechanical ventilation and air-conditional system; (b) to follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; (c) to provide adequate supporting infrastructure/ facilities for proper collection, treatment and disposal of waste/ wastewater generated from the proposed use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environment Protection Department” including percolation test; and (d) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

Landscape

- 9.1.5 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 landscape planning perspective.
 - (b) Based on the aerial photo taken in 2019, the Site is situated in an area of settled valleys landscape character comprising scattered tree groups, pond, open storage and vacant land. Dense woodland and a natural watercourse are found to the south of the Site and to the west of the Site respectively. Application No. A/YL-KTN/730

and A/YL-KTN/588 for similar use located to the west of the Site were approved in 2020 and 2018 respectively. The proposed development is considered not entirely incompatible with the surrounding landscaping setting.

- (c) Referring to the site record dated 8.2.2021, the Site is vacant with bare soil and no existing trees are found within the Site. Significant adverse impact on existing landscape resources within the Site arising from the proposed development is not anticipated.

Agriculture and Nature Conservation

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

- (a) The Site falls within “AGR” zone and is currently an abandoned land. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possessed potential for agricultural rehabilitation, the application for the proposed use and land filling is not supported from agricultural point of view.
- (b) Nevertheless, he has no comment from the nature conservation and animal establishment boarding licence aspects. The Site does not associate with any licences granted by his department, nor has he received any application regarding the Site. 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. He will provide detailed information and guidance on Animal Boarding Establishment when the applicant submits the licence application.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a 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 Supply

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

- (a) He has no objection to the application.
- (b) For provision of water supply to the development, the applicant may need to extend his inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix IV**.
- (c) Detailed checking under the BO will be carried out at building plan submission stage.

Fire Safety

9.1.10 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 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 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 (Cap. 123), detailed fire service requirements will be formulated upon receipt

of formal submission of general building plans.

Environmental Hygiene

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

- (a) Proper licence / permit issued by his department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant regulation for the public and the operation of any business should not cause any obstruction.
- (b) 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. Its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Any animal carcass/ parts shall be properly wrapped or bagged before disposal and in accordance with the relevant legislation. Also, for any waste generated from the activities in the premises, the applicant should handle on their own / at their expenses.

District Officer's Comments

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

He has not received any comments from the locals and has no comments on the application.

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

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

10. Public Comments Received During the Statutory Publication Period

On 2.2.2021, the application was published for public inspection. During the three-week statutory publication period, three public comments from the Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited and an individual were received (**Appendices III-1 to III-3**). They object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; the potential cumulative impact of approving animal boarding establishment applications on existing active farms in the subject “AGR” zone should be considered; approval of the application would set an undesirable precedent in the “AGR” zone; the Site may be subject to ‘destroy first, built later’ practice which should not be encouraged; and the current state and activity being carried out at the Site should be considered.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 5 years at the “AGR” zone and filling of land at part of the Site (216m²/38%) by 0.2m. The planning intention of the “AGR” zone is primarily 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 proposed use is not entirely 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 rehabilitation. Nevertheless, approval of the application on a temporary basis for a period of 5 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed use is considered not incompatible with the surrounding area which is rural in character predominated by residential structures/dwellings, orchard, plant nursery, animal boarding establishment, and vacant/unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest is 70m to the north of the Site) (**Plan A-2**), the applicant advises that all the animals will be kept within the enclosed structures between 6:00p.m. and 9:00a.m.. The structures for animal boarding will be equipped with soundproofing material, mechanical ventilation and air conditioning. In addition, no public announcement system and whistle blowing will be used at the Site. DEP has no adverse comment on the application. According to the applicant, the filling of land is to stabilize the ground surface of the structure and is minimized. CE/MN of DSD has no in-principle objection to the proposal.
- 11.3 Relevant departments consulted including C for T, DEP, CE/MN of DSD, CTP/UD&L of PlanD and D of FS, except DAFC, have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours and outdoor animal activities and prohibiting the use of public announcement system and whistle blowing are recommended in paragraphs 12.2 (a) to (c) below. The applicant will also be advised to adopt the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions (d) to (i) recommended in paragraph 12.2 below.
- 11.4 The Site is not subject to any previous application. There are 41 similar applications for temporary animal boarding establishment on 28 sites and 6 similar applications involving filling of land within the same “AGR” zone approved with conditions by the Committee between 2005 and 2021 as stated in paragraph 6 above. The circumstance of the only rejected application is different from the current one. Approval of this application is in line with the Committee’s previous decisions.
- 11.5 Three public comments were received during the statutory publication period objecting to the application as stated in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as stated 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 proposed temporary animal boarding establishment for a period of 5 years and filling of land.
- 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 26.3.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 9:00a.m. (except 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 animal boarding establishment on the Site between 6:00p.m. and 9:00a.m., as proposed by the applicant, at all times during the planning approval period;
- (c) no public announcement system, portable loudspeaker, any form of audio amplification system, or whistle blowing is allowed to be used on the Site at any time 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 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 26.9.2021;
- (f) in relation to (e) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 26.12.2021;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) 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 26.9.2021;
- (i) in relation to (h) above, the implementation of 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 26.12.2021;
- (j) if any of the above planning condition (a), (b), (c), (d) or (g) 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;

- (k) if any of the above planning condition (e), (f), (h) or (i) 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
- (l) 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.

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

the proposed development is not in line with the planning intention of the "AGR" zone which 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. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

Advisory Clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant 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 26.1.2021
Appendix Ia	FI received on 16.3.2021
Appendix II	Similar applications within the same "AGR" zone on the Kam Tin North OZP
Appendices III-1 to III-3	Public comments received during the statutory publication period

Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Ratio Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2021**