

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/755

<u>Applicant</u>	: Mr. Chu Kit Wing represented by Metro Planning & Development Company Limited
<u>Site</u>	: Various Lots in D.D. 107, Fung Kat Heung, Kam Tin, New Territories
<u>Site Area</u>	: About 1,980m 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 (Dog Kennel cum Dog Recreation Centre) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment (dog kennel cum dog recreation centre) for a period of 3 years. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in the “AGR” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently partly paved and vacant (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the proposed development involves six 1-storey structures with a total floor area of about 792m² and building height not exceeding 4.5m for dog kennel, dog recreation centre, dog washing facility, site office, staff restroom, toilet and store room. The operation hours are from 9:00a.m. to 7:00p.m. daily (including public holidays). All dogs will leave the Site after the operation hours. Not more than 12 dogs will be accommodated at the Site. According to the applicant, no public announcement system and whistle blowing will be used at the Site. All dogs will be kept indoors and the structures for the dogs will be enclosed with soundproofing materials and provided with mechanical ventilation and air-conditioning system. Five parking spaces for private car will be provided. The Site is accessible from Fung Kat Heung Road via a local track. The site layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application form with supplementary information received on 16.2.2021 **(Appendix I)**
- (b) Further Information (FI) received on 1.4.2021 and 8.4.2021 in response to departmental comments* **(Appendix Ia)**
- (c) FI received on 15.6.2021 in response to departmental comments* **(Appendix Ib)**
**exempted from publication requirement*

1.4 On 16.4.2021, the Committee agreed to defer a decision on the application to allow time for the applicant to prepare FI to address departmental comments. After the deferral request, the applicant submitted FIs in April and June 2021 in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justification put forth by the applicant in support of the application is detailed in the application form, supplementary information and FIs at **Appendices I to Ib**, 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.
- (b) The proposed development is not incompatible with the surrounding environment. Similar applications were approved in the same “AGR” zone.
- (c) The applicant will strictly follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ and Water Pollution Control Ordinance. Discharge licence would be obtained before new discharge is commenced. There will be insignificant traffic, drainage and environmental impacts. The proposed facility will be maintained in sanitary condition.

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 not the subject of any active planning enforcement action.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There are 26 similar applications for temporary animal boarding establishment in the vicinity of the Site within the same “AGR” zone. Except Application No. A/YL-KTN/759, which was rejected by the Rural and New Town Planning Committee (the Committee), the remaining 25 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**.

25 Approved Applications

- 6.2 25 applications involving 10 sites in the vicinity of the Site were approved with conditions by the Committee for 3 to 5 years between July 2005 and July 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 the relevant government departments generally had no adverse comments on the developments. However, planning permissions for 7 applications were revoked due to non-compliance with approval conditions.

One Rejected Application

- 6.3 Application No. A/YL-KTN/759 for temporary animal boarding establishment for a period of 3 years and filling of land was rejected by the Committee on 14.5.2021 on the grounds that the site was fragmented in that the boundary had enclosed existing structures which were used for the applied use without planning permission but were outside the application site, and approving the application would result in piecemeal development and was undesirable from land-use planning and planning control point of view.

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

- 7.1 The Site is:

- (a) currently partly paved and vacant; and
- (b) accessible from Fung Kat Heung Road via a local track.

7.2 The surrounding area is rural in character predominated by kennels, residential structures/dwellings, ponds, a pigsty, a sheep farm, storage yards and vacant/unused land:

- (a) to its immediate and further northeast are kennels subject to planning permissions for temporary animal boarding establishment (Applications No. A/YL-KTN/659 and 757);
- (b) to its further north and west are residential dwellings / structures (closest 20m away), a sheep farm, a pigsty, storage yards and vacant/ unused land;
- (c) to its the east is a stream. Across the stream is an area zoned “Conservation Area” (“CA”) with unused land, ponds and residential structures/ dwellings; and
- (d) to its south are ponds and sites with work in progress.

8. Planning Intention

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.

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(s) 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, HyD):

- (a) Fung Kat Heung Road is maintained by his office.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and San Tam Road.
- (c) 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) Provided that the facilities will be properly designed and maintained to minimize any potential environmental nuisance, she has no objection to the application subject to the following approval conditions:
 - (i) no dogs shall stay at the Site after the operation hours (i.e. between 7:00p.m. and 9:00a.m.) as proposed by the applicant;

- (ii) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at any time during the planning approval period; and
 - (iii) a 2.5m high solid (metal) wall is to be erected along the site boundary to minimize nuisance to the nearby residents during the planning approval period.
- (c) Moreover, the applicant is also advised: (i) that the proposed structures for animal boarding establishment, dog recreation centre and dog washing facility should be enclosed with soundproofing materials with provision of mechanical ventilation and air-conditioning system, as proposed by the applicant; (ii) dog masks should be used when the dogs are outdoors; (iii) to follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; (iv) to provide adequate supporting infrastructure/ facilities for proper collection, treatment and disposal of waste/ wastewater generated from the applied 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 the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environment Protection Department (EPD)” including percolation test; and (v) that 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) She has no objection to the application from the landscape planning perspective.
- (b) The applicant is reminded that approval of the application does not imply approval of tree works such as pruning, transplanting and felling. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

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 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 possesses potential for agricultural rehabilitation, the application for the proposed use is not supported from agricultural point of view.

- (b) The site inspection on 2.3.2021 revealed that land filling of over 2m in thickness was found at the Site. It is trusted that the site history among others and consideration if the application is a 'destroy first, building later' case which should not be encouraged from nature conservation perspective will be taken into account.
- (c) Nevertheless, he has no comment from the 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, 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 revised 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.
- (c) His detailed comments on the submitted drainage proposal are in **Appendix IV**.

Fire Safety

9.1.8 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 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 FSIs 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.

Building Matters

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

- (a) As there is no record of approval by the Building Authority (BA) for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) 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 BA should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (c) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix IV**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Environmental Hygiene

9.1.10 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. 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.

- (b) Proper licence/ permit issue 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 any other relevant legislation for the public and the operation of any business should not cause any obstruction.

District Officer's Comments

9.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), 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) Chief Engineer/Construction, Water Supplies Department;
- (c) Director of Electrical and Mechanical Services; and
- (d) Commissioner of Police.

10. Public Comments Received During the Statutory Publication Period

On 23.2.2021, the application was published for public inspection. During the three-week statutory publication period, five public comments from the Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited, World Wide Fund for Nature (Hong Kong), Hong Kong Bird Watching Society and an individual were received (**Appendices III-1 to III-5**). All the public comments object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; approval of the application would set an undesirable precedent; the potential cumulative impact of approving animal boarding establishment applications in the subject “AGR” zone should be considered; there will be adverse sewerage and ecological impacts; the application is to legitimize ongoing brownfield operations; and the Site may be subject to ‘destroy first, built later’ practice which should not be encouraged.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment (dog kennel cum dog recreation centre) for a period of 3 years at the “AGR” zone. 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. However, approval of the application on a temporary basis for a period of 3 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, a pigsty, ponds, storage yards and vacant/ unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest is 20m to the north of the Site) (**Plan A-2**), the applicant advises that no dog will stay at the Site after the operation hours (i.e. from 7:00 p.m. to 9:00 a.m.). All dogs will be kept indoors at all times. 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.
- 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, requiring the provision of a boundary wall and prohibiting the use of public announcement system and whistle blowing are recommended in paragraphs 12.2 (a) to (c) and (e) 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) and (f) to (j) recommended in paragraph 12.2 below.
- 11.4 The Site is not the subject of any previous application. Among the 26 similar applications within the same “AGR” zone, 25 were approved with conditions by the Committee between 2005 and 2021 as stated in paragraph 6 above. The circumstances of the only rejected application is different from the current one as stated in paragraph 6.3 above. Approval of this application is in line with the Committee’s previous decisions.
- 11.5 Five 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 (dog kennel cum dog recreation centre) for a period of 3 years.
- 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 3 years until 13.8.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept indoors at all times, as proposed by the applicant, 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 provision of a 2.5m high solid metal wall along the Site boundary within **3** months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 13.11.2021;
- (f) the submission of a revised 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 13.2.2022;
- (g) in relation to (f) above, the implementation of the revised 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 13.5.2022;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 13.2.2022;
- (j) in relation to (i) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 13.5.2022;
- (k) if any of the above planning condition (a), (b), (c), (d) 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;
- (l) if any of the above planning condition (e), (f), (g), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and

- (m) 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 with Supplementary Information received on 16.2.2021
Appendix Ia	FI received on 1.4.2021 and 8.4.2021
Appendix Ib	FI received on 15.6.2021
Appendix II	Similar Applications within the Same "AGR" Zone on the Kam Tin North OZP
Appendices III-1 to III-5	Public Comments received during the Statutory Publication Period
Appendix IV	Advisory Clauses
Drawing A-1	Layout 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
AUGUST 2021**