RNTPC Paper No. A/YL-KTN/756 For Consideration by the Rural and New Town Planning Committee on 16.4.2021

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/756

<u>Applicant</u>	:	Mr. TANG Lok San
<u>Site</u>	:	Lot 1025 RP in D.D. 109, Kam Tin North, Yuen Long, N.T.
<u>Site Area</u>	:	About 579.7m ²
Lease	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
Zoning	:	"Agriculture" ("AGR")
Application	:	Proposed Temporary Animal Boarding Establishment for a Period of 3 Years and Filling of Land

1. <u>The Proposal</u>

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of 3 years and filling of land. 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). Filling of land in "AGR" zone also requires planning permission from the Board. The Site is currently vacant and covered by weed (**Plans A-2 and A-4**).
- 1.2 The proposed development involves three one to two-storey structures with building height of not more than 6.5m and a total floor area of about 177.5 m^2 for animal boarding establishment, site office and storage. The whole site is proposed to be filled with soil and concrete on top by about 0.5m (from about 11.4mPD to 11.9mPD). The operation hours will be from 9:00a.m. to 6:00p.m. daily (including public holidays) with 24-hour animal boarding services. Not more than 30 dogs will be accommodated at the Site. According to the applicant, all dogs will be kept indoor from 6:00p.m. to 9:00p.m. and the structures for animal boarding will be equipped with soundproofing materials and 24-hour mechanical ventilation and air-conditioning systems. A 2.5m high solid metal fence will also be provided along the site boundary. No public announcement system and whistle blowing will be used on the Site. Six parking spaces for private car and a loading/unloading space for light goods vehicle will be provided at the Site. The Site is currently not accessible. The applicant proposed to form an access to a local track leading to Kong Tai Road. 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 document:
 - (a) Application form with supplementary statement and (Appendix I) plans received on 22.2.2021
 - (b) Further Information (FI) received on 12.4.2021 in (Appendix Ia) response to departmental comments [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 supplementary statement 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. Similar applications for animal boarding establishment in the same "AGR" zone have been approved. The proposed use is not incompatible with the surrounding environment.
- (b) The proposed land filling will use soil as the fill material, which is suitable for reinstatement into farmland afterwards, before being covered by concrete for foundation. This will provide a clean environmental for the visitors and avoid soil erosion. The filling of land will also stabilize the structures, provide manoeuvring and parking spaces for vehicles and facilitate drainage works. The land filling area is kept to a minimum.
- (c) Not more than 8 dogs will be allowed outdoor at one time and dog masks may be used to minimize noise nuisance. The landscaping and drainage facilities to be implemented at the Site will enhance the environment and prevent flooding. The applicant will remove paved materials upon expiry of the planning approval and ensure the soil is suitable for farming.

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 currently not subject to any active planning enforcement action.

5. **Previous Application**

The Site is not subject to any previous application.

6. <u>Similar Applications</u>

Animal Boarding Establishment

6.1 There are 43 similar applications for temporary animal boarding establishment involving 30 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 42 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.

42 Approved Applications

- 6.3 42 applications at 29 sites were approved with conditions by the Committee for 2 to 5 years between 2005 and March 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.
- 6.4 Apart from the above similar applications which have been considered by the Committee, Application No. A/YL-KTN/721 for temporary animal boarding establishment (dog kennel) for a period of 3 years within the same "AGR" zone will be considered at the same meeting.

Land Filling

6.5 There are seven 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 three are for animal boarding establishment (Applications No. A/YL-KTN/723, 716 and 752), which involved filling of the entire site (734.7m²/526.1m²) by about 0.5m or about 38% of the Site by 0.2m. These applications were approved with conditions by the Committee in 2020 and March 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. <u>The Site and Its Surrounding Areas</u> (Plans A-2 to A-4)

- 7.1 The Site is:
 - (a) vacant and covered by weed; and
 - (b) currently not accessible. The applicant proposed to form an access to a local track leading to Kong Tai Road.
- 7.2 The surrounding area is rural in character predominated by residential structures/dwellings, cultivated/fallow agricultural land, open storage/storage yards, parking of vehicles, a hobby farm and vacant/unused land:
 - (a) to its immediate south are a residential dwellings/structures and cultivated agricultural land. To its further south are a hobby farm, a residential structure/dwelling, vacant land and parking of vehicles.
 - (b) to its immediate west is Kam Tin River. To its further northwest and west across the river are cultivated/fallow agricultural land, open storage yards, parking of vehicles, residential structures/dwellings and vacant/unused land; and
 - (c) to its immediate north and east is cultivated agricultural land and its further east and northeast are residential structures/dwellings, storage yard and fallow agricultural land.

8. <u>Planning Intention</u>

- 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 may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. <u>Comments from Relevant Government Department</u>

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 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) Should planning approval be given the planning application, the lot owner(s) will need to apply his office to permit the structure(s)

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 the 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.

(c) Although a new 4m wide road is proposed to be built on GL in order to connect the Site from adjoining access road, there is no guarantee that any right-of-way over the GL to the Site would be granted. In addition, according to the established practice, application of Short Term Tenancy for the purpose of road/access will not be entertained, even if the planning application approved by the Board.

<u>Traffic</u>

- 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) Part of Kong Tai Road is maintained by his office.
 - (b) HyD shall not be responsible for the maintenance of any access connecting the Site and part of Kong Tai Road.
 - (c) Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.

<u>Environment</u>

- 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, he has no objection to the application subject to the following approval conditions:
 - (i) The animals shall be kept inside the enclosed structures between 6:00p.m. and 9:00a.m. on the Site, 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.
 - (iii) A 2.5m high solid (metal) wall to be erected along the Site boundary to minimize nuisance to the nearby residents, as proposed by the applicant, during the planning approval period.
 - (c) Moreover, the applicant is also advised to (a) the proposed structure for animal boarding establishment should be enclosed with soundproofing materials with provision of 24-hour mechanical ventilation and air-conditioning 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 support 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 Environmental 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 2020, the Site is situated in an area of rural inland plains landscape character with temporary structures, farmlands, vacant lands, scattered tree groups and pond. Kam Tin River is located to the west of the Site. The proposed use is considered not entirely incompatible with the surrounding landscape setting.
- (c) According to the site record dated 11.3.2021, the Site is covered with wild grass. 2 nos. of existing trees i.e. *Macaranga tanarius* (価柄) are found in the Site. With reference to the submission, land filling with 0.5m depth at the entire site is proposed. The proposed land filling will be in conflict with 2 nos. of the existing tress in the Site. As no information of the existing landscape resources within the Site and proposed treatment for the affected trees are provided in the submission, the potential impact on the existing trees cannot be ascertain. In view of the existing trees are of common self-seeded species, significant adverse impact on the proposed development is not anticipated.
- (d) The applicant is reminded to refer to Development Bureau (DEVB)'s Proper Planting Practice regarding "Do Not Plant Too Deep" (植樹不要過深). Also, the 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 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 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.

(c) Should the application be approved, the applicant shall be reminded to adopt measures to avoid disturbing and polluting the Kam Tin River located to the west of the Site.

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 of a drainage proposal, in particular to demonstrate how the overland flow across the Site to the adjacent drainage channel will not be adversely affected by the land filling, and 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

- 9.1.8 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 Site, prior approval and consent of the Building Authority 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.
 - (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

- 9.1.9 Comments of the Director of Fire Services (D of FS):
 - (a) He has no objection in principle to the proposal subject to fire

- (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

- 9.1.10 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 regislation 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

9.1.11 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) 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 2.3.2021, the application was published for public inspection. During the three-week statutory publication period, six public comments from the Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited, local residents and an individual were received (**Appendices III-1 to III-6**). They object to the application mainly on the grounds that the proposed development will affect the tranquility of the village and result in adverse environmental, hygiene, sewerage, noise, odour, traffic and pedestrian safety impacts; the proposed development 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 will set an undesirable precedent for other similar application; there are active farms near the Site and the Site has a great potential for agricultural rehabilitation, land filling should be avoided; the number of animal boarding establishment applications is disproportional to the market; and the credential of the applicant and similar operation nearby should be considered.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment for a period of 3 years at the "AGR" zone and filling of land at the entire Site by 0.5m. 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 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 predominated by residential structures/dwellings, rural in character cultivated/fallow agricultural land and vacant/unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest on the immediate south) (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 materials and 24-hour mechanical ventilation and air conditioning. A 2.5m high solid metal fence will also be provided along the site boundary. In addition, no public announcement system and whistle blowing will be used at the Site. DEP has no objection to the application. According to the applicant, the filling of land is to stabilize the ground surface of the structure, provide manoeuvring/ parking space for vehicles, and facilitate drainage works. The land filling work has been 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, prohibiting the use of public announcement system and whistle blowing and erection of boundary wall 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) to (j) recommended in paragraph 12.2 below.

- 11.4 The Site is not subject to any previous application. There are 42 similar applications for temporary animal boarding establishment on 29 sites and 7 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 Six 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. <u>Planning Department's Views</u>

- 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 <u>has no objection</u> to the proposed temporary animal boarding establishment for a period of 3 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 3 years until <u>16.4.2024</u>. 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 provision of a 2.5m high solid metal wall along the site boundary within
 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by <u>16.10.2021;</u>
- (f) the submission of drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by <u>16.10.2021</u>;
- (g) in relation to (f) 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 <u>16.1.2022</u>;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by <u>16.10.2021</u>;
- (j) in relation to (i) 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 <u>16.1.2022</u>;
- (k) if any of the above planning conditions (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;
- (1) if any of the above planning conditions (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. <u>Decision Sought</u>

- 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. <u>Attachments</u>

Appendix I	Application form received on 22.2.2021
Appendix Ia	FI received on 12.4.2021
Appendix II	Similar applications within the same "AGR" zone on the Kam Tin North OZP
Appendices III-1 to III-6	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 APRIL 2021