

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/759

<u>Applicant</u>	: Maison De Charlotte Pour Des Chats Et Des Chiens Sarl Limited represented by Mr. TANG Lok San
<u>Site</u>	: Lot 949 (Part) in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long, N.T.
<u>Site Area</u>	: About 1,826m 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>	: Temporary Animal Boarding Establishment for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for 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 used for the applied use without planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The development involves three one-storey structures with building height of not more than 3.5m and a total floor area of about 250.42m² for animal boarding establishment. Five existing structures enclosed by the site boundary which itself are being used for animal boarding establishment (**Plan A-2**) without planning permission are excluded from the site boundary and do not form part of the planning application. The whole Site is proposed to be filled with concrete by about 0.3m (from 11.2mPD to 11.5mPD). 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 150 animals will be accommodated at the Site. According to the applicant, all dogs will be kept indoor after business hours 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 wall is also provided along the site boundary. No public announcement system and whistle blowing will be used on the Site. 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 Mi via a local track and the adjoining site under approved application No. A/YL-KTN/730 for temporary animal boarding establishment (submitted by the same applicant of the current application). 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 and plans received on 15.3.2021 **(Appendix I)**
- (b) Further Information (FI) received on 4.5.2021 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
- (c) FI received on 5.5.2021 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]

2. Justifications from the Applicant

The justifications 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 applicant is a charitable organization and the proposed development is intended to accommodate abandoned animals. The application is for temporary use and will not affect the long-term planning intention. There are similar applications approved in the same “AGR” zone.
- (b) The proposed development is not incompatible with the surrounding environment and land use. The applicant will implement drainage and landscape proposals and environmental mitigation measures to enhance the environment, improve visual quality and reduce flooding. Not more than 10 dogs will be allowed outdoor at one time and measures such as using dog masks will be adopted to minimize noise impact.
- (c) The land filling area, which will use soil as foundation and concrete on top, will provide a clear environment for the users and avoid soil erosion. The paved area will also stabilize the structures, provide maneuvering and parking spaces for vehicles and facilitate drainage works. The paving will be removed upon expiry of the planning approval and no long-term impact will be caused.
- (d) The five existing structures enclosed by the application site boundary are not used by the applicant, thus they are excluded from the current application. The outdoor space within the Site will be allowed as access for the use of these existing structures.

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 subject to an on-going planning enforcement action (No. E/YL-KTN/538) against an unauthorized development (UD) involving storage use (including deposit of containers) (**Plan A-2**). Enforcement notice was issued on 29.6.2020 requiring discontinuation of the UD. Compliance notice was issued on 11.3.2021.

5. **Previous Application**

The Site is not subject to any previous application.

6. **Similar Applications**

Animal Boarding Establishment

- 6.1 There are 47 similar applications for temporary animal boarding establishment involving 31 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 46 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.

46 Approved Applications

- 6.3 46 applications at 30 sites were approved with conditions by the Committee for 2 to 5 years between 2005 and April 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 eight 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 four are for animal boarding establishment (Applications No. A/YL-KTN/723, 716, 752 and 756), which involved filling of the entire site (526.1m² to 734.7m²) 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 April 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-4b)

7.1 The Site is:

- (a) currently used for the applied use without planning permission;
- (b) five existing structures for animal boarding establishment enclosed by the site boundary are not covered by the current planning application and without planning permission; and
- (c) accessible from Castle Peak Road-Tam Mi via a local track and the adjoining site to the east under approved application No. A/YL-KTN/730 for temporary animal boarding establishment (submitted by the same applicant of the current application).

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

- (a) to its immediate north are storage yard and organic farm. To its further north are open storage/ storage yard (including a site subject to planning approval for animal boarding establishment) and residential structures/ dwellings;
- (b) to its immediate east is a temporary animal boarding establishment with planning approval (No. A/YL-KTN/730). However, the boarding structures have not been implemented according to the layout under the approved scheme. To its northeast are open storage yards and residential structures/ dwelling; and
- (c) to its south and west are residential structures/ dwellings (the nearest is about 20m away on the west), cultivated agricultural land, plant nursery, hobby farm, storage yard, vacant/ unused land and a site with work in progress under approved application for temporary animal boarding establishment.

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 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 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 will need to apply 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) 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 (i) that the proposed structure for animal boarding establishment should be enclosed with soundproofing materials with provision of 24-hour mechanical ventilation and air-conditioning system; (ii) to follow the requirements stipulated in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”; (iii) a maximum of ten dogs to be walked outdoor at the same time; (iv) dogs would wear dog masks during outdoor activities; (v) to provide adequate support 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 Environmental Protection Department (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 (vi) 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) Based on the aerial photo taken in 2019, the Site is situated in an area of rural landscape character comprising of scattered tree groups, temporary structures, active and abandoned farmlands. The development is not entirely incompatible with the surrounding landscape character of the area. Similar applications (Nos. A/YL-KTN/588, 642, 695 and 730) of temporary animal boarding use within the same "AGR" zone in proximity of the Site were approved.
- (b) Referring to the site visit in March 2021, the Site is in operation as animal boarding use and mostly paved with asphalt. Around 10 nos. of trees of common species, including *Melia azedarach* (楝), *Syzygium jambos* (蒲桃), *Averrhoa carambola* (楊桃) and *Dimocarpus longan* (龍眼) are found within the Site at the northern boundary. Significant adverse impact to the existing landscape resources arising from the applied use within the Site is not anticipated. However, in comparing with the aerial photos taken in 2018 and 2019, it is noted that most of the existing trees and vegetation within the Site has been cleared and hard paved and the Site is in operation as the applied use. There is concern that approval of the application may encourage more unauthorised site alteration within the area prior to the application. The cumulative impact of such approval may further alter the landscape quality of the "AGR" zone.
- (c) The applicant is reminded that approval of the application does not imply approval of tree works such as pruning, transplanting, and felling under lease. The applicant should seek comments and approval from relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.
- (d) The applicant is reminded that no materials should be stacked within 1m from the tree trunks to avoid damage to the trees.

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 used for the applied use. 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.

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 development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal including how to preserve the existing watercourse at eastern side of the Site and how to raise land as a result of the land filling will not adversely affect the overland flow across the Site, 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) As there is no record of approval granted by the Building Authority (BA) for existing structures at the Site, he is not in a position to offer comments on the 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 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.
- (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.

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 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.

Water Supply

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

- (a) He has no objection to the application.
- (b) Existing water mains will be affected. A waterworks reserve within 1.5 metres from the centerline of the water main shown in **Plan A-2** shall be provided to WSD.
- (c) No structure shall be built or materials stored within this waterworks reserve. Free access shall be made available at all times for staff of the Director of Water Supplies and their contractor to carry out construction, inspection, operation, maintenance and repair works.
- (d) No trees or shrubs with penetrating roots may be planted within the

waterworks reserve or in the vicinity of the water main (**Plan A-2**).

- (e) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

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 legislation 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/ no objection to 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 23.3.2021, 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 and two individuals were received (**Appendices III-1 to III-3**). They object to the application mainly on the grounds that the development causes adverse environmental, hygiene, noise and odour impacts; the number of animal boarding establishment applications is disproportional to the market demand; there is no information regarding the operation details and waste treatment of the development and the existing temporary structures at the Site; the proposed development is not in line with the planning

intention of the “AGR” zone; there are many active farms in the “AGR” zone; the impact of approving animal boarding establishment applications on existing active farms in the “AGR” zone should be considered; and the Site is subject to on-going enforcement action.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary animal boarding establishment for a period of 3 years at the “AGR” zone and filling of land at the entire Site by 0.3m. 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 applied 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 applied use is considered not incompatible with the surrounding area which is rural in character and intermixed with residential dwellings/ structures, cultivated agricultural land, animal boarding establishment and vacant/unused land, and concerned departments consulted (except DAFC) have no objection to or adverse comments on the application. For the proposed land filling, the applicant stated that it is to stabilize the ground surface of the structures, provide maneuvering/ parking spaces for vehicles, and to facilitate drainage works. DEP and CE/MN of DSD have no in-principle objection to the proposal.
- 11.3 However, the Site is fragmented in that the boundary has enclosed five existing structures which are currently used for animal boarding establishment without planning permission but outside application site. This would result in piecemeal development and is undesirable from planning point of view. In addition, to minimize potential nuisance to the nearby residents, the subject application has to be fenced off by 2.5m high solid (metal) wall if it is approved. After enclosure of the Site, it would be difficult to impose planning control on the use of these structures excluded from the site boundary. It would be more desirable to consolidate the current application and the existing structures for similar uses from land use planning and planning control point of view.
- 11.4 There are 46 similar applications for temporary animal boarding establishment and eight applications for land filling within the same “AGR” zone, which were approved by the Committee between 2005 and 2021. However, none of them involve excluding existing structures/land enclosed by the application site resulting in piecemeal development.
- 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 does not support the application for the following reason:

the Site is fragmented with structures excluded. Approving the application would result in piecemeal development and is undesirable from land-use planning and planning control point of view.

- 12.2 Alternatively, should the Committee decide to approve the application, the permission shall be valid on a temporary basis for a period of 3 years until 14.5.2024. 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 14.11.2021;
- (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 14.11.2021;
- (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 14.2.2022;
- (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 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 14.11.2021;

- (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 14.2.2022;
- (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;
- (l) 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.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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.

14. Attachments

Appendix I	Application form received on 15.3.2021
Appendix Ia	FI received on 4.5.2021
Appendix Ib	FI received on 5.5.2021
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
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2021**