

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/775**

<b><u>Applicant</u></b>	: Mr. Leung Yu Cheung represented by R-riches Property Consultants Limited
<b><u>Site</u></b>	: Lots 1224 S.D, 1225 S.B and 1226 S.D in D.D. 107, Fung Kat Heung, Kam Tin, N.T.
<b><u>Site Area</u></b>	: About 567m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: 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 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 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 some vegetation (**Plans A-2 and A-4**).
- 1.2 The proposed development involves 1 one-storey structure with building height of not more than 3.5m and floor area of about 108m<sup>2</sup> for animal boarding establishment (dog kennel) and storage of pet goods uses. About 108m<sup>2</sup> (19%) of the Site is proposed to be filled with concrete by not more than 0.2m (from about 10.2mPD to 10.4mPD) for site formation of structures and the remaining of 156m<sup>2</sup> (28%) is landscaping area for outdoor dog activities area and 303m<sup>2</sup> (53%) is grass paver area for circulation, parking and loading/unloading spaces. 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 20 dogs will be accommodated at the Site. According to the applicant, all dogs will be kept indoor at all times and the structures for animal boarding will be equipped with soundproofing materials and mechanical ventilation and air-conditioning systems. No public announcement system and whistle blowing will be used on the Site. Two parking spaces for private car and one 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. The site layout plan and paved ratio plan submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application form and plans received on 10.6.2021 (Appendix I)
- (b) Further Information (FI) received on 19.7.2021 in response to departmental comments (Appendix Ia)  
*[exempted from publication requirement]*

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form, plans and FI at **Appendices I and 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 applicant will reinstate the Site to an amenity area upon expiry of 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.
- (c) The land filling is for formation of structure. The land filling is required for the operation of the proposed development and has been kept to a minimum.
- (d) The applicant will submit an application for Boarding Establishment Licence in accordance with The Public Health (Animals) (Boarding Establishment) Regulations to the Agriculture, Fisheries and Conservation Department (AFCD) after obtaining planning approval of the Board.

## **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 land owners. Detailed information would be deposited at the meeting for Members’ inspection.

#### 4. **Background**

The Site is currently not subject to any active enforcement action.

#### 5. **Previous Application**

The Site is not involved in any previous application.

#### 6. **Similar Applications**

##### **Animal Boarding Establishment**

- 6.1 There are 31 similar applications for temporary animal boarding establishment involving 18 sites in the vicinity of the Site within the same “AGR” zone. Except Application No. A/YL-KTN/759, which was rejected by the Committee, the remaining 30 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/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 mainly for the reason that the site was fragmented in that the boundary had enclosed existing structures which were used for the applied use without planning permission but 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.

##### *30 Approved Applications*

- 6.3 30 applications involving 17 sites 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 11 applications were revoked due to non-compliance with approval conditions.

##### **Land Filling**

- 6.4 There are eight similar applications involving filling of land in the vicinity of the Site within the same “AGR” zone. Five are for temporary hobby farm and/ or caravan holiday camp (Applications No. A/YL-KTN/691, 693, 726, 745 and 772), which involved filling of 10% to 29.8% of the site area and with a depth of 0.2m to 0.5m. The remaining three applications are for animal boarding establishment (Applications No. A/YL-KTN/759, 769 and 771), which involved filling of 9% to 100% of the site area and with a depth of 0.2m to 0.3m. Except for Application No. A/YL-KTN/759 which was rejected by the Committee with reasons as stated in

paragraph 6.2 above, the other applications were approved with conditions by the Committee between January 2020 and July 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; 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 covered by some vegetation; and
- (b) accessible from Castle Peak Road – Tam Mi via a local track.

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

- (a) to its north and further northeast are residential structures/dwellings (the nearest about 60m), open storage/storage yards and vacant/unused land;
- (b) to its east is vacant/unused land;
- (c) to its west is vacant land and a site under work in progress and a stream course. To its further west are plant nursery, orchard, vacant/ unused land and open storage yards; and
- (d) to its south is a pond, a storage yard and a site under works in progress.

**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, 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 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 the 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, 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 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 at any times, as proposed by the applicant, during the planning approval period.
- (c) Moreover, the applicant is also advised (i) that the proposed structures 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) 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 (iv) 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) He has no objection to the application from the landscape planning point of view.
- (b) Based on the aerial photo of 2020, the Site is situated in an area of settled valleys landscape character comprises scattered tree groups, pond, temporary structures, open storage and vacant land. Applications No. A/YL-KTN/588, 730 and 752 for similar use located in the same “AGR” zone were approved in 2018, 2020 and 2021 respectively. The proposed development is considered not entirely incompatible with the surrounding landscape setting.
- (c) Referred to the site photos dated 18.6.2021, the Site is vacant with self-seeded vegetation. No existing tree is 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 the “AGR” zone and is currently abandoned. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water sources 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 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 have we received any application regarding the address. 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 of a drainage proposal 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, 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 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.

- (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 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**

#### **9.1.10 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 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**

9.1.11 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/ no objection to the application:

- (a) Project Manager (West), Civil Engineering and Development Department;
- ~~(b) Director of Food and Environmental Hygiene;~~
- ~~(c)~~ (b) Chief Engineer/ Construction, Water Supplies Department;
- ~~(d)~~ (c) Director of Electrical and Mechanical Services; and
- ~~(e)~~ (d) Commissioner of Police.

**10. Public Comments Received During the Statutory Publication Period**

On 18.6.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments from Kadoorie Farm and Botanic Garden Corporation and an individual (**Appendices III-1 and III-2**) were received. 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; active farms would be affected if planning applications for animal boarding establishment are continued to be approved; and the current state of the lots should be asked.

**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 (108m<sup>2</sup>/19%) by not more than 0.2m in depth. 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 some residential structures/dwellings, open storage/storage yards, plant nursery, orchard and vacant/unused land. Although there are residential dwellings/structures in the vicinity of the Site (the nearest about 60m to its northeast) (**Plan A-2**), the applicant advised that all the animals will be kept within the enclosed structures at all times and the structure will be equipped with soundproofing materials and mechanical ventilation and air conditioning. 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 (108m<sup>2</sup>/ 19%) is for site formation of structures. 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 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) as recommended in paragraph 12.2 below.
- 11.4 The Site is not involved in any previous application. There are 30 similar applications for temporary animal boarding establishment and 8 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 circumstances of the only rejected application (No. A/YL-KTN/759) is different from the current application as stated in paragraph 6.2 above. Approval of this application is in line with the Committee's previous decisions.
- 11.5 Two 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 23.7.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m. (except for overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed animal boarding establishment on the Site, 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 a 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 23.1.2022;
- (f) in relation to (e) above, the implementation of the 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 23.4.2022;
- (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 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 23.1.2022;
- (i) in relation to (h) 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 23.4.2022;
- (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.

#### Advisory Clauses

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

- 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 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.

**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**

<b>Appendix I</b>	Application Form with Plans received on 10.6.2021
<b>Appendix Ia</b>	FI received on 19.7.2021
<b>Appendix II</b>	Similar Applications within the Same “AGR” Zone on the Kam Tin North OZP
<b>Appendices III-1 and III-2</b>	Public Comments received during the Statutory Publication Period
<b>Appendix IV</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Paved Ratio Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
JULY 2021**