

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/797

- Applicant** : Mr. SZE Yat Ming represented by Metro Planning & Development Company Limited
- Site** : Lots 1347 S.W and 1347 S.AD in D.D.107, Fung Kat Heung, Kam Tin, Yuen Long, New Territories
- Site Area** : About 280m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment (Dog Kennel) 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 proposed temporary animal boarding establishment (dog kennel) 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 partly covered with weeds and partly used for storage of construction materials (**Plans A-2 and A-4**).
- 1.2 The proposed development involves the erection of two one-storey structures with building height of not more than 4.5m and a total floor area of about 200m² for dog kennel, toilet and site office uses. The whole site is proposed to be filled with concrete by not more than 0.2m in depth for site formation of structures and parking purposes. The operation hours will be 9:00a.m. to 7:00p.m. from Mondays to Sundays, including public holidays. According to the applicant, a maximum of 8 dogs will be accommodated at the Site. All dogs will be kept inside the enclosed animal establishment and will leave the Site after the operation hours. The structure is enclosed with soundproofing materials and equipped with mechanical ventilation and air-conditioning system. No public announcement system will be used on the Site. Three private car parking spaces will be provided at the Site. The Site is accessible via Fung Kat Heung Road branching off from San Tam Road. The site layout plan and land filling 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, supplementary information and plans received on 27.10.2021 **(Appendix I)**
- (b) Further Information (FI) received on 9.12.2021 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
- (c) FI received on 14.12.2021 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]
- (d) FI received on 16.12.2021 in response to departmental comments **(Appendix Ic)**
[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, supplementary information, plans and FIs at **Appendices I to Ic**, and are 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 area proposed to be filled is small in size, which is for supporting the proposed development at the Site.
- (b) The nature, layout, form and scale of the proposed development are not incompatible with the surrounding areas. Similar applications have been approved in the vicinity of the Site.
- (c) The proposed development would not generate adverse traffic, environmental and drainage impacts to the surrounding areas.
- (d) The applicant will follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by the Environmental Protection Department for relevant mitigation measures and requirements. A discharge licence under the Water Pollution Control Ordinance would be obtained before a new discharge is commenced.
- (e) There is a natural watercourse running in the southern boundary of the Site (**Plan A-2**). In this regard, the applicant stated that the minor excavation of soil, during the construction stage, will be delivered away from the Site on the same day to avoid accumulation of the excavated soil at the site boundary. He will also not disturb the adjoining watercourse in the operation stage including the provision of chemical toilet instead of using septic tank and soakaway pit system. Sand bags will be placed along the southern boundary and good site

practice will be adopted during soil excavation to avoid polluting the watercourse nearby.

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

The applicant is the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

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

5. Previous Application

The Site is not involved in any previous application.

6. Similar Applications

- 6.1 There are 28 similar applications for temporary animal boarding establishment with/without filling of land, involving 18 sites, within the same “AGR” zone in the vicinity of the Site. Except Application No. A/YL-KTN/759, which was rejected by the Committee in 2021, all applications were approved with conditions by the Committee between 2005 and 2021. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

27 Approved Applications

- 6.2 27 applications involving 17 sites were approved with conditions by the Committee between July 2005 and September 2021 for similar reasons that temporary approval would not frustrate the long-term planning intention; 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 relevant government departments generally had no adverse comments on the applications. However, planning permissions for 10 applications were revoked due to non-compliance with approval conditions.

One Rejected Application

- 6.3 Application No. A/YL-KTN/759 was rejected by the Committee in May 2021 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. Nevertheless, the same site for the same use was later approved by the Committee in September 2021 when all the existing structures previously left out in the fragmented application were included in one application site under application No. A/YL-KTN/781.

- 6.4 Apart from the above similar applications which have been considered by the Committee, Application No. A/YL-KTN/789 and 798 for proposed temporary animal boarding establishment without/with ancillary facilities for a period of 5 years and both with filling of land within the same “AGR” zone (**Plan A-1**) will be considered at the same meeting.

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

7.1 The Site is:

- (a) partly covered with weeds and partly used for storage of construction materials; and
- (b) accessible from Fung Kat Heung Road branching off from San Tam Road.

7.2 The surrounding area is rural in character intermixed by vacant land, open storage yard, parking of vehicles, grassland / woodland, fallow agricultural land, ponds, residential structures/dwellings, a pigsty farm and dog kennels with planning permissions:

- (a) to its south across a stream course are grass land, ponds, fallow agricultural land and a site with construction works in progress;
- (b) to its immediate west and northwest is a pond, parking of vehicles and a pigsty farm.
- (c) to its north are three sites with planning permissions (No. A/YL-KTN/659, 755 and 757) for animal boarding establishment, a few residential structures/dwellings and a storage yard; and
- (d) to its east is vacant land, and to its further east is woodland and a pond in “Conservation Area” zone.

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 lot 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) The applicant is reminded that sufficient manoeuvring space shall be provided within the Site. In addition, no vehicle should be allowed to queue back to or reverse onto / from public roads.
- (c) The Site is connected to the public road network via a section of a local access road and Fung Kat Heung Road, both of which are not managed by the 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 not 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, he has no objection to the application subject to the following approval conditions:
 - (i) no dogs shall be stayed at the Site between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, during the planning approval period; and
 - (ii) public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is not allowed to be used on the Site, 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) to provide adequate supporting infrastructure/ facilities for proper collection, treatment and disposal of waste/ wastewater generated from the proposed use; (iv) that chemical toilet will be provided at the Site for sewage handling, as proposed by the applicant; and (v) 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) Based on the aerial photo of 2021, the Site is located in an area of settled valleys landscape character comprising temporary structures, fish ponds and woodland. The Site is vacant and no significant tree/vegetation is observed within the site. Although land filling work is proposed for the entire site, it is considered that significant adverse impact on the existing landscape resources arising from the proposed use is not anticipated.
- (c) According to her office record, at least 3 planning applications (No. A/YL-KTN/659, 755 and 757) to the north of the Site within

the same “AGR” zone for the same temporary development were approved by the Board in 2019 to 2021. The proposed development is considered not entirely incompatible with its surrounding environment.

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 greenhouses and 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) Taken into account the FI submitted by the applicant (**Appendix Ic**), it is noted that the applicant would adopt appropriate measures to minimise the disturbance to the watercourse at the southern boundary of the Site, i.e. placing sandbags along the southern boundary and adopting good site practice during soil excavation; and provision of chemical toilets to handle discharge from daily operation of the dog kennel. As such, he has no strong view on the application from the nature conservation perspective.
- (c) He also has no comment on the application from the animal establishment boarding licensing aspect. The Site does not associate with any licence granted by his department, nor has he 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. Besides, the dogs kept by the applicant should be properly licensed in accordance with Cap. 421 Rabies Ordinance and he is reminded to observe Cap. 169 Prevention of Cruelty to Animals Ordinance at all times. 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 revised drainage proposal, and the implementation and maintenance of the 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.

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 water supply for firefighting and fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, water supply for firefighting and FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed water supply for fire fighting and 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 water supply for firefighting and 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.

Building Matters

9.1.9 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 Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix IV**.
- (c) Detailed checking under the BO will be carried out at building plan submission stage.

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 comment from the locals and has no comment 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;
- (c) Chief Engineer/ Construction, Water Supplies Department; and
- (d) Commissioner of Police.

10. Public Comments Received During the Statutory Publication Period

On 9.11.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments from Kadoorie Farm & Botanic Garden Corporation, and an individual were received (**Appendices III-1** and **III-2**). Both of them object to the application mainly on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; the proposed development would have potential pollution to the water course adjacent to the Site; and the Site, being located at the heart of the “AGR” zone, should be retained for farming activities.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary animal boarding establishment (dog kennel) for a period of 3 years at the “AGR” zone and filling of land at the whole site by about 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 3 years would not jeopardize the long-term planning intention of the “AGR” zone. Filling of land within “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, CE/MN of DSD and DEP have no adverse comment from the drainage and environmental perspectives.

- 11.2 The proposed use is considered not incompatible with the surrounding area which is rural in character intermixed by vacant land, storage yards, parking of vehicles, woodland / grassland, ponds, residential structures / dwellings, a pigsty farm and dog kennels with valid planning permissions. The nearest residential dwellings / structures to the Site is about 100m to its southeast (**Plan A-2**). Nevertheless, the applicant stated that all the animals, at a maximum of 8 dogs, will be kept within the enclosed structure, which will be equipped with soundproofing materials and mechanical ventilation and air conditioning. All dogs will leave the Site after the operation hours. In addition, no public announcement system and whistle blowing will be used at the Site. DEP has no objection to the application.
- 11.3 Other relevant departments consulted, including C for T, CTP/UD&L of PlanD, D of FS and DAFC (from both nature conservation and animal boarding licensing perspectives), have no adverse comment on the application. To minimise any possible environmental nuisance, approval conditions restricting the operation hours, the types of vehicle used, and prohibiting outdoor activities and the use of public announcement system and whistle blowing within the Site 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 CE/MN of DSD and D of FS could be addressed by approval conditions (d) to (h) as recommended in paragraph 12.2 below.
- 11.4 The Site is not involved in any previous application. There are 27 similar applications for temporary animal boarding establishment (with/without land filling) within the same “AGR” zone in the vicinity of the Site approved with conditions by the Committee between 2015 and 2021 for reasons as stated in paragraph 6.2 above. The circumstances of the only rejected similar temporary animal boarding establishment application (No. A/YL-KTN/759) are different from the current application as stated in paragraph 6.3 above. Approval of the current 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 consideration 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) 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 24.12.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all dogs shall be kept inside the enclosed animal boarding establishment structure 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) 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 24.6.2022;
- (e) in relation to (d) 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 24.9.2022;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of water supplies for firefighting and 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 24.6.2022;
- (h) in relation to (g) 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 24.9.2022;
- (i) if any of the above planning condition (a), (b), (c) or (f) 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;
- (j) if any of the above planning condition (d), (e), (g) or (h) 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

- (k) 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. There is no strong planning justification 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

Appendix I	Application Form with Supplementary Information and Plans received on 27.10.2021
Appendix Ia	FI received on 9.12.2021
Appendix Ib	FI received on 14.12.2021
Appendix Ic	FI received on 16.12.2021
Appendix II	Similar Applications within the Same "AGR" Zone in the Vicinity of the Site on the Kam Tin North OZP
Appendices III-1 and III-2	Public Comments Received during the Statutory Publication Period
Appendix IV	Advisory Clauses

Drawing A-1	Site Layout Plan
Drawing A-2	Land Filling 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
DECEMBER 2021**