

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/903

<u>Applicant</u>	:	Mr. TANG Lam Piu represented by R-riches Property Consultants Limited
<u>Site</u>	:	Lots 1446 (Part), 1447 (Part) and 1448 (Part) in D.D. 107, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	:	About 2,366m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Proposed Temporary Animal Boarding Establishment with Ancillary Facilities 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 proposed temporary animal boarding establishment for a period of 5 years and filling of land. The Site is zoned “AGR” on the draft Kam Tin North OZP (**Plan A-1**). 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 within “AGR” zone also requires planning permission from the Board. The Site is fenced, partly paved and mainly vacant (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the proposed development involves five single-storey structures with building height of about 3.5m and a total floor area of about 868m² for animal boarding establishment, storage of animal supplies, site office, washroom and meter room uses. Part of the Site (about 381m²/ 16%) has been filled with concrete at a depth of about 0.1m (from about +5.9mPD to about +6.0mPD, while the remaining of the Site (about 1,985m²/ 84%) will be filled with concrete by not more than 0.2m in depth (from about +5.9mPD to about +6.1mPD) for site formation and circulation purposes.
- 1.3 The applicant states that the operation hours are from 9:00 a.m. to 6:00 p.m. daily (except overnight animal boarding). A maximum of six staff members will be stationed at the Site to support the operation of the animal boarding establishment,

and two of which will stay overnight at the Site to handle potential complaints arising from the proposed development. It would accommodate not more than 60 dogs at the Site. A maximum of 2 dogs, with dog masks, will be allowed outdoor at the same time during the operation hours. All dogs would be kept inside the enclosed structures built with soundproofing materials and 24-hour mechanical ventilation and air conditioning systems after the operation hours. No public announcement system, whistle blowing or any form of audio amplification system would be used at the Site. Three private car parking spaces and one loading/unloading space for light goods vehicle will be provided within the Site. The Site is accessible from Shui Mei Road via a local access (**Plan A-1**). The site layout plan and paved area ratio plan submitted by the applicant are at **Drawings A-1** and **A-2**.

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

- (a) Application form with supplementary information received (Appendix I) on 27.3.2023
- (b) Further Information (FI) received on 15.5.2023* (Appendix Ia)

**exempted from publication and recounting requirements*

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 and FI at **Appendices I** and **Ia**. They can be summarised as follows:

- (a) The proposed use is temporary in nature and no active agricultural activities are involved at the Site. It will not jeopardise the long-term planning intention of the “AGR” zone. The proposed development is not incompatible with the surrounding environment.
- (b) The proposed filling of land can provide stronger reinforcement to stabilize the existing soiled ground and prevent erosion from surface run-off. The Site will be reinstated upon expiry of the planning approval.
- (c) All dogs will be kept in cages (except being walked by staff members) where urine and excrement of dogs would be collected for disposal. Dogs will be showered every week to ensure good hygiene conditions.
- (d) The proposed development will not induce adverse traffic, environmental and drainage impacts to the surrounding areas. 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 sewage treatment at the Site.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice 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/642) against an unauthorized development (UD) involving filling of land (**Plan A-2**). Enforcement Notice was issued on 9.5.2023 to the concerned parties requiring discontinuation of the UD.

5. **Previous Application**

There is no previous application at the Site.

6. **Similar Applications**

- 6.1 There are 40 similar applications (including renewal of the temporary planning approval granted by the Board), involving 34 sites, for temporary animal boarding establishment (22 of which with filling of land) within the same “AGR” zone in the vicinity of the Site in the past 5 years. Except Application No. A/YL-KTN/759, all applications were approved with conditions by the Committee on the considerations that temporary approval would not frustrate the long-term planning intention; the developments were not incompatible with the surrounding land uses; and relevant departments consulted in general had no adverse comment on the applications or their technical concerns could be addressed by relevant approval conditions. Nevertheless, the planning permissions for 11 of them were revoked subsequently due to non-compliance with the approval conditions.
- 6.2 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 points of view. Nevertheless, the 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.
- 6.3 Details of the applications are summarised in **Appendix II** and the locations are shown on **Plan A-1**.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4)

7.1 The Site is:

- (a) fenced, fenced, partly paved and mainly vacant; and
- (b) accessible from Shui Mei Road via a local access.

7.2 The surrounding areas have the following characteristics:

- (a) to the north are grassland, pond, religious institution and residential structures/dwellings;
- (b) to the east and southeast across a local access are pond, active farmland and vacant land (planning permission covering part of the site for hobby farm under Application No. A/YL-KTN/782); and
- (c) to its south and west are open storage/ storage yards, residential structures/ dwellings, grassland and vacant land.

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 Bureau/Departments

All the government bureau/departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III** and **IV** respectively.

10. Public Comments Received During Statutory Publication Period (Appendix V)

The application was published for public inspection. During the statutory publication period, nine public comments were received from Kadoorie Farm & Botanical Garden Corporation, villagers of Shui Mei Tsuen and individuals. 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; there are many active farms in the “AGR” zone; the number of animal boarding establishment applications is disproportional to the market demand; and the

development causes adverse environmental, hygiene, drainage, traffic, noise and odour impacts which would affect the livelihood and health of the surrounding residents.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment with ancillary facilities for a period of 5 years at the Site zoned “AGR” (**Plan A-1**) and associated filling of land at the whole Site by not more than 0.2m in depth (of which about 381m²/ 16% has already been filled) for site formation and circulation space. The planning intention of the “AGR” zone is to retain and safeguard good 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. Whilst the proposed development is not in line with the planning intention of the “AGR” zone, the Director of Agriculture Fisheries and Conservation has no comment on the application from the agriculture development and nature conservation perspectives. It is considered that approval of the application on a temporary basis would not frustrate 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 to the adjacent areas. In this regard, the Chief Engineer/Mainland North of Drainage Services Department (CE/MN of DSD) and Director of Environmental Protection (DEP) have no adverse comment from the drainage and environmental perspectives. An approval condition requiring the reinstatement of the Site to an amenity area is recommended should the Committee decide to approve the application.
- 11.2 The proposed use is considered not incompatible with the surrounding rural land uses comprising active farmland, residential structures/ dwellings, grassland, pond, open storage/ storage yards and vacant land. Although there are residential dwellings/structures in the vicinity of the Site (nearest on the immediate west) (**Plan A-2**), the applicant states that all the dogs will be kept inside the enclosed structures built with soundproofing materials and equipped with 24-hour mechanical ventilation and air conditioning after the operation hours. A maximum of 2 dogs with dog masks will be allowed for outdoor activities at the same time during the operation hours and no public announcement system will be used at the Site. Besides, there was no environmental complaint concerning the Site in the past three years. DEP has no adverse comment on the application.
- 11.3 Other relevant departments consulted, including the Commissioner for Transport, Chief Town Planner/Urban Design and Landscape of Planning Department and Director of Fire Services, have no adverse comment on the application. To minimise the possible environmental nuisances generated by the development and address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by EPD, and the relevant Practice Note for Professional Person PN 5/93 on “Drainage Plans subject to Comment by the Environmental Protection Department” including percolation test if septic tank and soakaway system will be used at the Site.

- 11.4 There are 39 similar applications approved for temporary animal boarding establishment (22 of which involve filling of land) within the same “AGR” zone in the vicinity of the Site. The circumstances of the only rejected similar application (No. A/YL-KTN/759) are different from the current application as stated in paragraph 6.2 above. Approval of the current application is in line with the Committee’s previous decisions.
- 11.5 Regarding the public comments on the application as detailed in paragraph 10 above, the applicant stated that guidelines and statutory requirements under relevant pollution control ordinances will be strictly followed and mitigation measures have been proposed to minimized nuisance to the surrounding area. The government departments’ comments and planning assessments 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 application.
- 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 19.5.2028. 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 overnight animal boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all dogs shall be kept inside the enclosed structures on the Site from 6:00 p.m. to 9:00 a.m., and up to two dogs with dog masks are allowed for outdoor activities at the same time during the operation hours, as proposed by the applicant, during the planning approval period;
- (c) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system, as proposed by the applicant, is allowed to be used on the Site at any time during the planning approval period;
- (d) 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 19.11.2023;
- (e) in relation to (d) 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 19.2.2024;
- (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 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 19.11.2023;

- (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 19.2.2024;
- (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, as proposed by the applicant, 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 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 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

Appendix I

Application form with supplementary information received

Appendix Ia	on 27.3.2023
Appendix II	FI received on 15.5.2023
Appendix III	Similar applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Drawing A-1	Public comments
Drawing A-2	Site layout plan
Plan A-1	Paved area ratio plan
Plan A-2	Location plan
Plan A-3	Site plan
Plan A-4	Aerial photo
	Site photos

PLANNING DEPARTMENT
MAY 2023