

RNTPC Paper No. A/YL-KTS/882
For Consideration by
the Rural and New Town
Planning Committee
on 16.4.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/882

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| <u>Applicant</u> | : Mr. Chan Sze Yu represented by Metro Planning & Development Company Limited |
| <u>Site</u> | : Lots 504 RP (Part), 512 S.A-S.B (Part), 513 (Part), 514 and 529 in D.D.113 and Adjoining Government Land, Ma On Kong, Kam Tin, Yuen Long, New Territories |
| <u>Site Area</u> | : About 3,438 m ² (including about 1,843 m ² of Government land (53.6%)) |
| <u>Lease</u> | : Block Government Lease (demised for agricultural use) |
| <u>Plan</u> | : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15 |
| <u>Zoning</u> | : “Agriculture” (“AGR”) |
| <u>Application</u> | : Proposed Temporary Animal Boarding Establishment (Dog Kennel cum Dog Recreation Centre) for a Period of 3 Years |

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 cum dog recreation centre) for a period of 3 years. According to the Notes of the OZP, ‘animal boarding establishment’ is a Column 2 use in “AGR” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently partly vacant and partly occupied by open storage of vehicles without planning permission (**Plans A-2 to A-4b**).
- 1.2 Part of the Site is subject to a previous application for temporary open storage of construction machinery, materials, equipment and containers with ancillary office which was rejected by the Rural and New Town Planning Committee (the Committee) on 21.8.2020.

- 1.3 According to the applicant, the proposed development involves six 1-storey structures (3.5-4m in height) with a total floor area of about 708m² for dog kennel, dog washing facility and dog recreation centre, site office, portable toilet and electricity meter room. The operation hours are 9 a.m. to 7 p.m. daily (including public holidays). No more than 18 dogs will accommodate at the Site. All dog will leave the Site after the operation hours and will be kept inside the enclosed structures with soundproofing materials and mechanical ventilation and air-conditioning system. No dogs will be allowed outdoor at all times. No public announcement system or blowing of whistle will be allowed at the Site. Eight car parking spaces for private cars will be provided on-site. The Site is accessible from Kam Ho Road via a local access. The layout submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with plans received on 23.2.2021 **(Appendix I)**
 - (b) Further Information (FI) received on 1.4.2021 providing response to departmental comments *[exempted from publication requirement]* **(Appendix Ia)**
 - (c) FI received on 9.4.2021 providing response to departmental comments *[exempted from publication requirement]* **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form and FIs at **Appendices I to Ib**. They can be summarized as follows:

- (a) The proposed development is compatible with the surrounding environment. It is temporary in nature and will not jeopardize the long-term planning intention of the “AGR” zone. Similar applications in “AGR” zone on the OZP have been approved.
- (b) There will be insignificant environmental, drainage and traffic impact. 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 Departmental (EPD). A discharge licence under the Water Pollution Control Ordinance will be obtained before new discharge commenced. The dog kennel will be maintained in a sanitary condition.

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

The applicant is not a “current land owner” of the private land portion of the Site but has complied with the requirements 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 site notice and sending notices to Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion, the “Owner’s Consent/Notification” Requirements are not applicable.

4. Background

The Site is currently subject to an on-going planning enforcement action (No. E/YL-KTS/436) (**Plan A-2**) against an unauthorized development (UD) involving storage use. Reinstatement Notice (RN) was issued on 27.5.2020 requiring the concerned parties to remove the leftovers, debris and fill materials (including hard paving) and to grass the land. Since the RN requirement have not been complied with, prosecution action may be followed.

5. Previous Application

Part of the Site is subject to a previous application (A/YL-KTS/853) submitted by a different applicant for temporary open storage of construction machinery, materials, equipment and containers with ancillary office for 3 years which was rejected by the Committee on 21.8.2020 on the grounds that the development was no in line with the planning intention of the “AGR” zone; the application did not comply with the Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13F) in that there was no previous approval granted at the application site and there were adverse departmental comments on the application; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. Details of the application are summarized in **Appendix II** and the location of the site is shown on **Plan A-1**.

6. Similar Applications

There are two similar applications (Nos. A/YL-KTS/868 and A/YL-KTS/869) for proposed temporary animal boarding establishment for 3 or 5 years (with/without filling of land) within the same “AGR” zone which were approved with conditions by the Committee in January 2021 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention; and the proposed development was considered not incompatible with the surrounding land uses. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) partly vacant and partly occupied by open storage of vehicles without planning permission; and
- (b) accessible from Kam Ho Road via a local access.

7.2 The surrounding areas are rural in character intermixed with open storage/ storage yards, warehouse, vehicle workshop, pig farm and vacant/unused land:

- (a) to its north, east and south are open storage yards (the one adjoining the Site on the east is subject to planning permission for animal boarding establishment), warehouse, vehicle workshop, pig farm and vacant/unused land; and
- (b) to its west is vacant land and further west is Tsing Long Highway.

8. Planning Intention

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.

9. Comments from Relevant Government Departments

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 Government Land (GL) and 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. No permission is given for occupation of GL (about 1,843m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (b) Should the planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularize any

irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Furthermore, the applicant has to either exclude the GL from the Site or obtain a formal approval prior to the actual occupation of the GL. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by the LandsD.

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, the approval condition that 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 Kam Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.
- (c) According to Route 3 (Country Park Section) Company Limited (R3CPS), despite the Site is completely out of the Toll Area of R3CPS, the applicant should be reminded the following comments from R3CPS:

- (i) The existing boundary fence of R3CPS shall not be affected. No temporary removal / relocation of it will be allowed.
- (ii) A minimum 2m wide barrier-free maintenance area outside the Toll Area along the existing boundary fence of R3CPS shall be maintained for carrying out maintenance works. For barrier-free maintenance areas outside the Toll Area, it should be: accessible directly and adequately from GL (i.e. public area / road); not confined to other private lots; and open to R3CPS on a 24-hour basis (i.e. unlimited access).
- (d) In case construction works (e.g. drilling, piling, excavation, etc.) are to be carried out adjacent to existing slopes maintained by R3CPS (e.g. 6NE-C/F92), a method statement and necessary protection measures to the slopes shall be submitted to R3CPS and HyD for comment prior to the commencement of site works.
- (e) In case the stability of existing slopes are in question, a ground settlement monitoring report endorsed by an Authorized Person shall be submitted to R3CPS and HyD for record on a monthly basis.
- (f) Access through the Toll Area to the concerned area will not be allowed, including loading & unloading of materials.

Environment

9.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) No environmental complaint concerning the Site was 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 after operation hours (i.e. 7:00pm to 9:00am) as proposed by the applicant.
 - (ii) No public announcement system, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site.
- (c) Moreover, the applicant is also advised (i) to properly design and maintain the facilities to minimize any potential environmental nuisance, e.g. the proposed structures for animal boarding establishment should be enclosed with soundproofing materials

with provision of 24-hour mechanical ventilation and air-conditional 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 Environmental Protection Department" including percolation test; and (iv) 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 landscape planning perspective.
- (b) Based on the aerial photo taken in 2020, the Site is situated in an area of miscellaneous rural fringe landscape character with temporary structures, open storages, vehicle parks and scattered tree groups. Existing trees are found at the slope between the Site and Tsing Long Highway and at the “Conservation Area” zone to the south of the Site. The proposed use is considered not entirely incompatible with the surrounding landscape setting.
- (c) According to the site record dated 8.3.2021, the Site is fenced off, mostly paved with temporary structures and partly covered with wild grass. Some undersized trees (i.e. DBH <95mm) and shrubs of common species such as *Clausena lansium* (黃皮), *Macaranga tanarius* (血桐), *Osmanthus fragrans* (桂花) and *Carica papaya* (番木瓜) are found near the ingress/ egress and southern portion of the Site. Significant adverse impact on the existing landscape resources within the Site arising from the proposed development is not anticipated.
- (d) The applicant is reminded that approval of the application does not imply approval of tree works such as pruning, transplanting and felling. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Agriculture and Nature Conservation

9.1.6 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) The Site falls within “AGR” zone and is currently paved and vacant. 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 greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) Nevertheless, he has no comments on the application from 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. His department 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.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix V**.

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 fire service installations (FSIs) 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 (BO) (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) As there is no record of approval granted by the Building Authority (BA) for the existing structures at the Site, he is not in a position to offer comments on their 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 the 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 coordinator for the proposed building works in accordance with the BO.
- (c) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix V**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Electricity

9.1.10 Comment of Electrical and Mechanical Services Department

The applicant shall approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within or in the vicinity of the Site. Based on the

cable plans and the relevant drawings obtained, if there is underground cable and/or overhead line within or in the vicinity of the Site, the applicant shall carry out the following measures:

- (a) For site within the preferred working corridor of high voltage overhead lines at transmission voltage level 132kV or above as stipulated in the Hong Kong Planning Standards and Guidelines (HKPSG), prior consultation and arrangement with CLP Power is necessary.
- (b) Prior to establishing any structure within the Site, the applicant and/or his contractors shall liaise with the electricity supplier and, if necessary, ask CLP Power to divert the underground cable and/or overhead line away from the vicinity of the proposed structure.
- (c) The Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation shall be observed by the applicant when carrying out works in the vicinity of the electricity supply lines.

Environmental Hygiene

9.1.11 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) Proper licence / permit issued by the Food and Environmental Hygiene Department (FEHD) 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), HAD):

He has no particular comment on the application. He has received a comment from the Resident Representative of Ma On Kong Tsuen, objecting to the application on the ground that the application is for storage use instead of animal boarding establishment.

9.2 The following Government departments have no comment on the application:

- (a) Project Manager (West), Civil Engineering and Development Department;
- (b) Chief Engineer/ Construction, Water Supplies Department; and
- (c) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 2.3.2021, the application was published for public inspection. During the three-week statutory publication period, four public comments from the Resident Representative of Ma On Kong (i.e the same current received by DO(YL), HAD), Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited and an individual (**Appendices IV-a to IV-d**) were received. One of them provides comment that the difference between the previous rejected application at the Site and the current application on their potential effects on the “AGR” zone should be considered. The remaining three comments object to the application mainly on the grounds that the proposed development is not in line with planning intention of the “AGR” zone, approval of the application may reward ‘destroy first, development later’ practice and unauthorized development; the application is for storage use instead of animal boarding establishment; more than 50% of the Site is GL and the Site is closed to country park; there is no justification for another animal boarding establishment in the district; and approval of the application would set an undesirable precedent for other application within “AGR” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment (dog kennel cum dog recreation centre) for a period of 3 years in the “AGR” zone. 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 the agriculture point of view as the Site possesses potential for agricultural rehabilitation. Nevertheless, it is considered that approval of the application on temporary basis for a period of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development is considered not incompatible with the surrounding area which is rural in character intermixed with pig farm and vacant/unused land.

- 11.3 Relevant departments consulted, including C for T, DEP, D of FS, CE/MN of DSD and CTP/UD&L of PlanD, 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 and 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) recommended in paragraph 12.2 below.
- 11.4 The Site is subject to a previous application (No. A/YL-KTS/853) for temporary open storage of construction machinery, materials, equipment and containers with ancillary office which was rejected by the Committee in 2020 as stated in paragraph 5 above. The current application is submitted by a different applicant for a different use. There are two similar applications (Nos. A/YL-KTS/868 and A/YL-KTS/869) for proposed temporary animal boarding establishment within the same "AGR" on the OZP approved in January 2021 for a period of 3 or 5 years as detailed in paragraph 6 above. Approval of the application is in line with the Committee's previous decision on similar applications.
- 11.5 One objecting comment was received by DO(YL), HAD as stated in paragraph 9.1.12 above. Four public comments were received during the statutory publication period, one providing comment and three objecting to the application as stated in paragraph 10 above. In this regard, the above departmental comments as well as planning considerations and assessments 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 paragraphs 9.1.12 and 10, the Planning Department has no objection to the proposed temporary animal boarding establishment (dog kennel cum dog recreation centre) for a period of 3 years.
- 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 16.4.2024. 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 animals shall be kept inside the enclosed structures 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 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 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 16.10.2021;
- (f) in relation to (e) 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 16.1.2022;
- (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 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 16.10.2021;
- (i) in relation to (h) 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 16.1.2022;
- (j) if any of the above planning conditions (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 conditions (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 the 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 V**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on 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

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| Appendix I | Application form with planning statement received on 23.2.2021 |
| Appendix Ia | FI received on 1.4.2021 |
| Appendix Ib | FI received on 9.4.2021 |
| Appendix II | Previous Application at the Site |
| Appendix III | Similar Applications within the same "AGR" zone on the OZP |
| Appendices IV-a to IV-d | Public Comments |
| Appendix V | Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Plan A-1 | Location Plan |

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| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4a to 4b | Site Photos |

**PLANNING DEPARTMENT
APRIL 2021**