

RNTPC Paper No. A/YL-KTS/891
For Consideration by
the Rural and New Town
Planning Committee
on 25.6.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/891

<u>Applicant</u>	: Ms. Chen Yan represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 125 and 126 in D.D. 113, Ma On Kong, Kam Tin, Yuen Long, N.T.
<u>Site Area</u>	: About 420 m ²
<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) 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) 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 paved and occupied by part of a structure extending outside the Site (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is subject to a previous application No. A/YL-KTS/783 for temporary warehouse for storage of drainage pipes with ancillary site office for a period of 3 years which was rejected by the Rural and New Town Planning Committee (the Committee) in 2018.
- 1.3 According to the applicant, the proposed development involves three 1-storey structures (about 3m to 4m in height) with a total floor area of about 200m² for dog kennel, site office and portable toilet respectively. Four private car parking

spaces will be provided at the Site. The proposed development will operate from 9:00am to 7:00pm daily including public holidays. Not more than 6 dogs will be accommodate at the Site. All dogs will be kept indoor at all times in enclosed structures with soundproofing material and mechanical ventilation and air-conditioning and will leave the Site after operation hours. No public announcement system and whistle blowing will be used. The Site is accessible from Kam Ho Road via a local access. The layout plan 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 27.4.2021 (**Appendix I**)
- (b) Further Information (FI) received on 18.6.2021 providing response to departmental comments (**Appendix Ia**)
[exempted from publication requirements]

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 Ia**. They can be summarized as follows:

- (a) The proposed development is temporary in nature and it would not jeopardize the long-term planning intention of “AGR” zone. The nature, layout and scale of the proposed development is not incompatible with the surrounding environment. Similar applications were approved in the “AGR” zone on the same OZP.
- (b) There will be insignificant environmental, traffic and drainage impact. The dog kennel will be maintained in a sanitary condition and contain means for removal and disposal of animal and food waste, etc. to minimize infestation, contamination, odours and disease hazards.
- (c) The applicant will follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The effluent discharge from the proposed use is subject to control under the Water Pollution Control Ordinance (WPCO) and a discharge licence under the WPCO would be obtained before a new discharge is commenced.
- (d) The existing structure occupying northwest part of the Site, which is owned by the applicant, will be demolished if the current application is approved. The vehicular access route will not serve the adjoining warehouse.

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 section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notification letter to the Pat Heung 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 active planning enforcement case (No. E/YL-KTS/402) (**Plan A-2**) against an unauthorised development (UD) involving storage use (including deposit of containers). Enforcement Notice (EN) was issued on 13.7.2018. Compliance Notice for the EN was issued on 28.12.2020 upon discontinuance of the UD. Reinstatement Notice (RN) was issued on 24.3.2021 requiring removal of leftovers and debris at the Site; and removal of filled materials (including hard-paving) and grassing at part of the Site. If the RN is not complied with, prosecution action may be taken.

5. Previous Application

The Site was subject to a previous application No. A/YL-KTS/783 submitted by a different applicant and covering a larger area for temporary warehouse for storage of drainage pipes with ancillary office for a period of 3 years. It was rejected by the Committee in 2018 on the grounds that the development was not in line with the planning intention of the “AGR” zone; the applicant failed to demonstrate that the development would not generate environmental nuisance and adverse landscape impacts on the surrounding area; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. Details of the application are summarised in **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is one similar application (No. A/YL-KTS/885) for temporary animal boarding establishment located at a site to the west of the Site. It was rejected by the Committee on 28.5.2021 on the ground that the applicant failed to demonstrate how the access arrangement and interface with the existing warehouse occupying the Site and adjoining area could be addressed. Details of the application are summarized in **Appendix III** and its location is shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently paved and occupied by part of a structure extending outside the Site;
- (b) situated within a fenced off area with a warehouse to the west of the Site; and
- (c) accessible from Kam Ho Road via a local access.

7.2 The surrounding areas are rural in character and intermixed with residential dwellings/structures, open storage/ storage yards, an animal boarding establishment, vacant and unused land:

- (a) to its east and northeast are open storage / storage yards and an animal boarding establishment;
- (b) to its west and southwest are warehouse and open storage;
- (c) to its south are residential dwellings/structures (the nearest one about 5m away);
- (d) to its north are vacant land and further north is unused land.

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 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 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. 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 the 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 nearby public roads and drains.

Environment

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

- (a) There is 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 after operation hours as proposed by the applicant; and
 - (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 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 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 Environmental Protection Department (EPD)’s Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" including percolation test; and (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 some reservations to the application from the 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

comprising of temporary structures, public car park, scattered tree groups, village housing, roads and infrastructures. The proposed use is considered not entirely incompatible with the surrounding landscape setting. Nevertheless, according to their record, the temporary structures in the vicinity are subject to enforcement actions.

- (c) According to site photos taken on 10.5.2021, the Site is hard paved with vehicles and storage materials. A few existing trees of *Ficus microcarpa* (細葉榕) are observed at northeast corner of the site. Referring to the layout plan, the proposed Structure 2 may be in direct conflict with the existing trees within the Site. Comparing the aerial photos of 2010 and 2012, it is apparent that vegetation clearance including tree removal and site formation works had taken place within the Site. Also, according to record, the Site is subject to enforcement case in 2018 related to unauthorized storage use. Significant landscape impact within the Site has taken place. Although further adverse impact on existing landscape resources within the site arising from the proposed use is not anticipated, there is concern that approval of the application may encourage more unauthorised site alteration within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone.
- (d) The applicant should note that that approval of the S.16 application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority / government department(s) direct to obtain the necessary approval on tree works.

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 comprised of vacant land, abandoned land and a part of a temporary structure. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are 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 comment on the application from conservation and animal boarding establishment licence aspects.

The Site does not associate with any licences granted by his department, nor have he received any application regarding the Site. Under the Public Health (Animals) (Boarding Establishment) Regulations, Cap. 139I, any person who provides food and accommodation for animals in return for a fee paid by the owner must apply for a Boarding Establishment Licence from his department. He will provide detailed information and guidance on animal boarding establishment when the applicant submits the licence application.

Drainage

9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, 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 drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.
- (c) His comments on the submitted drainage proposal is 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, his office 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 Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator 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.

Environmental Hygiene

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

- (a) 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.
- (b) 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.
- (c) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected.

Project Interface

- 9.1.11 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

It is noted that the Site falls within the boundary of "Site Formation and Infrastructure Works for Proposed Public Housing Development at Kam Ho Road, Yuen Long – Feasibility Study". He has no specific comment on the application as the applicant is seeking planning approval to use the Site for proposed temporary animal boarding establishment (dog kennel) for a period of 3 years.

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 and he has not received any comments from the locals upon close of consultation.

- 9.2 The following Government departments have no objection to/no comment on the application:

- (a) Chief Engineer/ Construction, Water Supplies Department;
- (b) Director of Electrical and Mechanical Services; and
- (c) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 4.5.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments were received from Kadoorie Farm & Botanic Garden Corporation and an individual (**Appendices IV-a and IV-b**) objecting to the application mainly on the grounds that the Site is subject to planning enforcement case; and the welfare of the animals should be considered.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary animal boarding establishment (dog kennel) 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 temporary approval of the application would not jeopardize the long-term planning intention of the “AGR” zone.

- 11.2 The proposed development is considered not incompatible with the surrounding areas which are rural in character and intermixed with residential dwellings/structures and vacant/unused land. Although there are residential structures/dwellings in the vicinity of the Site (the nearest one about 5m to the south) (**Plan A-2**), the applicant advised that all dogs will be kept inside the enclosed structures with soundproofing material and equipped with mechanical ventilation and air conditioning. Also, no public announcement system and whistle blowing will be used at the Site. All dogs will leave the Site after operation hour. DEP has no adverse comment on the application. The northwest of the Site is occupied by a structure extending outside the application boundary (**Plans A-1 and A-2**). The applicant states that the structure occupying the Site is owned by the applicant and will be demolished if the application is approved. Besides, the access to the Site will not serve the adjoining warehouse.
- 11.3 Other departments consulted, including C for T, DEP, D of FS and CE/MN of DSD, except DAFC and CTP/UD&L of PlanD have no adverse comment on the application. CTP/UD&L of PlanD has some reservations on the application as the Site is subject to tree removal and site formation works, but states that approval of the application may not resulting significant adverse landscape impact as the Site is not abutting major public frontage. 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 involves one previous application for temporary warehouse use which was rejected by the Committee in 2018 as mentioned in paragraph 5 above. The current application is different in terms of applicant and applied use. There is one similar application for temporary animal boarding establishment to the west of the Site (**Plan A-1**) which was rejected by the Committee in May 2021 on the grounds as mentioned in paragraph 6 above.
- 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, relevant Government departments’ comments as well as planning assessments and consideration 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.
- 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 25.6.2024. 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 loud speaker, 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 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 25.12.2021;
- (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 25.3.2022;
- (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 the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 25.12.2021;
- (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 25.3.2022;

- (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 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 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

Appendix I	Application form with plans received on 27.4.2021
Appendix Ia	FI received on 18.6.2021
Appendix II	Previous application
Appendix III	Similar application within the same “AGR” zone on the Kam Tin South OZP
Appendices IV-a to IV-b	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JUNE 2021**