

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/991

<u>Applicant</u>	:	Ching Yeung (Tai Kong Po) Limited represented by Allgain Land Planning Limited
<u>Site</u>	:	Lot 1595 (Part) in D.D.113, Ma On Kong, Kam Tin, Yuen Long
<u>Site Area</u>	:	1,930m ²
<u>Lease</u>	:	New Grant No. 1340 for Agriculture
<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 with Ancillary Facilities for a Period of Three 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 with ancillary facilities for a period of three years and filling of land. The Site is zoned “AGR” on the approved Kam Tin South OZP No. S/YL-KTS/15 (**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 the “AGR” zone also requires planning permission from the Board. The Site is currently fenced-off and vacant (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the proposed use involves eight structures of one to two storeys with building heights of not more than 7m and a total floor area of about 908m² for animal boarding establishment, reception and ancillary office, security and surveillance camera room, toilet and meter room (**Drawing A-1**). The applicant also applies for proposed filling of land by concrete at a depth of about 0.2m to +25.6mPD for part of the Site (about 950m² or 49.2%) to facilitate site formation for the above-mentioned structures and vehicular circulation. The proposed operation hours are from 9:00 a.m. to 6:00 p.m. (except overnight animal boarding) daily including public holidays. It will accommodate no more than 20 dogs and cats, and four staff members will be stationed at the Site to support the operation. No dogs without masks will be allowed outdoor during the operation hours. After the operation hours, all animals will be kept inside the enclosed

structures built with soundproof materials and installed with mechanical ventilation and air conditioning systems. No public announcement system, whistle blowing or any form of audio amplification system will be used at the Site. One loading/unloading space for light goods vehicle will be provided within the Site. A buffer area of 5m in width along the eastern boundary separating the animal boarding establishment from the area to the immediate east zoned “Conservation Area” (“CA”) is proposed (**Drawing A-1**) to avoid any disturbance to the “CA” zone by the operation of the animal boarding establishment. A fence of 1.8m in height would be erected for the buffer area. The Site is accessible via local tracks from Kam Ho Road (**Plans A-2 and A-3**). 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 with supplementary information received on 30.1.2024 (**Appendix I**)
- (b) Further Information (FI) received on 4.3.2024* (**Appendix Ia**)
- (c) FI received on 25.3.2024* (**Appendix Ib**)
- (d) FI received on 13.5.2024* (**Appendix Ic**)
- (e) FI received on 14.5.2024* (**Appendix Id**)

**accepted and exempted from publication and recounting requirements*

1.4 On 15.3.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months as requested by the applicant.

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 FIs in **Appendices I to Id**. They can be summarised as follows:

- (a) The proposed use is to serve the pet owners living in Kam Tin and Pat Heung areas.
- (b) The proposed use is temporary in nature which will not jeopardise the long-term planning intention of the “AGR” zone.
- (c) Land filling is required to facilitate site formation for the proposed structures and vehicular circulation. It is necessary and kept to minimal for the operation of the proposed use.
- (d) The proposed buffer area would be fenced-off to avoid disturbance to the adjacent “CA” zone by the operation of the animal boarding establishment. No fencing structure would encroach on the “CA” zone outside the Site. The applicant would ensure any watercourse nearby would not be disturbed by the construction and operation of the proposed use. The proposed use would not induce adverse impacts

on the surroundings in the landscape, traffic, environment, drainage and fire safety aspects. The applicant will strictly follow the relevant statutory environmental requirements and practice notes so as to minimise the possible adverse impacts and environmental nuisance to the nearby residents.

- (e) The unauthorised structures under lease previously erected on the Site have been removed. The applicant will follow-up by applying for the Cancellation Letter regarding the removed structures; and submitting relevant applications for the proposed structures to the Lands Department (LandsD) should the planning application be approved.
- (f) The proposed access to the Site would be via private lots from Kam Ho Road. The applicant will liaise with the relevant lot owners for the required access right. The proposed access is also currently utilised by the villagers and users of other sites in the surroundings.

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

The applicant is not a “current land owner” 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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) by posting notice on the Site and sending notification to the Pat Heung Rural Committee. 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 Applications**

The Site is the subject of two previous applications (No. A/YL-KTS/421 and 781) for temporary open storage which are not relevant to the current application. Details of the previous applications are summarised in **Appendix II** and the locations are shown on **Plan A-1**.

6. **Similar Applications**

6.1 There are four similar applications (No. A/YL-KTS/868, 869, 882 and 978), involving three sites, for temporary animal boarding establishment (including one renewal of temporary approval and one with filling of land) within the same “AGR” zone in the vicinity of the Site within the past five years. All these applications were approved with conditions by the Committee between January 2021 and December 2023 mainly on the considerations that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the proposed use was not incompatible with the surrounding land uses; and relevant departments consulted in general had no adverse comment and their concerns could be

addressed by relevant approval conditions. The planning permission under application No. A/YL-KTS/882 was subsequently revoked in September 2023 due to non-compliance with the approval conditions.

- 6.2 Details of the similar application are summarised in **Appendix II** and their 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-off and vacant; and
- (b) accessible via local tracks from Kam Ho Road.

7.2 The surrounding areas are rural in character intermixed with farm, residential dwellings/structures, parking of vehicles, open storage/storage yard, workshop and office. The parking of vehicles, open storage/storage yard, workshop and office are without valid planning permission. To the immediate east of the Site is an area zoned “CA” which is covered by woodland. Tai Lam Country Park is to further east across the “CA” zone. The village settlements of Ho Pui Village within the “Village Type Development” zone are to further northeast in about 180m.

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 for “AGR” zone, 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 Departments

9.1 Apart from the government department as set out in paragraph 9.2 below, other 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.

Land Administration

9.2 Comments of the District Lands Officer/Yuen Long (DLO/YL) of LandsD:

- (a) LandsD has adverse comment on the application;

- (b) the Site comprises Lot No. 1595 in D.D. 113 held under New Grant No. 1340 for the purpose of agriculture and no structures shall be erected on the lot;
- (c) LandsD has reservation on the planning application since there have been unauthorised structures and uses on the private lot which is already subject to lease enforcement actions according to case priority. The lot owner(s) should rectify/apply for regularisation on the lease breaches as demanded by LandsD. Warning letter has been registered in the Land Registry against the lot concerned. If the unauthorised structure(s) was/were removed, the applicant should take appropriate action deemed necessary, including but not limited to applying to his Office for the issuance of a Cancellation Letter. According to record no such application has been received by his Office; and
- (d) if the application is approved, the lot owner(s) shall apply to his office for a Short Term Waiver (STW) to (i) waive the user restriction as stipulated in the lease conditions, if any, and/or (ii) permit the structure(s) erected within the said private lot and/or (iii) regularise any irregularities on site, if any. The applications for STW will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW, if approved, will be subject to such terms and conditions including the payment of waiver fee and administrative fee as considered appropriate by LandsD. Besides, given the proposed use is temporary in nature, only erection of temporary structure(s) will be considered.

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

The application was published for public inspection. During the statutory publication period, two public comments were received from the village representative of Ho Pui Village and an individual objecting to the application on the grounds that the proposed use would cause adverse traffic impacts as the issue on access right to the Site via other private lots is not resolved; the proposed use would have adverse impact on fung-shui; and there is no justification for the proposed use.

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary animal boarding establishment with ancillary facilities for a period of three years and filling of land at the Site zoned "AGR" (**Plan A-1**). The planning intention of the "AGR" zone is primarily 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. The proposed use is not entirely in line with the planning intention of the "AGR" zone. The Director of Agriculture, Fisheries and Conservation (DAFC) considers that the Site can be rehabilitated for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc., though whether there will be agricultural activities on specific site will hinge on a lot of factors. Taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.

- 11.2 Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and the Director of Environmental Protection (DEP) have no objection to the application from 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.
- 11.3 The proposed use is considered not incompatible with the surrounding land uses intermixed with residential dwellings/structures, parking of vehicles, open storage/storage yard, workshop and office. According to the submission, all animals will be kept within enclosed structures equipped with soundproof materials, air-conditioning and mechanical ventilation systems after operation hours; and no public announcement system, whistle blowing or any form of audio amplification system will be used at the Site. While the Site adjoins the “CA” zone on the east, a 5m-buffer area from the “CA” zone is proposed by the applicant. DAFC has no comment on the application from nature conservation perspective. Besides, the Chief Town Planner/Urban Design and Landscape of the Planning Department has no objection to the application from landscape planning perspective considering that significant adverse landscape impact arising from the proposed use is not anticipated.
- 11.4 DLO/YL of LandsD has adverse comment on the application in view of the unauthorised structures and uses on the concerned private lot. While the applicant indicates that the unauthorised structures under lease have already been removed and the Site is currently vacant, DLO/YL of LandsD advises that the applicant should take appropriate action including but not limited to applying to his Office for the issuance of a Cancellation Letter if the unauthorised structures were removed. In this regard, the applicant will follow-up by submitting relevant applications to LandsD. Should the application be approved, relevant advisory clause on need for application to LandsD for regularisation for unauthorised structures and uses is also recommended.
- 11.5 Other relevant departments consulted, including the Commissioner for Transport and the Director of Fire Services, have no objection to or no adverse comment on the application. To 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 revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Department (EPD) to minimise any possible environmental nuisance, and the relevant Practice Note for Professional Person PN 1/23 on “Drainage Plans subject to Comment by EPD” including completion of percolation test and certification by Authorised Person if septic tank and soakaway system will be used.
- 11.6 There are four approved similar applications in the vicinity of the Site as mentioned in paragraph 6.1 above. Approving the current application is in line with the Committee’s previous decisions.
- 11.7 Regarding the public comments as mentioned in paragraph 10, the applicant indicates that liaison would be conducted with the relevant lot owners for the access

right. Besides, the concern on fung-shiu is not a planning consideration. The departmental comments and planning assessments above are also relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and taking into account the public comments 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 three years until 24.5.2027. The following approval conditions 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 animals shall be kept inside the enclosed structures on the site from 6:00 p.m. and 9:00 a.m., 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 is allowed to be used on the site 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 24.11.2024;
- (e) in relation to (d) 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 24.2.2025;
- (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 24.11.2024;
- (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 24.2.2025;
- (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 in **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 use with filling of land 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purpose. No strong planning justification has been given in the submission for a departure from the planning intention even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form with supplementary information received on 30.1.2024
Appendix Ia	FI received on 4.3.2024
Appendix Ib	FI received on 25.3.2024
Appendix Ic	FI received on 13.5.2024
Appendix Id	FI received on 14.5.2024

Appendix II	Previous and similar applications
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Site layout plan
Drawing A-2	Land filling plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MAY 2024**