

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/465

- Applicant** : Mr. Chan Chi Ming represented by Metro Planning & Development Company Limited
- Site** : Lots 221 S.A RP (Part) and 245 RP (Part) in D.D. 129 and adjoining Government Land (GL), Tsim Bei Tsui, Yuen Long, New Territories
- Site Area** : About 415m² (including GL of about 99m² or 23.9%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/11
- Zoning** : “Green Belt” (“GB”)
- Application** : Proposed Temporary Animal Boarding Establishment for a Period of 3 Years, and Filling and Excavation of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary animal boarding establishment for a period of three years, and filling and excavation of land at the application site (the Site) (**Plan A-1**) zoned “GB” on the OZP. According to the Notes of the OZP for the “GB” zone, both ‘Animal Boarding Establishment’, which is a Column 2 use, as well as filling and excavation of land require planning permission from the Town Planning Board (the Board). The Site is currently erected with a temporary structure, largely vacant and covered with vegetation (**Plans A-2, and A-4a to A-4c**).
- 1.2 As shown on the vehicular access plan at **Drawing A-2**, the Site is accessible from Deep Bay Road via an access track, with the ingress/egress located at the north of the Site (**Drawing A-1**). As shown on the layout plan at **Drawing A-1**, one single-storey structure (about 4.5m in height) with a total floor area of about 126m² is proposed for cattery and toilet uses. One parking space for private cars would be provided.
- 1.3 As indicated in the submission, the proposed development would provide commercially-operated day-time boarding service for cats. The operation hours would be between 9 a.m. and 7 p.m. daily, including public holidays. A maximum of 12 cats could be accommodated, and no cat would stay overnight at the Site after the operation hours. No whistle blowing and public announcement system would be carried out/used at the Site. According to the applicant, the maximum number of

visitors is about three per day. The proposed private car parking space would only be used by the staff. Visitors could access the Site by green minibus.

- 1.4 Moreover, the applicant also proposes to fill the entire Site (about 415m²) with bricks (area of about 215m² or 52%) and concrete (area of about 200m² or 48%), both about 0.2m in depth. In addition, the applicant proposes to excavate a strip of land along the periphery of the Site (with an area of 25.5m² or 6.1% and a depth of about 0.3m) for the proposed drainage works (i.e. surface U-channels and catchpits) (**Drawing A-3**).
- 1.5 The proposed layout plan, vehicular access plan, land filling and excavation plan, and drainage plan are at **Drawings A-1 to A-4** respectively.
- 1.6 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on 22.3.2023 (**Appendix I**)
 - (b) Supplementary Information (SI) received on 28.3.2023 (**Appendix Ia**)
 - (c) Further Information (FI) received on 25.4.2023* (**Appendix Ib**)

** accepted and 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 SI at **Appendix Ia**. They can be summarised as follows:

- (a) the proposed temporary animal boarding establishment, which is a Column 2 use of the “GB” zone, is temporary in nature and would not jeopardise the long-term planning intention of the “GB” zone;
- (b) the nature, layout and scale of the proposed development is compatible with the surrounding environment;
- (c) similar application has been approved within the “GB” zone;
- (d) all cats would be accommodated within enclosed structures made of sound-proofing materials and provided with mechanical ventilation and air-conditioning systems. A licence under the Water Pollution Control Ordinance would be obtained before effluent discharge. The proposed development would not generate significant adverse environmental impact;
- (e) the proposed development would not generate significant adverse traffic and drainage impacts;
- (f) filling of land is proposed to avoid vehicle fugitive dust; and
- (g) the proposed cattery would be maintained in sanitary condition. Animal excreta, food waste, used bedding and animal carcasses would be properly disposed of. Access of other animals to the Site would be restricted. Pest control would be conducted regularly.

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 Ordinance (TPB PG-No. 31A) by posting site notice and sending notification letter to the Ping Shan Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection. For the GL portion, the requirements under TPB PG-No. 31A are not applicable.

4. Town Planning Board Guidelines

- 4.1 Town Planning Board Guidelines for ‘Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are detailed at **Appendix II**.
- 4.2 According to Town Planning Board Guidelines No. 12C for ‘Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are detailed at **Appendix III**.

5. Background

The Site was previously involved in a planning enforcement action (Case No. E/YL-LFS/539) against unauthorized development (UD) involving storage use. Enforcement Notice (EN) requiring the discontinuance of the UD and Reinstatement Notice (RN) requiring the reinstatement of the UD site was issued on 6.10.2021 and 2.6.2022 respectively. As the UD was subsequently found to be discontinued and site had been reinstated, the Compliance Notices for the EN and RN were issued on 20.5.2022 and 12.1.2023 respectively. The Site is currently not subject to any active planning enforcement action.

6. Previous Application

The Site is not involved in any previous planning application.

7. Similar Application

Within the same “GB” zone, there is a similar application (No. A/YL-LFS/423) for temporary animal boarding establishment for a period of three years and filling and excavation of land, which was approved with conditions by the Committee on 6.5.2022 mainly on sympathetic considerations that the site was the subject of previous planning permissions for temporary recreational use with ancillary car park between 2001 and 2005 and had been hard-paved; the applicant was a charitable institution under section 88 of the Inland Revenue Ordinance (Cap. 112) and the proposed development was for accommodation of abandoned/stray dogs and cats; and concerned government departments had no objection to/adverse comment on the application. Details of the similar application

are summarised at **Appendix IV** and its location is shown on **Plan A-1**.

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

8.1 The Site is:

- (a) fenced off, erected with a structure at its southeast, and largely vacant and covered with vegetation; and
- (b) accessible from Deep Bay Road located to its north via an access track.

8.2 The surrounding areas have the following characteristics. Some of the uses are suspected UD's subject to planning enforcement action:

- (a) to the north, northeast and northwest across Deep Bay Road are warehouses, a pig farm, an open storage yard, a residential dwellings and shrubland;
- (b) to the east are vacant land, cultivated agricultural land, a pond and shrubland;
- (c) to the south are vacant land and storage/open storage yards; and
- (d) to the west are unused land and woodland intermixed with graves, part of which falling within the Permitted Burial Ground No. YL/63.

9. Planning Intention

9.1 The planning intention of the "GB" zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

9.2 As filling of land/pond or excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

10.1 Apart from the government department as set out in paragraph 10.2 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 V and VI** respectively.

10.2 The following government department has reservation on the application:

Landscaping

10.2.1 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) She has reservation on the application from landscape planning perspective.
- (b) As indicated in the submission, the entire Site is proposed to be filled with concrete and bricks. Adverse impact on landscape resource arising from the proposed development is envisaged. There is no landscape proposal provided in the submission to mitigate the landscape impact arising from the development.
- (c) The Site is situated in an area of rural landscape predominated by graveyard and woodland. The “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within the “GB” zone. The proposed development may not be considered compatible with the surrounding landscape resources and landscape character of the area.

11. Public Comments Received During Statutory Publication Period

On 31.3.2023, the application was published for public inspection. During the statutory public inspection period, two public comments from Kadoorie Farm & Botanic Garden Corporation and an individual (**Appendices VII-1 and VII-2**) were received objecting to the application mainly on grounds that the proposed development involves hard-paving of the entire Site which falls within the “GB” zone and is not subject to any previous application, and it is a suspected ‘destroy first, build later’ case; and raising concern on whether the Site is the subject of UD.

12. Planning Considerations and Assessments

12.1 The application is for proposed temporary animal boarding establishment for a period of three years, and filling (with bricks and concrete) and excavation of land at the Site within the “GB” zone of the OZP (**Plan A-1**). There is a general presumption against development within the “GB” zone. Moreover, filling and excavation of land within the “GB” zone requires planning permission from the Board as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. While the Director of Agriculture, Fisheries and Conservation has no comment on the application from nature conservation perspective, the proposed use and associated filling and excavation of land, which involve vegetation clearance and hard-paving of the entire Site, are not in line with the planning intention of the “GB” zone. There is no strong planning justification given in the submission to warrant a departure from the planning intention, even on a temporary basis.

- 12.2 The Site falls within the WBA designated under TPB PG-No. 12C, and is located in an area predominated by woodland. Although there are open storage/storage yards and warehouses in the vicinity, they are suspected UD's subject to planning enforcement action. Moreover, while the Site is proposed for day-time cattery use with all the cats (maximum at 12) to be accommodated inside the proposed structure, more than half of the Site (i.e. an open-air area of about 276.5m² or 66.6% of the Site) is not specified for any use. There is no strong justification for hard paving the entire Site. In a nutshell, the proposed development which involves vegetation clearance and hard paving of the entire Site is considered not compatible with the surrounding areas.
- 12.3 According to the TPB PG-No. 10, an application for new development within "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The design and layout of any proposed development within "GB" zone should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. The issue on compatibility has been discussed in paragraph 12.2 above. With regard to the impact on existing natural vegetation and landscape, CTP/UD&L of PlanD has reservation on the application as the proposed use and associated filling and excavation of land involves vegetation clearance and hard paving of the entire Site, and adverse impact on landscape resource is envisaged. However, no information is provided in the submission on the mitigation of the adverse landscape impact. She also considers that the proposed development may not be compatible with the surrounding landscape resources and landscape character of the area. In view of the above, the proposed use and associated filling and excavation of land are considered not in line with TPB PG-No. 10.
- 12.4 Other concerned departments including the Chief Engineer/Mainland North of Drainage Services Department, Director of Environmental Protection, Commissioner for Transport and Director of Fire Services have no objection to or no comment on the proposed use and associated filling and excavation of land from drainage, environmental, traffic and fire safety perspectives.
- 12.5 The Site is not involved in any previous planning application. Although the Committee approved a similar application (No. A/YL-LFS/423) within the same "GB" zone in 2022, it was approved mainly on sympathetic considerations that the site was the subject of previous planning permissions for temporary recreational use with ancillary car park between 2001 and 2005 and had been hard-paved; the applicant was a charitable institution under section 88 of the Inland Revenue Ordinance (Cap. 112) and the proposed development was for accommodation of abandoned/stray dogs and cats; and concerned government departments had no objection to/adverse comment on the application. The circumstances of the current application are different in that the Site is not covered by any previous planning permission and is currently largely covered with vegetation; the proposed temporary animal boarding establishment would be commercially-operated; and there are adverse departmental comments on landscape planning aspect. As such, rejecting the current application is not in conflict with the previous decision of the Committee.
- 12.6 Regarding the public comments received objecting to/raising concerns on the application on grounds as summarised in paragraph 11 above, the planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12 above and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) the proposed use and associated filling and excavation of land are not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) the proposed use and associated filling of land are not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that the proposed use and associated filling and excavation of land are considered not compatible with the surrounding areas, and the applicant fails to demonstrate that the proposed use and associated filling and excavation of land would not have adverse landscape impact on the surrounding areas.

13.2 Alternatively, 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 **19.5.2026**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site at any time during the planning approval period;
- (b) no vehicle exceeding 5.5 tonnes, including medium goods vehicle, heavy goods vehicle and container trailer/tractor, as defined in the Road Traffic Ordinance, is allowed to enter/exit or to be parked/stored on the Site at any time during the planning approval period;
- (c) 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 **19.11.2023**;
- (d) in relation to (c) above, the implementation of the revised drainage proposal within **9 months** from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **19.2.2024**;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) 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**;

- (g) in relation to condition (f) 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**;
- (h) if any of the above planning conditions (a), (b) or (e) 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;
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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
- (j) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VI**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant planning permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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 permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application Form with attachments received on 22.3.2023
Appendix Ia	SI received on 28.3.2023
Appendix Ib	FI received on 25.4.2023
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)
Appendix III	Extracts of Town Planning Board Guidelines for Application for Development within Deep Bay Area (TPB PG-No. 12C)
Appendix IV	Similar Application
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendices VII-1 and VII-2	Public Comments Received During Statutory Publication Period
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Drawing A-3	Land Filling and Excavation Plan

Drawing A-4	Drainage Plan
Plan A-1	Location Plan with Similar Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
MAY 2023**