

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/205

<u>Applicant</u>	: Ms. SIN Oi-hing represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 360AB (Part), 360C S.A (Part), 360D S.A (Part) and 360D RP (Part) in D.D. 87, Kong Nga Po, Sheung Shui, New Territories
<u>Site Area</u>	: 1,920 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/16
<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 for a temporary animal boarding establishment (dog kennel) for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/16. According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone requiring planning permission from the Town Planning Board (the Board). The Site is currently vacant, partly vegetated and partly hard paved with structures.
- 1.2 The Site is accessible by a local road leading to Kong Nga Po Road (**Plan A-1**). According to the applicant, the proposed development involves five one-storey structures not exceeding 4 m in height with a total floor area of about 680 m² for dog kennels (about 620 m²), portable toilet (about 20 m²) and site office (about 40 m²). Eight private car parking spaces (5m x 2.5m) including one reserved for staff will be provided. The operation hours are from 9:00 a.m. to 7:00 p.m. daily, including public holidays. Not more than 42 dogs will be accommodated at the Site and most of the dogs will stay overnight at the Site after operation hours. There will be a maximum of about 21 visitors and 3 staff on Site per day. According to the applicant, no public announcement system and whistle blowing will be used at the Site. All dogs will be kept inside the enclosed structures equipped with soundproofing materials and mechanical ventilation and air conditioning. The layout plan and drainage plan submitted by the applicant are at **Drawings A-1 to A-2** respectively.

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

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|-----|---|---------------|
| (a) | Application form with attachments received on 30.6.2021 | (Appendix I) |
| (b) | Further Information received on 18.8.2021 | (Appendix Ia) |
| | <i>^ accepted and exempted from publication</i> | |

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form and further information at **Appendices I and Ia** respectively. They can be summarized as follows:

- (a) the proposed development is temporary in nature and it would not frustrate the long-term planning intention of the “AGR” zone. No site formation works is proposed and the uncovered area of the Site would be grassed;
- (b) the proposed temporary development would only serve as a dog kennel and no other animal or services will be provided on the Site;
- (c) the layout and scale of the proposed development is not incompatible with the surrounding environment. Similar animal boarding establishment applications were approved in other “AGR” zones;
- (d) entry to the Site would be by prior appointments only. The traffic generation and attraction rates during peak hours are estimated at 3 pcu/hour and 2 pcu/hour respectively. It is estimated that the proposed development would not generate significant amount of traffic;
- (e) to address Environmental Protection Department (EPD)’s concerns on possible environmental nuisance, the applicant undertakes to provide the following mitigation measures:
 - (i) all dogs will be kept inside the enclosed structures equipped with soundproofing materials (i.e. rockwool with surface mass density not less than 10 kg/m²) and mechanical ventilation and air conditioning;
 - (ii) wastewater generated on site, including the effluent from toilet and dog kennel, removal of animal urine/ excrement, floor washing and general cleaning of dog kennel etc., would be tankered away for disposal;
 - (iii) Water Pollution Control Ordinance would be complied with, mitigation measures in “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (CoP) and good housekeeping measures would be adopted, including those to prevent animal urine/ excrement, rubbish etc. from polluting watercourse(s) nearby;
 - (iv) no public announcement system and whistle blowing will be used at the Site;
 - (v) 3 staff during operation hours and 2 staff after office hours (i.e. 9 am - 7 pm from Mondays to Sundays, including public holidays) would be on Site to take care of the dogs;
 - (vi) the openings of the dog kennels would be facing away from the noise sensitive receiver nearby; and

- (vii) auto-closing doors would be used.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent / Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by posting site notice and sending notice to the Ta Kwu Ling District Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

Majority of the Site is currently subject to planning enforcement action (No. E/NE-FTA/174) involving storage use (including deposit of containers). Reinstatement Notice (RN) was issued on 26.4.2021 requiring reinstatement of the southern portion of the Site by 26.7.2021. According to the latest site inspection, the concerned area is partially reinstated.

5. Previous Application

- 5.1 Part of the Site is the subject of a previous planning application No. A/NE-FTA/195 for proposed temporary warehouse and open storage of containers for a period of 3 years submitted by the same applicant. The application was rejected by the Committee on 6.3.2020 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; it did not comply with the then Town Planning Board Guidelines No. 13E for Open Storage and Port Back-up Uses in that no previous planning approval has been granted at the Site, there were adverse departmental comments and local objections to the application; and the applicant failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas; and setting of undesirable precedent.
- 5.2 Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application for temporary animal boarding establishment within the “AGR” zone in the vicinity of the Site in the Fu Tei Au and Sha Ling area.

7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4a and A-4b)

- 7.1 The Site is:
- (a) partly grassed, partly paved and fenced off;
 - (b) occupied by vacant temporary structures; and

- (c) accessible by a local road leading to Kong Nga Po Road (**Plan A-1**).

7.2 The surrounding areas have the following characteristics:

- (a) to the east and west of the Site are pigsties;
- (b) to the north are some unused/ vacant land, open storage sites and warehouses. A watercourse is located to the north of the Site; and
- (c) to the south across the local road are some unused/vacant land, an open storage site and a domestic structure located about 90 m southwest from the Site.

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 summarised as follows:

Land Administration

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots which are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining Government land (GL) will be allowed for vehicular access to the Site for the proposed use;
- (b) the actual occupation area does not tally with the Site. The existing total built-over area is larger than the proposed development parameters under application. The existing number of structures also does not tally with the proposed development parameters under application;
- (c) there are unauthorized structures erected on the Site and portions of GL are occupied without approval from her office. Her office reserves the right to take necessary lease enforcement actions against the structures on private lots and land control action against the irregularities on GL as appropriate;
- (d) the applicant should note that any proposed toilet facility should meet the current health requirements; and
- (e) should the application be approved, the owners of the lots concerned shall apply to her office for a Short Term Waiver (STW) and/or Short Term Tenancy (STT) covering all the actual occupation area and structures concerned. The applications for STW and STT will be considered by

Government in its landlord's capacity and there is no guarantee that they will be approved. Should the STW and STT be approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee, rent and administrative fees as considered appropriate by her office.

Traffic

9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) based on the submitted information, he considers that the traffic impact induced by the temporary development is tolerable from the traffic engineering point of view; and
- (b) the vehicular access between the Site and Man Kam To Road is not managed by his department. The applicant should seek comment from responsible party.

Environment

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

- (a) having reviewed the applicant's submission in **Appendices I and Ia**, he has no objection to the application subject to the undertaking of the implementation of mitigation measures as proposed by the applicant in paragraph 2(e); and imposition of the approval conditions including (i) no operation between 7:00 p.m. to 9:00 a.m. as proposed by the applicant; (ii) all animals shall be kept inside fully enclosed structures on the Site, as proposed by the applicant, at all times; and (iii) any form of audio amplification system is not allowed, as proposed by the applicant;
- (b) the applicant should be reminded of his obligation to comply with environmental protection / pollution control ordinances, including but not limited to Water Pollution Control Ordinance and Noise Control Ordinance, and to follow all requirements and mitigation measures in EPD's latest CoP. His detailed comments are appended at **Appendix IV**; and
- (c) there was no substantiated environmental complaints against the Site during the past three years.

Landscape

9.1.4 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 of 2020 (**Plan A-3**), the Site is situated in an area of miscellaneous rural fringe landscape character surrounded by temporary structures, scattered tree groups and agricultural lands. Given that there are existing pigsties adjoin the Site to its east and west and the proposed

development involves five 1-storey structures, the proposed temporary development is considered not incompatible with the surrounding environment;

- (c) it is noted that there is no significant existing trees observed within the Site and further significant adverse landscape impact arising from the proposed development is not anticipated; and
- (d) should the application be approved, it is considered not necessary to impose a landscape condition in view that there is existing vegetation buffer to the north outside the Site and there is no major public frontage surrounding the Site. The effect of additional landscaping in enhancing the quality of public realm is not apparent.

Agriculture, Nature Conservation and Licensing

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

- (a) he does not support the application from agricultural point of view;
- (b) the Site is currently cemented vacant land occupied by temporary structures. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site possesses potential for agricultural rehabilitation and can be used for other agricultural activities such as greenhouses, plant nurseries, etc.;
- (c) the Site does not associate with any licence granted by his department, nor have we received any application regarding this address. 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. The applicant should also be reminded that the establishment and ancillary facilities which is licensed under the Cap 139I Public Health (Animals) (Boarding Establishment) Regulations must always fulfil the criteria listed in the Regulations. His other advisory comments are at **Appendix IV**; and
- (d) the Site is paved with a watercourse located to the north of the Site. While he has no comment on the application from nature conservation point of view, should the application be approved, the applicant should avoid impact to the watercourse during construction and operation phase of the proposed development.

Drainage

9.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and

- (c) the Site is in an area where no public sewerage connection is available.

Building Matters

- 9.1.7 Comments of the Chief Building Surveyor/New Territories West, Building Department (CBS/NTW, BD):

there is also no record of submission of the proposed building/ structure to BD for approval. His advisory comments are at **Appendix IV**.

Fire Safety

- 9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) being provided to the satisfaction of his department;
- (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. In addition, the applicant should be also advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Environmental Hygiene

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

- (a) he has no adverse comment on the application from environmental hygiene point of view; and
- (b) his advisory comments are at **Appendix IV**.

District Officer's Comments

- 9.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The incumbent North District Council member of subject constituency, the Indigenous Inhabitant Representative (IIR) of Lei Uk, the Resident Representative (RR) of San Uk Ling, the IIR and RR of Tai Po Tin and the Chairman of 沙嶺村居民福利會 have no comment on the application.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

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

On 9.7.2021, the application was published for public inspection. During the statutory public inspection period, two public comments were received. A North District Council member indicates no comment on the application. Kadoorie Farm and Botanic Garden objects to the application on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; there is potential water quality impact on the nearby watercourse arising from the proposed development; and the Site is the subject of an active enforcement case.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary animal boarding establishment for a period of 3 years at the Site zoned “AGR” on the OZP. 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, the proposed animal boarding establishment is temporary in nature for a period of 3 years, the approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “AGR” zone.
- 11.2 The proposed development comprises mainly some temporary structures for dog kennels is considered not incompatible with the surrounding area which is rural in character surrounded by temporary structures, scattered tree groups and agricultural lands (**Plan A-2**). In this regard, CTP/UD&L of PlanD has no objection to the application from landscape point of view as significant adverse landscape impact arising from the temporary development is not anticipated.
- 11.3 The Site is directly accessible by a local road leading to Kong Nga Po Road. C for T considers that the traffic impact induced by the temporary development is tolerable from the traffic engineering point of view. Although there is a domestic structure in the vicinity of the Site (**Plan A-2**), DEP has no objection to the application taking into account that the applicant undertakes the implementation of relevant environmental mitigation measures and relevant approval conditions restricting the operation hours and outdoor animal activities, and the use of any form of audio amplification system are recommended. Moreover, the applicant will be advised to follow the latest CoP issued by DEP to minimize the potential environmental impacts on the surrounding areas. Other relevant Government departments consulted, including CE/MN of DSD, D of FS and CE/C of WSD, have no adverse comment on/no objection to the application.

- 11.4 There is no similar application within the same “AGR” zone. Part of the Site is the subject of a previous planning application No. A/NE-FTA/195 for a different use (i.e. proposed temporary warehouse and open storage of containers) for a period of 3 years submitted by the same applicant which was rejected by the Committee on 6.3.2020.
- 11.5 Regarding the adverse public comments as detailed in paragraph 10 above, Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 27.8.2024. The following conditions of approval and advisory clauses are 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, during the planning approval period;
- (c) no public announcement system, portable loudspeaker, any form of audio amplification system, or whistle blowing is allowed to be used on the Site, as proposed by the applicant, at any time during the planning approval period;
- (d) the provision of boundary fencing on the Site within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 27.5.2022;
- (e) 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 27.2.2022;
- (f) in relation to (e) above, the provision of drainage facilities 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 27.5.2022;
- (g) the submission of proposals for fire service installations and water supplies for firefighting 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 27.2.2022;
- (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 27.5.2022;
- (i) if any of the above planning conditions (a), (b) or (c) 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 conditions (d), (e), (f), (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 at **Appendix IV**.

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

- the proposed development is not in line with the planning intention of the "Agriculture" zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such 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 the 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 attachments received on 30.6.2021
Appendix Ia	Further Information received on 18.8.2021
Appendix II	Previous Application
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos