

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/207A

<u>Applicant</u>	: Mr. YU Fuk Hau represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 360AB (Part), 360C S.A (Part), 360C RP (Part), 360D S.A (Part), 360D RP (Part) and 360E (Part) in D.D. 87, Kong Nga Po, Sheung Shui, New Territories
<u>Site Area</u>	: 1,660 m ² (about)
<u>Land Status</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 3 years at the application site (the Site) which falls within an area zoned “AGR” on the OZP (**Plan A-1**). 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 and partly occupied by a single storey structure.
- 1.2 The Site is accessible by a local road leading to Kong Nga Po Road (**Plans A-1 and A-2**). According to the applicant, the proposed development involves a single storey structure not exceeding 4 m in height with a total floor area of about 950 m² for dog kennel (about 635 m²), site office (about 255 m²) and toilet (about 60 m²). Four 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. Not more than 42 dogs will be housed at the Site and most of the dogs will stay overnight at the Site after operation hours. There will be a maximum 8 visitors on the 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 The northern part of the Site is the subject of a previous application (No. A/NE-FTA/195) for different proposed uses (see paragraph 5 below).
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with attachments received on 29.10.2021 (Appendix I)
 - (b) Supplementary Information (SI) received on 4.11.2021 (Appendix Ia)
 - (c) Further Information (FI) received on 22.2.2022 (Appendix Ib)
 - (d) FI received on 11.4.2022 (Appendix Ic)
(accepted and exempted from publication and recounting requirements)
- 1.5 On 24.12.2021, the Committee agreed to the applicant's request to defer making a decision on the application for 2 months to allow more time for the applicant to address departmental comments. Two FIs were received on 22.2.2022 and 11.4.2022, and the application is scheduled for consideration by the Rural and New Town Planning Committee (the Committee) at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the SI at **Appendix Ib**, and are summarized as follows:

- (a) the proposed development is temporary in nature and would not frustrate the long-term planning intention of the "AGR" zone;
- (b) the proposed temporary development would only serve as a dog kennel and no other 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 application was approved within the "AGR" zone;
- (d) 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;
- (e) entry to the Site would be by prior appointments only. It is estimated that the proposed development would not generate significant amount of traffic; and
- (f) the dog kennel will be kept in a sanitary condition. The applicant would follow the relevant mitigation measures and requirements set out in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" (CoP) and ProPECC PN 5/93.

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

The Site is subject to planning enforcement action (No. E/NE-FTA/173) involving workshop use and storage use (including deposit of containers). Reinstatement Notice (RN) was issued on 8.6.2020 requiring reinstatement of the concerned land by 8.9.2020. As the Site had not been reinstated as required by the RN, prosecution action was taken. The defendant was convicted on 30.6.2021. If the requirement of the RN is still not complied with, further legal action will be taken.

5. Previous Application

- 5.1 The northern part of the Site is the subject of a previous planning application No. A/NE-FTA/195 for different uses (i.e. proposed temporary warehouse and open storage of containers for a period of 3 years).
- 5.2 Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

- 6.1 There is one similar application for the same use within the "AGR" zone in the vicinity of the Site in the past 5 years (**Plan A-1**). Application No. A/NE-FTA/205 for proposed temporary animal boarding establishment (dog kennel) for a period of 3 years was approved with conditions by the Committee on 27.8.2021 mainly on consideration that temporary approval would not frustrate the long-term planning intention of the "AGR" zone; the proposed development was not incompatible with the surrounding land uses; and the departmental comments and public concerns could be addressed through the implementation of relevant approval conditions.
- 6.2 Details of the application is summarised at **Appendix II** 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) partly fenced off and occupied by a vacant temporary structure; and
- (b) accessible via a local road leading to Kong Nga Po Road (**Plans A-1 and A-2**).

- 7.2 The surrounding areas have the following characteristics:

- (a) to the east and west are pigsties;
- (b) to the immediate northeast is a storage yard which has been approved by the Committee in 2021 for temporary animal boarding establishment (dog kennel) for

a period of 3 years under Application No. A/NE-FTA/205. To the further north across the watercourse are unused/vacant land, clusters of tree groups and an open storage site; and

- (c) to the south across the local road are unused/vacant land, clusters of tree groups, a storage yard 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 Apart from the government departments as set out in paragraph 9.2 below, other government 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.

9.2 The following government departments have objection to / reservation on the application.

Agriculture

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

- (a) he does not support the application from agricultural point of view; and
- (b) the Site is currently abandoned. 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 open-field cultivation, greenhouses, plant nurseries, etc.

District Officer's Comments

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

- he has consulted the locals regarding the application. The 1st Vice-Chairman of the Ta Kwu Ling District Rural Committee, one Indigenous Inhabitant Representatives (IIRs) of Chow Tin Tsuen, the Resident Representative (RR) of Chow Tin, the IIR of San Uk Ling, the IIR of Tai Po Tin and 打鼓嶺區沙嶺村居民福利會 object to the application on the grounds that the proposed development would disrupt the rural environment, and cause noise and hygiene impacts to the surrounding areas.

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

On 9.11.2021, the application was published for public inspection. During the statutory public inspection period, a total of 4 public comments were received. A North District Council member indicates no comment on the application. The Sha Ling Village Welfare Association, Kadoorie Farm and Botanic Garden and an individual object to the application on the grounds that the proposed development is not in line with the planning intention of the “AGR” zone; potential noise nuisance and public hygiene concerns 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 as set out in paragraph 8 above. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, the proposed development is temporary in nature for a period of 3 years, 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 comprising a temporary single storey structure for dog kennel is considered not incompatible with the surrounding area which is rural in character surrounded by temporary storages, pigsties, scattered tree groups and agricultural lands (**Plan A-2**). CTP/UD&L of PlanD considers that significant adverse landscape impact arising from the temporary development is not anticipated. In this regard, she has no objection to the application from landscape point of view.
- 11.3 The Site is directly accessible by a local road leading to Kong Nga Po Road. C for T has no comment on the application from traffic engineering point of view and considers that the traffic impact induced by the temporary development is tolerable. 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 ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by DEP to minimize the potential environmental impacts on the surrounding areas. Other concerned government departments, 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 one approved similar application (No. A/NE-FTA/ 205) within the same “AGR” zone in the vicinity of the Site for the same use in the past 5 years (see paragraph 6.1 above). The planning circumstances of the current application are similar to the approved similar application.
- 11.5 Regarding the local comments conveyed by DO(N) of HAD and public comments on the application as detailed in paragraphs 9.2.2 and 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 local comments conveyed by DO(N), HAD and public comments mentioned in paragraphs 9.2.2 and 10 respectively, 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 22.4.2025. 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 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 22.10.2022;
- (e) in relation to (d) 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 22.1.2023;
- (f) 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 22.10.2022;
- (g) in relation to (f) 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 22.1.2023;
- (h) 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; and
- (i) if any of the above planning conditions (d), (e), (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.

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 29.10.2021
Appendix Ia	Supplementary Information received on 4.11.2021
Appendix Ib	Further Information received on 22.2.2022
Appendix Ic	Further Information received on 11.4.2022
Appendix II	Previous and Similar Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments
Drawing A-1	Proposed Layout Plan
Drawing A-2	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

**PLANNING DEPARTMENT
APRIL 2022**