

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/182

- Applicant** : Mr. WU Shun Kwong represented by Metro Planning and Development Company Limited
- Site** : Lot 27 (Part) in D.D. 38, Lots 804 (Part), 806 (Part), 807 (Part), 808 (Part), 826 (Part), 827 (Part) and 828 S.B RP (Part) in D.D. 46, Sha Tau Kok, New Territories
- Site Area** : About 1,140m²
- Lease** : (i) Block Government Lease (demised for agricultural use)
(ii) Letter of Approval (LoA) No. L5312 (for erection of temporary structures for watchman shed, shade and agriculture storage purpose)
- Plan** : Approved Man Uk Pin Outline Zoning Plan No. S/NE-MUP/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment (Dog Kennel) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary animal boarding establishment (dog kennel) for a period of three 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 disused temporary structure.
- 1.2 The Site is accessible via Sha Tau Kok Road (Wo Hang Section) (**Plan A-2**). According to the applicant, the proposed development comprises a single-storey temporary structure of about 4m in height and a total floor area of about 480m² for dog kennel and toilet uses. Four private car parking spaces (5m x 2.5m) and a loading/unloading space (7m x 3.5m) for light goods vehicle will be provided at the southern part of the Site (**Drawing A-2**). The proposed development will operate between 9:00a.m. to 7:00p.m. daily. Not more than 48 dogs will be housed at the Site and most of the dogs will stay overnight at the Site after operation hours. Three staff will stay overnight at the Site to take care of the dogs. There will be a maximum of 12 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 location plan, proposed layout and drainage proposal submitted by the applicant are shown in **Drawing A-1 to A-3**

respectively.

- 1.3 Parts of the Site are the subject of three previous applications (No. A/NE-MUP/54, A/NE-MUP/55 and A/NE-MUP/152) for different uses as compared with current application. Details of the previous applications are set out in paragraph 5 below.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with Attachments received on 13.3.2023 (Appendix I)
 - (b) Further Information (FI) received on 18.4.2023 (Appendix Ia)
 - (c) FI received on 19.4.2023 (Appendix Ib)
 - (d) FI received on 25.4.2023 (Appendix Ic)
 - (e) FI received on 27.4.2023 (Appendix Id)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** are summarized as follows:

- (a) the proposed temporary animal boarding establishment is temporary in nature and would not frustrate the long-term planning intention of the “AGR” zone;
- (b) the proposed development would only provide animal boarding services;
- (c) the nature, layout, form, and scale of the proposed development is not incompatible with the surrounding environment. Similar animal boarding establishment applications were approved within the “AGR” zones;
- (d) all dogs will be accommodated within enclosed structure. No public announcement system will be used at the Site;
- (e) no adverse environmental, traffic and drainage impacts on the surroundings are anticipated. Drainage proposal is submitted in support of the application;
- (f) the existing structure within the Site will be demolished and new temporary structure will be erected according to the layout plan. Also, the Site will be entirely fenced off according to the site plan; and
- (g) 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 Sha Tau Kok District Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is subject to active planning enforcement action against an unauthorized development (UD) involving storage. Enforcement Notice was issued on 24.10.2022 requiring discontinuation of the UD by 24.12.2022. Site inspection on 28.12.2022 and 14.2.2023 revealed that the UD had been discontinued. The Site would be kept under close monitoring according to the established procedures.

5. **Previous Applications**

- 5.1 Parts of the Site are the subject of three previous applications (No. A/NE-MUP/54, A/NE-MUP/55, A/NE-MUP/152) for different uses from the current application. These applications were rejected on review by the Board or by the Rural and New Town Planning Committee (the Committee) between August 2008 and September 2020. They are considered not relevant to the current application.
- 5.2 Details of the previous applications are summarized at **Appendix II** and the locations are shown on **Plan A-1**.

6. **Similar Applications**

- 6.1 There are two similar applications No. A/NE-MUP/146 and 166 for the same use submitted by different applicants within the same “AGR” zone to the northwest and the immediate west of the Site respectively (**Plan A-1**). Application No. A/NE-MUP/146 was rejected by the Committee in 2020 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the applicant failed to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; and approval of the proposed development would set an undesirable precedent for similar applications in the area. Application No. A/NE-MUP/166 to the west of the Site was approved by the Committee on 13.1.2023 mainly on consideration that the development would unlikely generate significant adverse traffic, environmental and drainage impacts on the surrounding areas; and concerned government departments had no adverse comments on the application.
- 6.2 Details of the similar applications are summarized at **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, mostly vacant and partly hard paved;
 - (b) occupied by a disused temporary structure in the western part; and
 - (c) accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**).
- 7.2 The surrounding areas are generally rural in character surrounded by active/fallow agricultural land temporary domestic structures, vacant land and warehouse/open storage uses.

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 department 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 the following comments on the application.

9.2.1 Comments of the District Lands Office/North, Lands Department (DLO/N, LandsD :

- the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains a restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via government land (GL) is granted to the Site;
- she has reservation on the planning application since there are unauthorized building works on the application lots which are already subject to lease enforcement actions according to the case priority. The owners should immediately rectify the lease breaches as demanded by earlier letters and her office reserves the rights to take necessary lease enforcement action against the breaches without separate notice;
- the Site is covered by a LoA No. L5312 which is issued for erection of temporary structures for watchman shed, shade and agriculture storage purposes. Given that the existing structures and use do not tally with the approved one under the aforesaid LoA, her office reserves the rights to take enforcement action and cancel the LoA; and
- the lot owner(s) will need to apply to this office for a Short Term Waiver (STW) to permit the structures to be erected and regularize the irregularities on the Site. Besides, given that the proposed use is temporary in nature, only applications for regularization or erection of temporary structure(s) will be considered. The application will be considered by the LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

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

- he has consulted the locals regarding the application. The Resident Representative (RR) of Loi Tung supports the application. The RR of Man Uk Pin objects the application. The incumbent North District Councillor of N16 Constituency objects the application mainly on the grounds that the proposed development may cause nuisances to the nearby residents. The Chairman of Sha Tau Kok District Rural Committee, the Chairman of Lung Shan Area Committee, the Indigenous Inhabitant Representative (IIR) of Loi Tung and the IIR of Man Uk Pin have no comment on the application.

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

On 21.3.2023, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation and two individuals object the application mainly on the grounds that approval of the application would set an undesirable precedent; the proposed development is not in line with the planning intention of the “AGR” zone; the proposed development is not entirely compatible with landscape character of the area; and there are active agricultural lands in the surrounding areas and could not be reinstated if damaged.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary animal boarding establishment (dog kennel) for a period of three 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 advises that the Site possesses potential for agricultural rehabilitation and can be used as green houses or plant nurseries, etc., though whether there will be agricultural activities on a specific site will hinge on a lot of factors. Nevertheless, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “AGR” zone from planning point of view.
- 11.2 The Site is partly hard-paved and is situated in an area of rural landscape character comprising active/fallow farmlands, temporary structures and some warehouse/open storage uses (**Plan A-2**). CTP/UD&L, PlanD considers the proposed development is not entirely incompatible with the surrounding environment. Significant adverse impact on the landscape characters and existing landscape resources arising from the proposed development is not anticipated. Hence, she has no objection to the application from the landscape planning perspective.
- 11.3 The Site is accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**). C for T has no comment on the application from the traffic engineering perspective and considers that the traffic impact induced by the temporary development is tolerable. While DLO/N of LandsD has reservation on the application for the reason of the presence unauthorized building works within the Site, which are subject to lease enforcement actions, the applicant indicates that he would liaise with LandsD to rectify/regularize the matters and

settle the land issue separately (**Appendix Ib**). DEP has no objection to the application subject to relevant approval conditions being imposed and advises that the applicant should follow the latest CoP to minimize any potential environmental impacts. Other relevant departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD have no adverse comment on/no objection to the application.

- 11.4 There are two similar applications (No. A/NE-MUP/146 and 166) for the same use within the same “AGR” zone. Application No. A/NE-MUP/146 was rejected in January 2020 mainly on the grounds that the applicant failed to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas. Application No. A/NE-MUP/166 was approved in January 2023 mainly on the grounds that there was no adverse departmental comments on the application. The planning considerations of the current application are similar to the approved 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 as detailed in paragraphs 9.2.2 and 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 5.5.2026. 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. (except for overnight dogs boarding), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all animals should be kept inside the enclosed structures on the Site at all times, as proposed by the applicant, during the planning approval period;
- (c) no public announcement system and whistle blowing (portable loudspeaker or any form of audio amplification system) 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 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 5.11.2023;
- (e) in relation to (d) above, the implementation 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 5.2.2024;
- (f) in relation to (e) above, the implemented drainage facilities at the Site should be maintained at all times during the planning approval period;
- (g) the submission of proposals for water supplies for fire-fighting and fire service

installations 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 5.11.2023;

- (h) in relation to (g) above, the implementation of proposals for water supplies for fire-fighting and fire service installations 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 5.2.2024;
- (i) the submission of run-in/run-out proposal within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 5.11.2023;
- (j) in relation to (i) above, the implementation of run-in/run-out proposal within 9 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 5.2.2024;
- (k) if the above planning conditions (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; and
- (l) if any of the above planning conditions (d), (e), (g), (h), (i) or (j) 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.
- (m) upon expiry of the planning permission, the reinstatement of the Site to the 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 Member's 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justifications in the submission for a departure from such planning intentions, 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 received on 13.3.2023
Appendix Ia	FI received on 18.4.2023
Appendix Ib	FI received on 19.4.2023
Appendix Ic	FI received on 25.4.2023
Appendix Id	FI received on 27.4.2023
Appendix II	Previous and Similar Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments
Drawing A-1 to A-3	Location Plan, Proposed Layout and Drainage Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
MAY 2023**