

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/187

<u>Applicant</u>	: Mr LAM Lung represented by Honest Land Surveys Company
<u>Site</u>	: Lot 30 S.B RP (Part) in D.D. 38, Sha Tau Kok, New Territories
<u>Site Area</u>	: About 507.43m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: 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 partly covered with vegetation and partly occupied by a few temporary structures.
- 1.2 The Site is accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicant, the proposed development comprises three single-storey temporary structures of not more than 9m in height with a total floor area of about 211.8m² for dog kennel, site office, toilet and bathroom uses. Two private car parking spaces (5m x 2.5m) will be provided in the northern part of the Site (**Drawing A-1**). The operation hours of the Site are from 9:00a.m. to 7:00p.m. daily. Not more than 12 dogs will be kept at the Site. One staff will stay overnight at the Site to take care of the dogs. There will be a maximum of six visitors per day. No public announcement system or 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 within the structures. The proposed layout plan, landscape plan, drainage plan and swept path analysis plan submitted by the applicant are shown in **Drawings A-1 to A-4** respectively.

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

- (a) Application Form with Attachments received on 7.6.2023 (Appendix I)
- (b) Further Information (FI) received on 4.8.2023 (Appendix Ia)
(accepted and exempted from publication)

1.4 On 28.7.2023, the Committee agreed to the applicants' request to defer making a decision on the application for two months to allow more time for the applicants to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix I**. They can be summarized as follows:

- (a) the proposed temporary animal boarding establishment is temporary in nature and relatively small in scale, it will not frustrate the long-term planning intention of the "AGR" zone;
- (b) 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" zone;
- (c) disposal of animal excretion and other waste will be carried out at least once a day for hygiene purpose. Facilities will be provided to reduce pollution, smell and chance of spreading diseases;
- (d) no significant adverse environmental, drainage, landscape and traffic impacts on the surroundings are anticipated; and
- (e) 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 the sole "current land owner" of the lot. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is currently not the subject of any enforcement cases.

5. Previous Application

There is no previous application for the Site.

6. Similar Applications

- 6.1 There are three similar applications (No. A/NE-MUP/146, 166 and 182) for the same use submitted by different applicants within the “AGR” zone in the vicinity of the Site (**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. Applications No. A/NE-MUP/166 and 182 were approved by the Committee on 13.1.2023 and 5.5.2023 respectively mainly on considerations that the proposed developments would unlikely generate significant adverse traffic, environmental and drainage impacts on the surrounding areas; and concerned government departments had no adverse comments on the applications.
- 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;
 - (b) partly covered with vegetation and partly occupied by a few temporary structures; and
 - (c) accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**).
- 7.2 The surrounding areas are generally rural inland plains landscape character comprising active/fallow agricultural lands, warehouse, car repairing workshops, open storages, temporary domestic structures, village houses and vacant land.

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 at **Appendices III** and **IV** respectively.

9.2 The following government departments have reservation on the application/conveyed local views 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. Other than those unauthorized structures erected within the Site, there is unauthorized structure extended from the adjoining Lot No. 31 S.B RP in D.D. 38 to the application lot but not included in the Site. The lot owner should immediately rectify the lease breaches as demanded by the warning letter registered in Land Registry and her office reserves the rights to take necessary lease enforcement action against the breaches without separate notice; 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/to be erected on the Site. Besides, given that the proposed use is temporary in nature, only application 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 incumbent North District Councillor of N16 Constituency and the RR of Man Uk Pin object to the application. 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 16.6.2023, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. An individual raises concern that the applicant does not provide justification of the demand and supply for the animal boarding establishment.

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 open-field cultivation, green houses, plant nurseries, etc., though whether there will be agricultural activities on a specific site will hinge on a lot of factors. Nevertheless, it is considered that the 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 covered with vegetation and is situated in an area of rural inland plains landscape character comprising active/fallow agricultural lands, warehouse, car repairing workshops, open storages, temporary domestic structures, village houses and vacant land (**Plan A-2**). CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective as significant adverse impact on the landscape characters and existing landscape resources arising from the proposed development is not anticipated.
- 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 traffic engineering perspective and considers that the traffic impact induced by the proposed temporary development is tolerable. While DLO/N, LandsD has reservation on the application due to 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 land matters and settle the land issues separately (**Appendix Ia**). 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, DFEH, CE/MN of DSD and CE/C of WSD, have no adverse comment on/no objection to the application.
- 11.4 There are three similar applications for the same use within the “AGR” zone in the vicinity. 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. Applications No. A/NE-MUP/166 and 182 were approved in 2023 respectively mainly on consideration that there were no adverse departmental comments on the applications. The planning circumstances of the current application are similar to the approved applications.
- 11.5 Regarding the local comments conveyed by DO(N), HAD and the 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 views 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 three years until 22.9.2026. 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) the dogs 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, whistle blowing, portable loudspeaker or any form of audio amplification system is allowed to be used on the Site, as proposed by the applicant, 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 22.3.2024;
- (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 22.6.2024;
- (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 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 22.3.2024;
- (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 22.6.2024;
- (i) the submission of a 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 22.3.2024;
- (j) in relation to (i) above, the implementation of the 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 22.6.2024;
- (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;

- (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; and
- (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 "Agriculture" 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 with attachments received on 7.6.2023
Appendix Ia	FI received on 4.8.2023
Appendix II	Similar Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments
Drawing A-1	Proposed Layout
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Plan
Drawing A-4	Swept Path Analysis
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos