

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/200

- Applicants** : Mr. MOK Chi Kong and Ms. CHAN Mo Kuen
- Site** : Lot 138 RP in D.D. 46 and Adjoining Government Land (GL), Sha Tau Kok, New Territories
- Site Area** : About 467.1m² (includes GL of about 217m² or 46% of the Site)
- Land Status** : (i) Block Government Lease (demised for agricultural use)
(ii) GL
- Plan** : Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Animal Boarding Establishment for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicants seek planning permission for a proposed temporary animal boarding establishment for a period of three years and associated filling of land at the application site (the Site) which falls within an area zoned “AGR” on the approved Man Uk Pin OZP No. S/NE-MUP/11 (**Plan A-1**). According to the Notes of the OZP, ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone and filling of land require planning permission from the Town Planning Board (the Board). The Site is vacant and partly covered with vegetation.
- 1.2 The Site is accessible via a local track leading to Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicants, the proposed use involves a single-storey structure (not more than 4.5m in height) with a total floor area of about 214.1m² for dog kennel, site office, toilet and bathroom uses. Filling of land by concrete at a depth of about 0.2m for the whole Site is proposed for erection of the temporary structure and circulation purposes. One parking space for medium goods vehicle is proposed. The operation hours of the proposed animal boarding establishment are from 9:00a.m. to 7:00p.m. daily, including public holidays. The kennel will accommodate seven dogs. A staff will stay overnight to take care of the dogs. All dogs will be kept inside the enclosed structures equipped with soundproofing materials and ventilation system. Two to three visitors are anticipated at the Site per day. No public announcement system, whistle blowing, portable loudspeaker or any form of audio amplification system will be used at the Site. The proposed layout plan and land filling plan submitted by the applicants are shown in **Drawings A-1** and **A-2** respectively.

1.3 In support of the application, the applicants have submitted the following documents:

- (a) Application Form with attachments received on 31.1.2024 (Appendix I)
 - (b) Further Information (FI) received on 26.2.2024* (Appendix Ia)
 - (c) FI received on 6.3.2024* (Appendix Ib)
 - (d) FI received on 26.3.2024* (Appendix Ic)
 - (e) FI received on 11.4.2024* (Appendix Id)
 - (f) FI received on 3.5.2024* (Appendix Ie)
- * accepted and exempted from the publication and recounting requirements*

1.4 On 15.3.2024, the Committee agreed to the applicants' request to defer a decision on the application for two months.

2. **Justifications from the Applicants**

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

- (a) the applicants are the registered owners of the Site and also retirees, and would like to provide a proper shelter for the dogs at the Site; and
- (b) the proposed animal boarding establishment could provide a shelter with a suitable environment for stray dogs without receiving due care and attention.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The applicants are the sole "current land owners" of the Site. Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) are not applicable.

4. **Background**

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

5. **Previous Application**

- 5.1 The Site is in part the subject of a previous application No. A/NE-MUP/83 for a different use (i.e. proposed burial ground (reprovisioned permitted burial ground) approved by the Rural and New Town Planning Committee (the Committee) on 15.3.2013, but its considerations are not relevant to the current application.
- 5.2 Details of the previous application are summarized at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are four similar applications (No. A/NE-MUP/146, 166, 182 and 187) for the same use submitted by different applicants within the “AGR” zones in the vicinity of the Site (**Plan A-1**) in the past five years.
- 6.2 Applications No. A/NE-MUP/166, 182 and 187 were approved by the Committee between January and September 2023 mainly on considerations that the proposed use would unlikely generate significant adverse traffic, environmental and drainage impacts on the surrounding areas; and government departments concerned had no adverse comments on the applications.
- 6.3 The remaining application No. A/NE-MUP/146 was rejected by the Committee on 17.1.2020 on the grounds of not in line with the planning intention; failing to demonstrate no adverse traffic and environmental impacts on the surrounding areas; and setting of an undesirable precedent for similar applications.
- 6.4 Details of the similar applications are summarized at **Appendix III** 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) partly fenced off;
 - (b) vacant and partly covered with vegetation; and
 - (c) accessible via a local track leading to Sha Tau Kok Road – Wo Hang (**Plan A-2**).
- 7.2 The surrounding areas are of rural inland plains landscape character comprising active/fallow agricultural lands, tree clusters and woodlands within the “Green Belt” zone to the immediate north. A domestic structure is located about 25m to the southeast of the Site.

8. Planning Intention

- 8.1 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.
- 8.2 According to the Explanatory Statement of the OZP, permission from the Board is required for filling of land within the “AGR” zone as such activity may cause adverse drainage and environmental impacts on the adjacent areas.

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 at **Appendices IV** and **V** respectively.

9.2 The following government departments have the following comments on the application:

Agricultural and Animal Management

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

- (a) the Site is zoned “AGR” and is generally vacant. Agricultural activities are active in the vicinity of the Site and agricultural infrastructures such as road access and water source are also available. The Site can be rehabilitated for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc., though whether there will be agricultural activities on a specific site will hinge on a lot of factors;
- (b) from animal management perspective, the Site does not associate with any licence granted by his department, nor had they received any application regarding the Site;
- (c) 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 applicants should also be reminded that the establishment and ancillary facilities which are licensed under Cap. 139I must always fulfil the criteria listed in the Regulations;
- (d) the dogs kept by the applicants should be properly licensed as in accordance with Cap. 421 Rabies Ordinance and the applicants are reminded to observe Cap. 169 Prevention of Cruelty to Animal Ordinance at all times; and
- (e) detailed information and guidance on Animal Boarding Establishment would be provided upon receipt of the licence application.

Environment

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

- (a) according to the “Code of Practice on Handling the Handling Aspects of Temporary Uses and Open Storage Sites” (the COP), the application should not be supported as the proposed use involves the use of heavy vehicles (i.e. medium goods vehicles) and there are sensitive receivers in the vicinity of the Site (the nearest domestic structure being located in about 25m away) (**Plan A-2**); and
- (b) no substantiated environmental complaint has been received for the Site over the past three years.

9.3 The following government department has relayed the local views on the application:

District Officer's Comments

9.3.1 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD) are as follows:

- (a) the Indigenous Inhabitant Representative (IIR) of Tai Tong Wu objects to the proposal. The Resident Representative (RR) of Tai Tong Wu also objects to the proposal mainly on considerations that the proposal is not in line with the planning intention of the “AGR” zone, and the proposed use may induce environmental nuisance on the surroundings;
- (b) six members of North District Council (NDC) and the Chairman of Lung Shan Area Committee have no comments; and
- (c) a NDC member cum Chairman of the Sha Tau Kok District Rural Committee and 17 other NDC members do not reply.

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

On 9.2.2024, the application was published for public inspection. During the first three weeks of statutory public inspection period, three public comments were received, including a comment of the Chairman of Sheung Shui District Rural Committee indicating no comment on the application; a comment from Kadoorie Farm & Botanic Garden Corporation expressing their concern on the potential cumulative impacts of approving the application; and a comment from an individual objecting to the application mainly on the grounds of no previous application, the presence of a cemetery nearby, and the potential adverse environmental impact on the surroundings.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary animal boarding establishment for a period of three years and associated filling of land at the Site zoned “AGR” on the OZP. The proposed use is considered 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. Taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.
- 11.2 The subject application involves filling of land for the entire site. Filling of land within “AGR” zone requires planning permission as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, CE/MN, DSD has no objection to the application from public drainage viewpoint while DEP has no particular comment on the proposed filling of land from environmental perspective. An approval condition requiring the reinstatement of the Site to an amenity area is recommended should the Committee decide to approve the application. Besides, DEP advises that the application should not be supported as proposed use involves use of heavy vehicles (i.e.

medium goods vehicles) and there are sensitive receivers in the vicinity of the Site (the nearest domestic structure is located about 25m to the southeast). To address the concern, relevant approval conditions including restricting the operation hours at the Site and the dogs shall be kept inside enclosed structure, etc. are also recommended. The applicants would also be advised to follow the environmental mitigation measures set out in the COP.

- 11.3 The Site is vacant and partly covered with vegetation and is situated in an area of rural inland plains landscape character comprising active/fallow agricultural lands, tree clusters, village houses and woodlands (**Plan A-2**). While CTP/UD&L, PlanD states that approval of the application may change the landscape character, she advises that significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated.
- 11.4 The Site is accessible via a local track leading to Sha Tau Kok Road – Wo Hang (**Plan A-2**). C for T has no comment on the application from traffic engineering perspective. Other relevant departments consulted, including DLO/N, D of FS and CE/C of WSD, have no adverse comment on/no objection to the application.
- 11.5 There are four similar applications for the same use within the “AGR” zone in the vicinity. Application No. A/NE-MUP/146 was rejected in 2020 mainly on the ground of failing to demonstrate no adverse traffic and environmental impacts. All the other three applications (No. A/NE-MUP/166, 182 and 187) were approved in 2023 mainly on consideration that there were no adverse impacts or adverse departmental comments on the applications. As there are no adverse departmental comments on the subject application, or the concern could be addressed by imposition of relevant approval conditions, the planning circumstances of the current application are similar to those of the approved applications. As such, approval of the current application is in line with the Committee’s previous decisions.
- 11.6 Regarding the local comments conveyed by DO(N), HAD and the public comments on the application as detailed in paragraphs 9.3.1 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 9.3.1 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 24.5.2027. 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 applicants, is allowed on the Site during the planning approval period;
- (b) the dogs shall be kept inside the enclosed structure on the Site, as proposed by the applicants, 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 applicants, 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 24.11.2024;
- (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 24.2.2025;
- (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 24.11.2024;
- (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 24.2.2025;
- (i) if **any of** the above planning condition (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;
- (j) if any of the above planning condition (d), (e), (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 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 V**.

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

- the proposed use with filling of land 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 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 applicants.

Attachments

Appendix I	Application Form with attachments received on 31.1.2024
Appendix Ia	FI received on 26.2.2024
Appendix Ib	FI received on 6.3.2024
Appendix Ic	FI received on 26.3.2024
Appendix Id	FI received on 11.4.2024
Appendix Ie	FI received on 3.5.2024
Appendix II	Previous Application
Appendix III	Similar Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Proposed Layout
Drawing A-2	Land filling Plan
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 2024**