

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/146

- Applicants** : CHAN Heung Kwan, YAU Yee Hung and LI Yeung Ying represented by M&D Planning and Surveyors Consultant Ltd.
- Site** : Lots 49, 50 (Part) and 52 RP in D.D. 37 and adjoining Government Land, Man Uk Pin, New Territories
- Site Area** : About 1,143 m² (including about 27 m² of Government land)
- Land Status** : Block Government Lease (demised for agricultural use)
- 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 3 Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for proposed temporary animal boarding establishment for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Man Uk Pin OZP No. S/NE-MUP/11. 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 fenced off and divided into two portions. The eastern portion is currently used as open storage without a valid planning permission while the remaining area is vacant.
- 1.2 According to the applicants, the proposed temporary animal boarding establishment will accommodate about 50 dogs/cats. It involves a total of six one-storey temporary structures of 2.5m high. The animal boarding establishment (i.e. **Structure B**) locates at the centre portion of the Site. The site office (i.e. **Structure A**), a temporary structure for dogs recreation use (i.e. **Structure C**) and a toilet (i.e. **Structure D**) locates at the eastern portion of the Site while another two temporary structures (i.e. **Structures E and F**) for bathing dogs and dog’s swimming pool are located at the western portion of the Site. The total floor area of the proposed development is about 149.76 m² (**Drawing A-1**). Two parking spaces for private cars will also be provided at the east of the Site near the entrance (**Drawing A-1**). The proposed development will operate from 9 a.m. to 8 p.m. daily. The ingress/egress of the Site is located at the southern part of the Site. The Site is accessible via a local track to Wo Keng Shan Road (**Plans A-1 and A-2**). The layout plan is at **Drawing A-1**.

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

- (a) Application Form with Attachments received on 4.12.2019 (**Appendix I**)
- (b) Supplementary Information received on 10.12.2019 (**Appendix Ia**)
- (c) Supplementary Information received on 11.12.2019 (**Appendix Ib**)

2. **Justifications from the Applicants**

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

- (a) the application is a temporary development which would not jeopardize the long-term planning of “AGR” zone;
- (b) the proposed ‘Animal Boarding Establishment’ is a Column 2 use in “AGR” zone, does not deviate from the planning intention;
- (c) the demand for animal boarding establishment is increasing;
- (d) no 5.5 tonnes or above heavy goods vehicles are allowed at the Site;
- (e) the proposed development is compatible with the surrounding environment; and
- (f) the proposed development would not cause adverse traffic, drainage and landscape impact to the surroundings.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection. For the portion of Government Land, the “owner’s consent/notification” requirements are not applicable.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is subject to two active enforcement cases (**Plan A-2**) for storage use (including deposit of containers). Enforcement Notices were issued on 2.10.2019 requiring the concerned owners to discontinue the unauthorised development by 2.12.2019. According to the recent site visit, it was revealed that the unauthorised development of the Site was not discontinued. Relevant prosecution action may be considered.

5. **Previous Application**

- 5.1 The Site is the subject of a previous planning application No. A/NE-MUP/75 for temporary open storage of new and second-hand vehicles (including 2 private cars and 4 light goods vehicles) covering a larger area for a period of 3 years. The application was rejected by the Committee on 7.12.2012 on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the

proposed development did not comply with the TPB PG-No. 13E in that no previous planning approval had been granted to the application site and there were adverse comments from the relevant government departments and local objections against the application; the proposed development was incompatible with the rural character of the surrounding area which was predominantly agricultural land with domestic structures in its close vicinity; there was no information in the application to demonstrate that the proposed development would have no adverse environmental and landscape impact on the surrounding areas.

5.2 Details of the previous application are at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

There is no similar application for ‘animal boarding establishment’ use in the “AGR” zone in the vicinity of the Site in Man Uk Pin area.

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

7.1 The Site is:

- (a) fenced off, partly vacant and partly used as open storage use; and
- (b) accessible from Wo Keng Shan Road via a local track (**Plans A-1 and A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) generally rural in character surrounded by vacant land, open storage use and fallow agricultural land (**Plan A-3**);
- (b) sandwiched by two “Green Belt” (“GB”) zones to the north and south, and to the immediate north are some temporary domestic structures (**Plan A-2**);
- (c) to the immediate east are vacant land and some temporary domestic structures;
- (d) to the immediate west are open storage use and vacant land; and
- (e) to the further south are fallow agricultural land and some open storage uses.

8. Planning Intention

The planning intention of the “AGR” zone in Man Uk Pin area is to primarily 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 Office/North, Lands Department (DLO/N, LandsD):

- (a) the lots are an Old Schedule Lots held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. The applicant should make his own arrangement, and there is no guarantee that any adjoining Government land (GL) will be allowed for the vehicular access of the proposed use;
- (b) the existing structures on the subject lots were erected without approval from her office. The aforesaid structures are not acceptable under the Lease concerned and she reserves the right to take necessary lease enforcement actions against the aforesaid structure;
- (c) the total number and location of the existing structures erected on the Site are different from that of the proposed one under the development schedule of the planning application. The Site is now mostly fenced off by metal hoardings;
- (d) the proposed structures on the subject lots will include a structure for toilet use. The applicants should note that any proposed septic tank and soakage pit system should meet current health requirements, and that they should apply for Certificates of Exemption for Building Works and Drainage Works from her office;
- (e) the GL between Lots 50 and 52 RP is being occupied without approval from her office. Her office reserves the right to take land control actions against the unauthorized occupation of GL (**Plan A-2**);
- (f) the application boundary and the actual occupation boundary do not tally; and
- (g) if the planning application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) for the erection of animal boarding establishment and site office, and regulation of the unauthorized occupation of GL respectively. The application for STW and STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT are 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 fee as considered appropriate by her office.

Traffic

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

- (a) unless the applicants could satisfactorily address his concerns, he cannot render support to the application from the traffic engineering perspective:
 - (i) the applicants should substantiate the traffic generation and attraction from and to the site as quoted in the application and advise the traffic impact to the nearby road links and junctions;
 - (ii) the applicants shall justify the adequacy of the parking spaces and loading/unloading spaces to be provided by relating to the number of vehicles visiting the Site;
 - (iii) the applicants shall assess if the existing provision of public transport services could address the needs of visitors to the Site;
 - (iv) the applicants shall advise the width of the vehicular access;
 - (v) the applicants shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site and manoeuvring within the Site, preferably using the swept path analysis;
 - (vi) the applicants shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the subject site;
 - (vii) the applicants shall advise measures in preventing illegal parking by the visitors to the Site;
 - (viii) it is noted that the Site is not directly connected to Wo Keng Shan Road. The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (ix) the vehicular access between the Site and Wo Keng Shan Road is not managed by Transport Department. The applicants should seek comment from the responsible party.

9.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) he has no comment on the application; and
- (b) the access road adjacent to the Site is not maintained by his office.

Environment

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

- (a) he does not support the application from environmental viewpoint as there are insufficient information provided by the applicants to satisfactorily address the potential environmental impacts;
- (b) there is insufficient information to demonstrate that no adverse environmental impact arises from the proposed use; and
- (c) the applicants are advised to provide further details to assess and address the potential odour, noise and sewerage treatment/disposal impacts, and the detailed technical comments are set out at **Appendix III**.

Agriculture and Licensing

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

- (a) the Site is currently vacant. Agricultural activities are observed in the vicinity of the Site and agricultural infrastructure such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agriculture point of view;
- (b) the Site does not associate with any licence granted by this 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 this 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; and
- (c) the dogs kept by the applicant should also be properly licensed as in accordance with the Rabies Ordinance, Cap. 421 and the applicant is reminded to observe the Prevention of Cruelty to Animal Ordinance, Cap. 169 at all times;

Landscape

9.1.6 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 the landscape planning point of view;
- (b) according to the aerial photo of 2019, the site is located in an area of rural inland plains landscape character, comprises temporary structures and

vegetated areas. No significant sensitive landscape resource is observed within the site; hence, significant adverse impact on existing landscape resources arising from the application is not anticipated; and

- (c) since there is no major public frontage along the site boundary. Should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of the public realm is not apparent.

Drainage

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

- (a) he has some reservation on the application from public drainage viewpoint;
- (b) the applicant proposed to provide a swimming pool for the dogs under the proposal. Discharging large amounts of water would give an adverse drainage impact on the existing drainage facilities. The applicant is required to assess and identify the project's potential drainage impacts and demonstrate in their submission with the implementation of necessary mitigation measures, the project will not cause an unacceptable increase in the risk of flooding in areas upstream of adjacent to or downstream of the development;
- (c) should the application be approved, an approval condition on the submission and implementation of drainage proposal is recommended to ensure that the development will not cause adverse drainage impact to the adjacent area; and
- (d) the Site is in an area where no public sewer connection is available.

Building Matters

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

- (a) before any new building works (including temporary buildings/structures and containers etc.) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (b) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the application site under the BO;
- (c) any temporary shelters or converted containers for storage or washroom or workshop or other uses are considered as temporary buildings are subject to the control of Part VII of the Building(Planning) Regulations;

- (d) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)Rs) respectively;
- (e) if the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)Rs at the building plan submission stage; and
- (f) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.

Fire Safety

9.1.9 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 being provided to the satisfaction of his department; and
- (b) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Water Supply

9.1.10 Comments of the Chief Engineer/Construction, Water Services Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicants shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standard.

Environmental Hygiene

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

- (a) he has no objection to the application; and
- (b) the operation of the proposed temporary animal boarding establishment and ancillary office should not cause any environmental hygiene problems at and in the vicinities of the application site. Any animal carcass/ parts shall be properly wrapped or bagged before disposal.

District Officer's Comments

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

he has consulted the locals regarding the application. The Chairman of Sha Tau Kok District Rural Committee (DRC), the Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Man Uk Pin objected to the proposal on the grounds that the proposed development would cause environmental impact; and the former / current North District Council members of subject constituency had no comments on the said proposal.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 13.12.2019, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix IV**). The Chairman of Sheung Shui DRC and a former North District Council member indicate no comment on the application. World Wide Fund for Nature Hong Kong, the Hong Kong Bird Watching Society, Designing Hong Kong Limited and one individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of "AGR" zone, approval of the application would set an undesirable precedent to future similar applications within the "AGR" zone; potential adverse ecological impacts induced by the proposed development; there is insufficient information to show whether the proposed development is registered and suitable for taking care of animals; approval of this application would further legitimize current misuse of the "AGR" zone.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary animal boarding establishment for a period of three years at a Site zoned "AGR" which is primarily to retain and safeguard good 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. The proposed development is not in line with the planning intention of "AGR" zone. As the Site possesses potential for agricultural rehabilitation, DAFC does not support the application from the agriculture point of view. There is no strong justification given in the submission for a departure from the planning intention, even on a temporary basis.
- 11.2 The proposed development involving animal boarding establishment, dogs recreation area, site office, etc. is considered not entirely incompatible with the surrounding area which is rural in character predominated by temporary structures, vacant land and fallow agricultural land (**Plans A-2 and A-3**). CTP/UD&L, PlanD considers that significant adverse impact on existing landscape resources arising from the

development is not anticipated and she has no objection to the application from landscape planning perspective.

- 11.3 DEP does not support the application as the applicants fail to demonstrate in the submission that the proposed development would not cause adverse environmental impacts or nuisance. Further mitigation measures should be provided to address the potential odour, noise, sewage treatment and disposal impacts. CE/MN of DSD has reservation on the application as there is insufficient information to demonstrate that the proposed development will not cause an unacceptable increase in the risk of flooding in areas upstream of adjacent to or downstream of the development. Besides, C for T does not support the application from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary development will not cause adverse traffic impact on the surrounding area. Other Government departments consulted, including D of FS and DFEH, have no comment on / no objection to the application.
- 11.4 There is no similar application for temporary animal boarding establishment within the “AGR” zone under the OZP. Approval of the application would set an undesirable precedent for similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 11.5 Regarding the local objections conveyed by DO(N), HAD and adverse public comments as detailed in paragraphs 9 and 10 above respectively, the Government department’s comments and the 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, the Planning Department does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good 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 justification in the submission for a departure from such planning intention, even on a temporary basis;
 - (b) the applicant fails to demonstrate that the proposed development would not cause adverse environmental and traffic impacts on the surrounding areas; and
 - (c) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 12.2 Alternatively, 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 **17.1.2023**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m. daily for animal boarding service, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (b) all animals shall be kept inside the enclosed animal boarding establishment on the Site during the planning approval period;
- (c) no public announcement system, whistle blowing, portable loud speaker, or any form of audio amplification system is allowed on the Site 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 17.7.2020;
- (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 17.10.2020;
- (f) 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 17.7.2020;
- (g) in relation to (f) above, the provision of 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 17.10.2020;
- (h) the submission of an environmental assessment within 6 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 17.7.2020;
- (i) in relation to (h) above, the implementation of environmental mitigation measures identified therein within 9 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 17.10.2020;
- (j) the submission of proposed traffic management measures identified therein within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.7.2020;
- (k) in relation to (j) above, the implementation of the traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.10.2020;
- (l) if any of the above planning conditions (a), (b) or (c) is not complied with during planning approval, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;

- (m) if any of the above planning conditions (d), (e), (f), (g), (h), (i), (j) or (k) 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
- (n) 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 III**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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.

14. Attachments

Appendix I	Application Form with Attachments received on 4.12.2019
Appendix Ia	Supplementary Information received on 10.12.2019
Appendix Ib	Supplementary Information received on 11.12.2019
Appendix II	Previous Application
Appendix III	Recommended Advisory Clause
Appendix IV	Public Comments
Drawing A-1	Layout 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
JANUARY 2020**