

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/148

- Applicants** : Messrs. LAM Lung, CHEUNG Kwong Tat and LAM Siu Sum represented by Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lots 23, 25 and 26 in D.D. 38 and Lot 803 in D.D. 46, Man Uk Pin, New Territories
- Site Area** : About 1,577.4 m²
- 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 Wholesale Trade (Fruit and Vegetable Market) for a Period of 2 Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for proposed temporary wholesale trade (fruit and vegetable market) for a period of two 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, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the OZP.
- 1.2 According to the applicants, the proposed temporary development involves two one-storey temporary structures of 6.5m high for wholesale trade of fruit and vegetables with ancillary warehouse. The total floor area of the two structures is about 1,201.2m² and each structure will be provided with a greenhouse with a floor area of 150m². There would be two private car parking spaces and two loading and unloading spaces for light goods vehicles. The proposed development will operate from 8 a.m. to 6 p.m. from Mondays to Fridays and no operation on Saturdays, Sundays and public holidays. The ingress/egress of the Site is located at the northeastern part of the Site. The Site is accessible via a local track from Sha Tau Kok Road – Wo Hang Section (**Plans A-1 and A-2**). The layout plan is at **Drawing A-1**. The Site is currently occupied by three vacant structures.

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

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| (a) Application Form with Attachments received on 22.4.2020 | (Appendix I) |
| (b) Supplementary Information received on 23.4.2020 | (Appendix Ia) |
| (c) Further Information received on 19.5.2020 [^] | (Appendix Ib) |
| (d) Letter dated 5.6.2019 requesting for 1 st deferment of consideration of the application | (Appendix Ic) |
| (e) Further Information received on 10.8.2020 [^] | (Appendix Id) |
| (f) Further Information received on 7.9.2020 [^] | (Appendix Ie) |
| (g) Further Information received on 16.9.2020 [^] | (Appendix If) |
| (h) Further Information received on 24.9.2020 [^] | (Appendix Ig) |

[^] *accepted but exempted from publication and recounting requirements.*

1.4 At the request of the applicants (**Appendix Ic**), the Committee agreed on 12.6.2020 to defer making a decision on the application for two months pending the preparation of further information to address the departmental comments. The applicants submitted the further information (**Appendix Id**) on 10.8.2020 and the application is re-scheduled for consideration by the Committee on 9.10.2020.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in the Application Form and further information at **Appendices I, Ia, Ib, Id and Ig**. They can be summarized as follows:

- (a) the applicants would like to fully utilise the land for selling local and imported vegetables and fruits;
- (b) the sources of the agricultural products are from the local farmers and imported from the mainland China, and these products would be selling to the local vegetables dealers in Fanling, Tai Po Market etc.;
- (c) about 300m² of the proposed temporary development would be used for greenhouse;
- (d) the proposed temporary development would mainly be used for wholesale trade of vegetables and fruits. The unsold fruits and vegetables would be stored in the temporary structure;
- (e) there will be no more than 10 vehicular trips per day at the proposed development;
- (f) the proposed development would involve daily throughput of vegetables and fruits not exceeding 30 tonnes;
- (g) as the proposed vehicular access will pass through some private lots, the applicants undertake to obtain consent for acquiring access from relevant land owners upon planning approval;
- (h) to ensure pedestrian safety, a worker will be deployed to alert the pedestrians whenever vehicles entering and leaving the Site. Signage would also be provided to alert the pedestrian that there will be vehicular movement at the access;

- (i) there will be 2 toilets for not more than 6 employees per day, and septic tank and soakaway system would be adopted for the treatment and disposal of all wastewater on site; and
- (j) the proposed temporary development would only allow for 20 people visiting per week and advanced booking is required. Hence, there would be no adverse traffic impact induced 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.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is currently not subject to any active enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorised development under the Town Planning Ordinance, enforcement action would be instigated.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Application**

There is no similar application for ‘wholesale trade’ 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 to 4c)

7.1 The Site is:

- (a) currently occupied by three vacant structures (**Plan A-4a**); and
- (b) accessible from Sha Tau Kok Road – Wo Hang Section 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, warehouse / open storage use and active/ fallow agricultural land (**Plan A-3**);
- (b) to the immediate east and south are active agricultural land, plant nursery and some temporary domestic structures;

- (c) to the immediate northeast and west are intermixed with temporary structures for domestic/ warehouse use, vacant land, open storage sites; and
- (d) to the north are vacant land and to the further north is Sha Tau Kok Road – Wo Hang Section.

8. Planning Intention

The planning intention of the “AGR” zone 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 will be allowed for the vehicular access of the proposed use;
- (b) the Site is surrounded by private lots. The applicants should make its own arrangement for acquiring access with the lots owners concerned;
- (c) the existing structures on the subject lots (**Plan A-4a**) were erected without approval from her office, and are not acceptable under the Lease concerned. She reserves her rights to take necessary lease enforcement actions against the aforesaid structure; and
- (d) if the planning application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord’s capacity and there is no guarantee that they will be approved. If the STW is 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) having reviewed the further information as submitted by the applicants (**Appendix Id**), she cannot render support to the application from the traffic engineering perspective unless the applicants could satisfactorily address her concerns:
 - (i) the applicants are required to review the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site;
 - (ii) the applicants shall advise the anticipated peak traffic volume to the Site;
 - (iii) the applicants shall confirm the width of the access and indicate it on plan;
 - (iv) the applicants shall provide the design of the sign and a drawing showing the arrangement as mentioned in the further information; and
- (b) the vehicular access between the Site and Sha Tau Kok 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) having reviewed the further information as submitted by the applicants (**Appendix Id**), he has no objection to the application; and
- (b) should the application be approved, the applicants should be reminded of his obligation to comply with all environmental protection/ pollution control ordinances, including Water Pollution Control Ordinance and its Technical Memorandum, as well as relevant guidelines, such as ProPECC PN 5/93 regarding the design, construction, operation and maintenance of the septic tank and soakaway system. The applicant's attention is particularly brought to the requirements on its capacity, the Percolation Test and Minimum Clearance distance, which should be duly certified by the Authorised Person, to ensure the wastewater generated during operation, including but not limited to sewage and cleaning activities, could be properly treated and disposed of. Besides, the applicants are advised to follow the relevant mitigation measures and requirements in the COP and other guidelines.

Agriculture

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

- (a) having reviewed the further information as submitted by the applicants (**Appendix Id**), he has reservation on the proposed temporary wholesale trade market at the Site from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries etc.;
- (b) he has no comment on the subject application from market planning point of view; and
- (c) it is noted that the site is a vacant land occupied by some structures, he has no comment on the subject application from nature conservation point of view.

Landscape

9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) she has some reservation on the application from the landscape planning point of view;
- (b) the Site is located in an area with landscape character of rural inland plains, which typically comprises of mainly vegetated areas, agricultural land, village houses and temporary structures. Based on aerial photo in 2019 (**Plan A-3**), it was noted that the Site was comprised of fallow agricultural land with some trees. However, according to recent site visit, the vegetation and trees within the Site were cleared and some structures have already been erected within the Site (**Plan A-4a**);
- (c) the proposed use is not entirely compatible with the landscape character within the “AGR” Zone. There is a concern that approval of this application will set an undesirable precedent for other similar development resulting in alteration of landscape character by vegetation clearance and erection of structures prior to planning approval. The cumulative impact of such approvals would further degrade the landscape quality of the surrounding environment; and
- (d) 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 it 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 no objection to the application from public drainage viewpoint;
- (b) 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
- (c) 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) taking account of the size of those structures and subject to his inspection findings and related land status provided by DLO/N, LandsD, his office may take enforcement actions on those structures under the provision of the Buildings Ordinance as appropriate. Lot owners should also be reminded of their responsibility to ensure that their lands/premises are free from unauthorised building works (UBWs) and should, in their own interest, take the initiative to arrange for demolition of the UBWs in their premises/lands. The applicants' attention is drawn to the following points:
 - (i) there is no record of approval by the Building Authority (BA) for the structures existing at the application site and BD is not in a position to offer comments on their suitability for the use related to the application. There is also no record of submission of the proposed building/ structure to the BA for approval;
 - (ii) 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 UBWs. An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO. From the Existing Building Division enforcement policy point of view, since those existing structures were carried out without prior approval and consent from the Building Authority, those structures contravene the provisions of the Buildings Ordinance and therefore are illegal structures (i.e. UBWs);
 - (iii) 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;

- (iv) 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;
- (v) 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;
- (vi) 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
- (vii) 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.

Environmental Hygiene

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

- (a) for any waste generated from the such business, the applicants should arrange disposal properly at her own expenses; and
- (b) proper licence / permit issued by FEHD is required if there is any catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

Fire Safety

9.1.10 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 (FSIs) and water supplies for fire-fighting being provided to his satisfaction;
- (b) in consideration of the design/ nature of the proposed use, the applicants are advised to submit relevant layout plans incorporated with the proposed FSIs to his satisfaction;
- (c) the applicants should be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Water Supply

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

- (a) having reviewed the further information as submitted by the applicants (**Appendix Id**), he has no further comment on the application; and
- (b) for provision of water supply to the development, the applicants 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.

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 Loi Tung objected to the proposal on the grounds that the proposed development would cause traffic impact to the surrounding area; and the incumbent North District Council members of subject constituency had no comments on the said proposal.

9.2 The following Government department has no comment on / no objection to the application:

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

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

On 5.5.2020, the application was published for public inspection. During the statutory public inspection period, nine public comments were received. The Chairman of Sheung Shui DRC indicates no comment on the application. Kadoorie Farm and Botanic Garden, Hong Kong Bird Watching Society, Designing Hong Kong Limited, one local resident 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; 'development first, application later' and/or 'destroy first, build later' should not be tolerated; and the proposed development would cause environmental impacts to the surrounding area. One private company objects to the application on the grounds that the proposed development used their private lots (i.e. Lots 28 and 29 S.B RP in D.D. 38) (**Plan A-2**) as vehicular access without seeking their consent. Two individuals support the application on the grounds that the proposed development would provide an alternative site for storing/wholesaling fruits and vegetables.

11. Planning Considerations and Assessments

11.1 The application is for a proposed temporary wholesale trade (for fruit and vegetable market) for a period of two years at a Site zoned "AGR" on the OZP. The proposed development is not in line with the planning intention of "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. DAFC has reservation on the proposed use from agricultural point of view.

- 11.2 The proposed development with two structures covering an area of 1,201m² is considered not entirely compatible with the surrounding area which is rural in character predominated by vacant land and active/ fallow agricultural land intermixed with some temporary structures for domestic and warehouse use (**Plans A-2, A-3 and A-4a**). It is noted that the Site was comprised of fallow agricultural land with some trees in 2019. However, the vegetation and trees within the Site were cleared and some structures have been erected within the Site. CTP/UD&L, PlanD has some reservations on the application as there is a concern that approval of this application will set an undesirable precedent for other similar development resulting in alteration of landscape character by vegetation clearance and erection of structures prior to planning approval. The cumulative impact of such approvals would further degrade the landscape quality of the surrounding environment.
- 11.3 C for T does not support the application from the traffic engineering viewpoint as the applicants has not satisfactorily addressed the aspects of the anticipated traffic volume generated and justifications for the proposed parking spaces etc. DEP has no objection to the application and advised that the applicants should follow the guideline regarding the design, construction, operation and maintenance of the septic tank and soakaway system to ensure the wastewater would be properly treated and disposal of. Other Government departments consulted, including CE/C of WSD, PM(N), CEDD, CE/MN, DSD and D of FS, have no comment on / no objection to the application.
- 11.4 There is no similar application for temporary wholesale trade 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 9.1.12 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 local views conveyed by DO(N), HAD and public comments mentioned in paragraphs 9.1.12 and 10 respectively, 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 applicants fail to demonstrate that the proposed development would have no adverse 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 2 years until 9.10.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m. on Mondays to Fridays, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the submission of a drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 9.1.2021;
- (e) in relation to (d) above, the provision of drainage facilities 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 9.4.2021;
- (f) the submission of proposals for water supplies for fire fighting and fire service installations within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 9.1.2021;
- (g) in relation to (f) above, the provision of 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 9.4.2021;
- (h) the submission of traffic impact assessment within 3 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.1.2021;
- (i) in relation to (h) above, the implementation of traffic mitigation 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 9.4.2021;
- (j) 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;

- (k) if any of the above planning conditions (d), (e), (f), (g), (h) or (i) 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
- (l) 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 applicants.
- 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 22.4.2020
Appendix Ia	Supplementary Information received on 23.4.2020
Appendix Ib	Further Information received on 19.5.2020
Appendix Ic	Letter dated 5.6.2019 requesting for 1st deferment of consideration of the application
Appendix Id	Further Information received on 10.8.2020
Appendix Ie	Further Information received on 7.9.2020
Appendix If	Further Information received on 16.9.2020
Appendix Ig	Further Information received on 24.9.2020
Appendix II	Public Comments
Appendix III	Recommended Advisory Clause
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**