

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/6

- Applicant** : Mr. TO Lun Fat represented by Mr. PANG Hing Yeun
- Site** : Lot 633 S.A RP (Part) in D.D. 90, Lin Ma Hang Road, Man Kam To, New Territories
- Site Area** : About 1,038.6 m²
- Leases** : Block Government lease (demised for agricultural use)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Construction Materials for a Period of 2 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary open storage of construction materials for a period of two years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Man Kam To OZP No. S/NE-MKT/4. 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 or development is not provided for under the Notes of the OZP. The Site is currently vacant.
- 1.2 The Site is accessible from Lin Ma Hang Road (**Plans A-1 and A-2**). According to the information submitted by the applicant, no structure would be erected within the Site. The operation hours of the proposed development are between 10:30 a.m. and 4:30 p.m. on Mondays to Fridays and no operation on Saturdays, Sundays and public holidays. Two loading/unloading spaces for light goods vehicles with no fixed location would be provided within the Site. The estimated vehicular traffic will be twice a week within the periods from 10:30 a.m. to 12:30 p.m. and 2:30 p.m. to 4:30 p.m. The ingress/egress is located at the southeastern boundary of the Site. A site plan and vehicular access plan are shown on **Drawings A-1 and A-2** respectively.
- 1.3 The Site is part of the subject of a previous application (No. A/NE-MKT/2) submitted by a different applicant for temporary container trailer park with ancillary storage and office for a period of three years, which was rejected by the Rural and New Town Planning

Committee (the Committee) on 7.4.2017.

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

- (a) Application Form with Attachment received on 29.1.2019 (Appendix I)
- (b) Supplementary Information received on 4.2.2019 (Appendix Ia)
- (c) Further Information received on 15.3.2019 (Appendix Ib)

2. **Justifications from the Applicant**

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

- (a) the Site is located in the vicinity of Man Kam To Control Point (MKT CP) and adjacent Lin Ma Hang Road which is one of the connecting roads to Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP). The Site provides a convenient location for storage of construction materials importing from the Mainland;
- (b) demand for open storage of construction materials is large due to a number of infrastructure works being undertaken in the northern New Territories;
- (c) the proposed development is compatible with the warehouse and carpark uses in the vicinity;
- (d) only two light goods vehicles will enter/exit the Site and the estimated vehicular traffic of the proposed development will be twice a week within the periods from 10:30 a.m. to 12:30 p.m. and 2:30 p.m. to 4:30 p.m.. Hence, no adverse traffic impact arising from the proposed development is expected;
- (e) the proposed development would not generate adverse visual and environmental impacts; and
- (f) drainage facilities will be provided to avoid flooding.

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

The applicant is the “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) states that although the Site was previously subject to planning enforcement actions against an unauthorized development (UD) involving use for fuel filling station with an Enforcement Notice issued on 13.9.2017 to the concerned parties requiring discontinuance of the unauthorized development, the unauthorized development was then discontinued and Compliance Notice was issued on 1.3.2018. Thus, the Site is currently not subject to any active enforcement case under the Town Planning Ordinance.

5. Previous Application

- 5.1 The Site is part of the subject of a previous application (No. A/NE-MKT/2) submitted by different applicant for temporary container trailer park with ancillary storage and office for a period of three years which was rejected by the Committee on 7.4.2017 mainly on the grounds that the development was not in line with the planning intention of “AGR” zone; the applicant failed to demonstrate in the submission that the development would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and the approval of the application would set an undesirable precedent for similar applications.
- 5.2 Details of the previous application are summarised at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Application

- 6.1 There is one similar application for temporary open storage use within the “AGR” zone in the Man Kam To area.
- 6.2 The application No. A/DPA/NE-MKT/1 for proposed temporary open storage of construction materials for a period of three years was rejected by the Board on review on 18.10.2013 mainly on the considerations that the proposed development was not in line with the planning intention of “AGR” zone; the development was incompatible with the surrounding environment; and the approval of the application would set an undesirable precedent for other similar applications.
- 6.3 Details of the similar application is summarised at **Appendix III** and its location is shown on **Plan A-1**.

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

- 7.1 The Site is:
- (a) formed, paved and currently vacant (**Plans A-3 and A-4**); and
 - (b) accessible from Lin Ma Hang Road (**Plan A-2**).
- 7.2 The surrounding areas have the following characteristics:
- (a) the Site is situated in an area of rural landscape character (**Plan A-1**) and surrounded predominantly by active and fallow agricultural land, tree clusters and temporary domestic structures;
 - (b) to the immediate east is a paved area;
 - (c) to the north, east and west of the Site are mainly active/fallow agricultural land, vacant and unused land, domestic structures/ temporary structures for domestic purpose;
 - (d) to the further northwest is a vegetated knoll zoned “Green Belt” and the MKT CP

(Plan A-1); and

- (e) to the east and northeast, across Lin Ma Hang Road, are mainly active/fallow agricultural land, a few temporary domestic structures and being used as parking of vehicles.

8. Planning Intention

The planning intention of the “AGR” zone in the Man Kam To area 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 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 Officer/North, Lands Department (DLO/N, LandsD):

the Site comprises private Lot 633 S.A RP (Part) in D.D. 90, which is an Old Schedule Lot held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. The applicant should make his own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement.

Agriculture

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

he does not support the application from the agricultural development point of view as the Site possesses potential for agricultural rehabilitation. The agricultural activities are active in its vicinity and agricultural infrastructures such as road access and water source are available. The Site can be used for other agricultural activities such as plant nursery, greenhouse, etc.

Traffic

- 9.1.3 Comments of the Commissioner for Transport (C for T):

- (a) she does not support the application from the traffic engineering perspective; and
- (b) the vehicular access to the Site is via Lin Ma Hang Road. There is no or insufficient information in the application on the vehicular access arrangement (in particular the applicant should demonstrate on a scaled plan, preferably by swept path, whether vehicles can manoeuvre within the Site without reversing on to the local track and at the proposed ingress/egress), exact width and location of the vehicular access points,

class of vehicles, number of parking spaces for each class of vehicles, etc for her consideration.

Environment

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest one is located to the northwest of the Site at a distance of about 10m (**Plan A-2**);
- (b) there was no environmental complaint against the Site during the past three years; and
- (c) should the application be approved, an approval condition to prohibit medium and heavy goods vehicles parked/stored on or enter/exit the Site is required. Moreover, the applicant is advised to implement relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”.

Landscape Aspect

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

- (a) she has some reservations on the application from the landscape planning perspective;
- (b) based on the aerial photo of 2017, the Site is situated in an area of rural landscape character surrounded by temporary structures, parking of vehicles and clustered tree groups. The Site is hard paved with no existing vegetation. Although landscape impact arising from the proposed temporary development is not anticipated, approval of the application would set an undesirable precedent for similar applications within the “AGR” zone in the area. The cumulative effect of approving similar applications would result in a general degradation of the landscape character and landscape resources within the area; and
- (c) since there is no major public frontage along the site boundary and clustered tree groups are found in close proximity of the Site, should the application be approved, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to

request the applicant to submit and implement a drainage proposal for the Site to ensure that the proposed development will not cause adverse impact to the adjacent area;

- (c) the general requirements in the drainage proposal are appended in **Appendix IV**; and
- (d) the Site is in an area where no public sewerage connection is available.

Building Matters

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

- (a) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are unauthorized buildings works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (b) any temporary shelters or converted containers for storage/washroom/first-aid room/site office to be erected are considered as temporary buildings which are subject to control under the Building (Planning) Regulations (B(P)Rs) Pt. VII.
- (c) 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 B(P)Rs respectively;
- (d) if the Site is not abutting on 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
- (e) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at building plan submission stage.

Fire Safety

9.1.8 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 firefighting being provided to satisfaction of his department;
- (b) having considered the nature of the use, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval is recommended for inclusion in the planning permission. To address this condition, the applicant should submit certificate(s) under Regulation 9(1) of the Fire Service (Installations and Equipment) Regulations (Chapter 95B) to his department for compliance of condition;

- (c) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed;
- (d) in such circumstances, except where building plan will be circulated to his department via the Centralized Processing System of the Buildings Department, the applicant is required to send the relevant layout plans to his department incorporated with the proposed FSIs for approval. In preparing the submission, the applicant is advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the locations of the proposed FSIs to be installed and the access for emergency vehicles should be clearly indicated on the layout plans; and
- (e) detailed fire safety requirements will be formulated upon receipt of formal submission of the aforesaid plans. The applicant will need to subsequently provide such FSIs according to the approved proposal.

District Officer's Comments

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

he has consulted the locals regarding the application. The Indigenous Inhabitant Representative (IIR) of Muk Wu supports the application whereas the incumbent North District Council (NDC) member of the subject constituency, the Resident Representative (RR) of Muk Wu and IIR of San Uk Ling have no comment on the application. However, the RR of San Uk Ling objects to the application.

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);
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Divisional Commander (Ta Kwu Ling Division), Hong Kong Police Force (DVC TKLDIV, HKPF).

10. Public Comments Received During Statutory Publication Period

On 12.2.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 11 public comments were received (**Appendix V**). A NDC member supports the application as it can provide convenience to the villagers whereas Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, World Wide Fund for Nature Hong Kong, The Hong Kong Bird Watching Society, three local villagers and three individuals object to the application mainly on the grounds that the proposed development is not in line with the planning

intention of “AGR” zone; the Site is the subject of a rejected planning application; the application would cause noise and air pollution that affects health of the villagers and would have adverse traffic, environmental and drainage impacts; and approval of the application would set an undesirable precedent for similar applications in the surrounding area.

11. Planning Considerations and Assessments

- 11.1 The Site falls entirely within the “AGR” zone on the approved Man Kam To OZP No. S/NE-MKT/4 (**Plan A-1**). The proposed open storage of construction materials at the Site is not in line with the planning intention of the “AGR” zone which is 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 does not support the application as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 11.2 The Site is situated in an area of rural landscape character comprising mainly farmland, tree clusters, village houses/temporary domestic structures and some GIC facilities including the MKT CP (**Plans A-1 and A-2**). It was previously subject to planning enforcement action by the Planning Authority for the use for fuel filling station. Enforcement Notice (EN) was issued against the UD in September 2017. Upon expiry of the EN, the UD was discontinued. CTP/UD&L, PlanD has some reservations on the application from the landscape planning perspective as approval of the application would set an undesirable precedent for similar applications, thus causing adverse landscape impact on the landscape character and landscape resources within the area.
- 11.3 Besides, C for T does not support the application from the traffic engineering viewpoint as the applicant has not provided information in the application on the vehicular access arrangement, exact width and location of the vehicular access points, and class of vehicles with number of parking spaces. Approval of the application would thus result in adverse traffic impact on the surrounding area. There is a domestic structure located to the northwest of the Site at a distance of about 10m (**Plan A-2**). In this regard, DEP does not support the application. Other Government departments consulted, including D of FS, CE/C of WSD and CE/MN of DSD, have no objection to or no adverse comment on the application.
- 11.4 The Site is part of the subject of a previous application (No. A/NE-MKT/2) submitted by different applicant for temporary container trailer park with ancillary storage and office for a period of three years which was rejected by the Committee on 7.4.2017 mainly on the grounds that the development was not in line with the planning intention of “AGR” zone; the applicant failed to demonstrate in the submission that the development would not cause adverse traffic, environmental and landscape impacts on the surrounding areas; and the approval of the application would set an undesirable precedent for similar applications. There is one similar application (No. A/DPA/NE-MKT/1) for proposed temporary open storage of construction materials for a period of three years rejected by the Board on review on 18.10.2013 mainly on the considerations that the proposed development was not in line with the planning intention of “AGR” zone; the development was incompatible with the surrounding environment; and the approval of the application would set an undesirable precedent for other similar applications. The circumstances of the current application are similar to the rejected similar application.
- 11.5 There are local objections and adverse public comments against the application mainly on

the grounds of being not in line with the planning intention of “AGR” zone, previous rejection of planning application at the Site, adverse impacts of the proposed development, and setting an undesirable precedent for similar applications. In this regard, 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 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 for the Man Kam To area, 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 the planning intention, even on a temporary basis;
- (b) there is no information in the submission to demonstrate that the development would not cause adverse traffic, landscape and environmental 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 similar 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 22.3.2021. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no operation between 4:30 p.m. and 10:30 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 22.9.2019;
- (e) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 22.9.2019;

- (f) in relation to (e) 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 22.12.2019;
- (g) the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 3.5.2019;
- (h) the submission of proposals for fire service installations and water supplies for firefighting 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 22.9.2019;
- (i) in relation to (h) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 22.12.2019;
- (j) the submission of a traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for transport or of the Town Planning Board by 22.9.2019;
- (k) in relation to (j) above, the implementation of traffic mitigation 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 22.12.2019;
- (l) if any of the above planning conditions (a), (b) or (c) 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;
- (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 Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix VI**.

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 Attachment received on 29.1.2019
Appendix Ia	Supplementary Information received on 4.2.2019
Appendix Ib	Further Information received on 15.3.2019
Appendix II	Previous s.16 Application
Appendix III	Similar s.16 Application within or partly within the “AGR” zone in the vicinity of the Site in the Man Kam To area
Appendix IV	Detailed Comments of Chief Engineer/Mainland North, Drainage Services Department
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**