

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-MKT/8**

- Applicant** : Mr. LI Kin Hoi represented by Mr. WONG Sun Wo William
- Site** : Lots 788 and 792 in D.D. 82, Ping Che Road, Kan Tau Wai, New Territories
- Site Area** : About 3,400 m<sup>2</sup>
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zoning** : “Recreation” (“REC”)
- Application** : Proposed Temporary Shop and Services (Agricultural Products and Fruits Promotion Centre) with Ancillary Site Office and Car Park for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for a proposed temporary shop and services (agricultural products and fruits promotion centre) with ancillary site office and car park for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “REC” on the approved Man Kam To OZP No. S/NE-MKT/4. According to the Notes of the OZP, ‘shop and services’ is a Column 2 use under the “REC” zone requiring planning permission from the Town Planning Board (the Board). The Site is largely vacant.
- 1.2 The Site is accessible from Ping Che Road (**Plan A-2**). According to the applicant, there will be five structures on the Site with a total floor area of 685 m<sup>2</sup>. Three sets of single-storey converted containers will be placed at the eastern portion of the Site with a total floor area of 480 m<sup>2</sup> for retail use. A two-storey temporary structure of 5m high would be used as site office with total floor area of 190 m<sup>2</sup>. The remaining structure is a single-storey temporary toilet with floor area of 15 m<sup>2</sup> and height of 3m. A total of 13 private car parking spaces (measuring 5m x 2.5m each) and three loading/ unloading space for light goods vehicle (7m x 3.5m) will be provided within the Site. An access point is proposed at the northeastern boundary of the Site. The operation hours are from 8:30 a.m. to 7 p.m. daily. The site layout plan, landscape proposal and drainage proposal submitted by the applicant are at **Drawings A-1 to A-3**.

1.3 In support of the application, the applicant has submitted the Application Form with attachments received on 13.9.2019 (**Appendix I**).

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in part 9 of the Application Form at **Appendix I**. They can be summarized as follows:

- (a) with the support of local farmers and fruit suppliers from Malaysia and Thailand, the applicant would like to use the Site for agricultural products and fruits promotion centre; and
- (b) as 'shops and services' is a column 2 use, the applicant has obtained owners' consent for making the subject planning application for a period of three years.

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

The applicant is not the "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on 'Satisfying the "Owner's Consent/ Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance' (TPB PG-No. 31A) by obtaining written consent from one of the "current land owner" and notified other "current land owners" by registered mail. 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, the Site is subject to planning enforcement action (No. E/NE-MKT/15) against unauthorized development involving storage use (**Plan A-2**). Reinstatement Notice was issued on 11.6.2019 requiring reinstatement of the concerned land by 11.9.2019. As the Site has not been reinstated upon expiry of the notice, prosecution action may be taken.

## **5. Previous Application**

There is no previous application for the Site.

## **6. Similar Application**

6.1 There is one similar application (No. A/NE-MKT/1) for proposed temporary shop and services (metal hardware retail shop) and ancillary office for a period of three years within the "REC" zone in the Man Kam To area. The application was rejected by the Committee on 15.7.2016 on the grounds that the development was not in line with the planning intention of "REC" zone in the Man Kam To area which is primarily for recreational developments for the use of the general public, and encourages the development of active and/or passive recreation and tourism/eco-tourism. There was no strong planning justification provided in the submission for a departure from the planning intention, even on a temporary basis.

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

**7. The Site and Its Surrounding Areas (Plans A-1 to A-2, A-3, A-4a and A-4b)**

7.1 The Site is:

- (a) flat and paved; and
- (b) accessible via Ping Che Road.

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in character where vacant land, fallow agricultural land and open storage are found;
- (b) to the north and west are some vacant land, fallow agricultural land and to the further north is a site of open storage of construction materials;
- (c) to the east and further east are Ping Che Road and some fallow agricultural land; and
- (d) to the south is Ping Yuen River and to the southeast is a sewage pumping station.

**8. Planning Intention**

The planning intention of the “REC” zone in the Man Kam To area is intended primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

**9. Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application are summarized as follows:

**Land Administration**

9.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, Lands D):

- (a) the Site comprises private lots Nos. 788 and 792 in D.D 82 which are Old Schedule lots held under the Block Government Lease (demised for agricultural 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) it is noted that 5 structures including one structure for toilet use will be erected on the Site, the applicant should note that any proposed septic tank and soakage pit system should meet the current health requirements, and has to apply for Certificate of Exemption (Drainage Works) from her office before any works starts; and
- (c) if the planning application is approved, the owner(s) of the lots concerned shall apply to her office for a Short Term Waiver (STW) to cover all the actual occupation area. The application for STW will be considered by the Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, the commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fees as considered appropriate by her office.

### **Traffic**

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

- (a) unless the applicant could satisfactorily address her following comments, she cannot render support to the application from the traffic engineering perspective:
  - (i) the applicant should advise and substantiate the traffic generation and attraction from and to the Site and the traffic impact to the nearby road links and junctions;
  - (ii) the applicant shall justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site;
  - (iii) the applicant should confirm if any coach would visit the Site and if coach parking spaces would be provided;
  - (iv) the applicant should advise the width of the vehicular access;
  - (v) the applicant should provide a scale drawing showing the layout of the Site and proposed parking spaces and loading/unloading spaces;
  - (vi) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis;
  - (vii) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site; and
  - (viii) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety.

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

- (a) the proposed access to the Site from Ping Che Road will pass through a piece of area which covers both private lot (Lot 796 RP in D.D 82) and unallocated GL (**Plan A-2**). The applicant is required to sort out the land issues with relevant lot owner and land authority; and
- (b) a cut-off channel should be provided along the site entrance area to prevent surface water running from the Site to the nearby public roads and drains.

**Environment**

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

- (a) as the application is temporary in nature, the applicant is advised to follow EPD's latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)";
- (b) in view that temporary toilet and office are proposed, generation of sewage may be anticipated. There is public sewerage near the Site. Should the application be approved, the applicant is required to connect the proposed use to the nearby public sewer for sewage disposal as per CoP;
- (c) the applicant should also be reminded of his obligation to strictly comply with all environmental protection/ pollution control ordinances in particular Water Pollution Control Ordinance and Waste Disposal Ordinance, and to follow relevant measures given in the EPD's latest CoP, during construction and operation stages of the proposal;
- (d) the applicant should also be reminded that necessary precautionary/ pollution control measures should be put in place to prevent any pollution of nearby waterbodies/ watercourse during construction and operation phases; and
- (e) additional mitigation measures on water quality are suggested below for the applicant's considerations:
  - (i) drainage outlets provided in all the covered areas (including offices, toilets, covered carparks, cargo storage and selling floors) within the Site should be discharged to foul sewer; and
  - (ii) drainage serving open carparks and open lorry loading and unloading areas within the Site should be connected to stormwater drains via a petrol interceptor that would allow stormwater bypass during peak flow periods.

**Landscape Aspect**

9.1.5 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

perspective;

- (b) based on aerial photo (**Plan A-3**), the Site is situated in an area of rural landscape character surrounded by temporary structures, village houses and vegetation. Compared to 2015, the Site was covered by wild grass/vegetation, no significant sensitive landscape resources is observed; whereas in aerial photo (**Plan A-3**), site formation has taken place, the Site is observed to be hard paved and in operation;
- (c) as no significant sensitive landscape resources is observed within the Site, significant adverse impact arising from the temporary use under the application on existing landscape resources is not anticipated; and
- (d) since the Site is set back from Ping Che Road with vegetation buffer in between the two, and there is no major public frontage along the site boundary, should the application be approved, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing the quality of public realm is not apparent.

### **Nature Conservation**

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

- (a) the Site is paved, with Ping Yuen River located to the south of the Site. She has no strong view on the application from nature conservation point of view; and
- (b) should the application be approved, the applicant should be reminded to perform good site practice so as not to pollute the watercourse nearby.

### **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 the public drainage point of view;
- (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 it will not cause adverse drainage impact to the adjacent area. In the submission, the applicant requires assessing and identifying the project's potential drainage impacts and demonstrate in the 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) the Site is in the vicinity of an existing streamcourse. The applicant shall be required to place all the proposed works 3 m away from the top of the bank of the streamcourse. All the proposed works in the vicinity of the streamcourse should not create any adverse drainage impacts, both during and after construction. Proposed flooding mitigation measures if

necessary shall be provided at the resources of the applicant to his satisfaction;

- (d) the applicant should be reminded to minimize the possible adverse environmental impacts on the existing streamcourse in his design and during construction;
- (e) the applicant is reminded that all existing flow paths as well as the run-off falling onto and passing through the Site should be intercepted and disposed of via proper discharge points. The applicant shall also ensure that no works, including any site formation works, shall be carried out as may adversely interfere with the free flow condition of the existing drain, channels and watercourses on or in the vicinity of the Site any time during or after the works;
- (f) if the surface runoff is to be discharged to Ping Yuen River, the applicant is required to propose a means in their drainage proposal to remove or screen the contaminated runoff before allowing it to enter into DSD's stormwater drainage system. The removal or screening facilities such as the last manhole, desilting trap, petrol interceptor and the like (for a storage compound of building materials, preferably a desilting trap) should be maintained by the applicant and shall be available for Government inspection upon demand, and its clearance action shall be enforceable by Government upon demand; and
- (g) should the application be approved, an approval condition on submission and implementation of sewerage proposal is recommended.

### **Building Matters**

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

- (a) he has no in-principle objection under the Buildings Ordinance (BO) to the proposed use on the application;
- (b) there is no record of submission of the proposed building/structure to the Building Authority for approval; and
- (c) the applicant's attention is drawn to the following points:
  - (i) 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 Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
  - (ii) 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 Site under the BO;

- (iii) any temporary shelters or converted containers for storage or office or toilet or shop and service or other uses are considered as temporary buildings are subject to the control of Part VII of the Building (Planning) Regulations;
- (iv) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Building (Planning) Regulations 5 and 41D respectively;
- (v) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Regulation 19(3) at the building plan submission stage; and
- (vi) 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.

### **Water Supply**

#### 9.1.9 Comments of the Chief Engineer/Construction, Water Supplies 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 applicant 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 standards.

### **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 being provided to the satisfaction of his department;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also be 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 location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) 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.

**Public Hygiene and Licensing**

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

- (a) proper licence/permit issued by his Department is required if there is any food business/catering service/ activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Under the Food Business Regulation, Cap. 132X, a food business licence is required for the operation of the relevant type of food businesses listed in the Regulation; and
- (b) the operation of the business should not cause any environmental nuisances and/or hygiene problems at the Site and its vicinities. The operator of the Site is responsible for the removal and disposal of any trade waste generated from the commercial activities at their expenses.

**District Officer's Comments**

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

- (a) he has consulted the locals. The 1<sup>st</sup> Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIR), the Resident Representative (RR) of Fung Wong Wu and the IIR of Tong Fong support the proposal mainly on the considerations that the proposed development would increase the shop and services in the area and encourage agricultural rehabilitation;
- (b) the North District Council member of the subject constituency, the IIR and RR of Lei Uk have no comment and indicate that the proposed development requires implementation of the drainage facilities as there is high flooding risk in the vicinity; and
- (c) the RR of Tong Fong objects on the ground that the proposed development would introduce outsiders to the area and the villagers were not consulted before the application.

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

- (a) Director of Electrical and Mechanical Services (DEMS); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

## **10. Public Comments Received During Statutory Publication Period (Appendix III)**

On 20.9.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, three public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining two public comments submitted by WWF-HK and an individual raise objection to the application mainly on the grounds that the proposed development is not in line with the planning intention of “REC” zone; the approval of application would legitimize the brownfield use and encourage similar “destroy first, apply later” planning applications; there is potential flooding risks to the surroundings; and the proposed use is incompatible with surrounding land uses.

## **11. Planning Considerations and Assessments**

- 11.1 The proposed temporary shop and services (agricultural products and fruits promotion centre) with ancillary site office and car park under application falls entirely within an area zoned “REC” on the OZP (**Plan A-1**). The proposed development is not in line with the planning intention of the “REC” zone, which is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. The applicant has not provided any strong justifications in the submission to merit a departure from the planning intention of “REC” zone, even on a temporary basis.
- 11.2 The Site is situated in area of rural landscape character surrounded by temporary structures, village houses and vegetation (**Plan A-3**). CTP/UD&L has no objection on the application as significant adverse impact arising from the temporary use under the application on existing landscape resources is not anticipated. DAFC has no strong views on the application from nature conservation point of view as the Site is paved.
- 11.3 C for T does not support the application as there is insufficient information on the proposed vehicular access, the estimated traffic flow, justifications for the proposed parking spaces, relevant satisfactory management/ control measures, traffic arrangement and vehicle manouvering within the Site and provision and management of pedestrian facilities. In this regard, the applicant has failed to demonstrate in the submission that there is no adverse traffic impact arising from the proposed development. DEP has no adverse comment on the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites (CoP)”, perform good site practice and adopt necessary precautionary/ pollution to prevent polluting nearby watercourse during construction and operation of the proposed development. Other relevant Government departments consulted, including CHE/NTE of HyD, D of FS, DEMS and D of WS have no adverse comment on or no objection to the application.
- 11.4 The Site is not subject of any previous planning application, whereas one similar application (No. A/NE-MKT/1) for proposed temporary shop and services (metal hardware retail shop) and ancillary office for a period of three years was rejected by the Committee on 15.7.2016 on the grounds that the development was not in line with the planning intention of “REC” zone in the Man Kam To area which is primarily for recreational developments for the use of the general public, and encourages the development of active and/or passive recreation and tourism/eco-tourism. There was no strong planning justification provided in the submission for a departure from the

planning intention, even on a temporary basis. The planning circumstances of the current application is similar to the rejected application.

- 11.5 Regarding the local objection conveyed from DO(N) of HAD and adverse public comments as mentioned in paragraphs 9.1.12 and 10 above, the Government department's comments and the planning assessment above are relevant.

## **12. Planning Department's Views**

12.1 Based on the assessments made in paragraph 11 and having taken into account local comments conveyed by DO(N) of HAD and the public comments in paragraph 9.1.12 and 10 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed development under application is not in line with the planning intention of the "REC" zone for the Man Kam To area which is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification in the submission to justify for a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate in the submission that the proposed development would not result in adverse traffic impact on the surrounding areas.

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 **1.11.2022**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval Conditions

- (a) no operation between 7:00 p.m. and 8:30 a.m. daily, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 1.5.2020;
- (c) 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 1.5.2020;
- (d) in relation to (c) 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 1.8.2020;
- (e) the submission of sewerage proposal within 6 months from the from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 1.5.2020;

- (f) in relation to (e) above, the provision of sewerage facilities within 9 months from the from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 1.8.2020;
- (g) the submission of proposals for fire service installations and water supplies for fire-fighting 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 1.5.2020;
- (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for fire-fighting 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 1.8.2020;
- (i) the submission of a traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 1.5.2020;
- (j) in relation to (i) above, the implementation of traffic improvement 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 1.8.2020;
- (k) if the above planning condition (a) 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; and
- (l) if any of the above planning conditions (b), (c), (d), (e), (f), (g), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

#### Advisory Clauses

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

### **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 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**

<b>Appendix I</b>	Application Form with attachments received on 13.9.2019
<b>Appendix II</b>	Similar s.16 Application within “REC” Zone on the approved Man Kam To Outline Zoning Plan No. S/NE-MKT/4
<b>Appendix III</b>	Public Comments
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Landscape Proposal
<b>Drawing A-3</b>	Drainage Proposal
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo taken in 2018
<b>Plan A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2019**