

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

**APPLICATION NO. A/NE-MUP/154**

<b><u>Applicant</u></b>	:	Good Kind Investment Limited represented by Metro Planning & Development Company Limited
<b><u>Site</u></b>	:	Lots 813, 823 S.B RP (Part) and 824 S.B RP (Part) in D.D. 46 and Adjoining Government Land, Sha Tau Kok, New Territories
<b><u>Site Area</u></b>	:	About 1,690 m <sup>2</sup> (including about 186 m <sup>2</sup> of Government Land)
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
<b><u>Zoning</u></b>	:	“Agriculture” (“AGR”)
<b><u>Application</u></b>	:	Proposed Temporary Shop and Services (Selling of Agricultural Products) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a proposed temporary shop and services (selling of agricultural products) 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, 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 applicant, the proposed development comprises a single-storey enclosed structure, covering largely the entire Site with a total floor area of about 1,460m<sup>2</sup> and height of about 7m for selling of agricultural products and a two-storey site office with portable toilet underneath the structure at the northern part of the Site. Six private car parking spaces and one loading/unloading space for light goods vehicle will be provided within the Site. The Site is accessible via Sha Tau Kok Road (**Plan A-2**). The operation hours are from 9:00 a.m. to 7:00 p.m. from Mondays to Sundays including public holidays. A plan showing the layout of the Site is at **Drawing A-1**. The Site is currently occupied by an enclosed structure for storage and office uses without valid planning permission.

- 1.3 The Site involves two previous applications (No. A/NE-MUP/19 and 54) for temporary open storage of ceramic tiles and temporary warehouse for storage of ceramic tiles respectively. The applications were rejected by the Board on review in 1997 and 2008 respectively. Details of the previous applications are set out in paragraph 5 below.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachment received on 1.9.2020 (Appendix I)
  - (b) Supplementary Information received on 4.9.2020 (Appendix Ia)
  - (c) Letter received on 20.10.2020 requesting for deferment of consideration of the application (Appendix Ib)
  - (d) Further Information (FI) received on 27.11.2020 (Appendix Ic)  
(accepted and exempted from publication)
  - (e) FI received on 6.1.2021 (Appendix Id)  
(accepted and exempted from publication)
- 1.5 At the request of the applicant (Appendix Ib), the Committee decided on 23.10.2020 to defer making a decision on the application for two months pending the preparation of FI to address the departmental comments. The applicant submitted FI (Appendix Ic) on 27.11.2020 and the application is re-scheduled for consideration by the Committee on 22.1.2021.

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

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) active agricultural activities are found on the land adjacent to the Site. The proposed development is intended to serve as an outlet to sell the agricultural products grown on adjacent land. It would benefit the residents in the vicinity by catering the demand for agricultural products and improve the livelihood of the farmers in the vicinity;
- (b) the proposed development is a temporary use for a period of 3 years which would not jeopardise the long term planning intention of the “AGR” zone;
- (c) there are some similar approved applications for shop and services use in “AGR” zone in Lung Yeuk Tau and Lam Tsuen areas;
- (d) the proposed development would only cause minimal traffic impact;
- (e) the proposed development has insignificant environmental impacts as the applied use will be accommodated within an enclosed structure; and
- (f) surface U-channel is proposed at the Site to mitigate drainage impact.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. For the adjoining Government land within the Site, TPB PG-No. 31A is not applicable.

### 4. **Background**

The Chief Town Planner / Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advised that the Site is subject to planning enforcement action (**Plan A-2**) against an unauthorised development (UD) involving storage use. An Enforcement Notice (EN) was issued on 14.1.2020 requiring discontinuation of the UD by 14.3.2020. Since the UD has not been discontinued upon expiry of the notice, the registered owner of the Site was prosecuted and convicted on 23.12.2020. Site inspection on 18.12.2020 revealed that the UD still continued, further prosecution action may be followed.

### 5. **Previous Applications**

5.1 The Site is involved in two previous applications. Application No. A/NE-MUP/19 for open storage of ceramic tiles for a temporary period of 12 months was rejected on review by the Board on 13.6.1997 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; the development was not compatible with the rural character of the surrounding areas; and the setting of an undesirable precedent for similar applications.

5.2 Application No. A/NE-MUP/54 for temporary warehouse for storage of ceramic tiles for a period of three years was rejected on review by the Board on 23.8.2008 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone. Although part of the Site was covered by “existing use” for storage of ceramic tiles, the Board considered that such extension of “existing use” and proliferation of unauthorised open storage uses should not be encouraged.

5.3 Details of the previous applications are at **Appendix II** and their locations are shown on **Plan A-1**.

### 6. **Similar Application**

6.1 There is one similar application No. A/NE-MUP/152 for the same use submitted by different applicant within the same “AGR” zone to the immediate northeast of the Site (**Plan A-1**). It was rejected by the Committee on 4.9.2020 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the applicant fails to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; and the setting of undesirable precedent for similar applications in the area.

6.2 Details of the similar application are 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 Plans A-4a to A-4b)

7.1 The Site is:

- (a) flat, paved and fenced off;
- (b) currently occupied by an enclosed structure which is used for storage use with ancillary office; and
- (c) accessible from Sha Tau Kok Road – Wo Hang (**Plan A-2**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate north is Sha Tau Kok Road and further north is vacant land;
- (b) to its east and west along Sha Tau Kok Road are vacant land, warehouse and open storage; and
- (c) to its south are active agricultural land, plant nursery and some temporary domestic structures.

8. **Planning Intention**

The planning intention of the “AGR” zone is intended 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):

- (a) the lots under application 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 for acquiring access, and there is no guarantee that any adjoining Government Land (GL) (**Plan A-2**) will be allowed for access of the proposed use;
- (b) the existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under the Leases concerned. His office reserves the right to take enforcement actions against the aforesaid structures;

- (c) according to the proposed development, portable toilet would be erected on the Site. The applicant should note that any proposed toilet facilities should meet current health requirements;
- (d) the GL (**Plan A-2**) adjoining the Site is being occupied without consent from his office. The applicant should cease occupation of the GL concerned. His office reserves the right to take enforcement action against the illegal occupation of GL; and
- (e) if the application is approved, the owner of the lots concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. 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 and 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 fees as considered appropriate by his office.

### **Traffic**

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

- the application is not supported from the traffic engineering perspective as the proposed car parking provisions are inadequate to meet the demand of the proposed retail business.

### **Agriculture**

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

- the Site falls within the "AGR" zone. The 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 greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

### **Environment**

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

- he has no comment on the application and advises that the applicant should follow the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses" issued by DEP to minimise the potential environmental impact on the surrounding areas.

### **Drainage**

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

- (a) he has no in-principle objection 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 it will not cause adverse drainage impact to the adjacent areas; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Landscape**

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

- (a) she has reservation on the application from landscape planning perspective;
- (b) the Site is located in an area with landscape character of rural inland plains, which comprises of mainly vegetated areas, agricultural land, village houses and temporary structures. Based on aerial photo taken in Oct 2019 (**Plan A-3**), it was noted that the Site was occupied by erected temporary structure;
- (c) the proposed use, which involves a 7m high structure covering large area, is considered not entirely compatible with the landscape character of the surroundings comprising agricultural land and clustered tree groups within the “AGR” zone. There is a concern that approval of this application would set an undesirable precedent of landscape character alteration 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) it is noted that existing trees are located between Sha Tau Kok Road – Wo Hang and the northern boundary of the site and there is insufficient space for meaningful landscaping within 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.

### **Fire Safety**

9.1.7 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) 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;
  - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **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 containers as temporary buildings) 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 Buildings Ordinance (BO);
- (b) the proposed drainage works on the Site shall comply with Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations, prior approval and consent of the BA should be obtained unless they are exempted building works or commenced under the simplified requirement under the Minor Works Control System;
- (c) 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;
- (d) any temporary shelters for shop, services or other uses are considered as temporary buildings are subject to the control of Part VII of the Building (Planning) Regulations (B(P)R);
- (e) the Site shall be provided with means of obtaining access thereto from a street under the B(P)R 5 and emergency vehicular access shall be provided under B(P)R 41D;
- (f) if the Site is not abutting on a specified street having a width not less than 4.5m wide, the development intensity shall be determined by the BA under B(P)R 19(3) at the building plan submission stage; and

- (g) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be given at building plan submission stage.

### **Environmental Hygiene**

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

- (a) she has no comment on the application provided that no Food and Environmental Hygiene Department (FEHD)'s facilities will be affected and the operation of the business shall not cause any environmental nuisances, obstruction 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; and
- (b) proper licence/permit issued by FEHD is required if there is any food businesses / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

### **District Officer's Comments**

#### 9.1.10 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 supports the application. The incumbent North District Council member of subject constituency, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Man Uk Pin, the IIR and RR of Loi Tung have no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD); and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

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

On 8.9.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received. The Chairman of Sheung Shui Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, Hong Kong Bird Watching Society, World Wide Fund For Nature Hong Kong and an individual 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 two previously rejected applications for temporary open storage and warehouse uses; approval of the application would set an undesirable precedent to the future similar applications within the "AGR" zone;



and enforcement action against the unauthorised use has been carried out, “destroy first, apply later” approach should be deterred.

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

- 11.1 The application is for a proposed temporary shop and services (selling of agricultural products) for a period of three years at the Site zoned “AGR” on the OZP. The proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation and can be used as greenhouse or plant nurseries. There is no strong planning justification in the submission to justify a departure from the planning intention, even on a temporary basis.
- 11.2 The Site is paved and situated in an area of rural landscape character, which comprises mainly vegetated areas, agricultural land, village houses and temporary structures. The applied use is considered not entirely compatible with the landscape character of the area. CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. Approval of the application would set an undesirable precedent of landscape character alteration and erection of structures prior to planning approval. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment.
- 11.3 The Site is accessible from Sha Tau Kok Road – Wo Hang (**Plan A-2**). Having reviewed the traffic information submitted by the applicant (**Appendices Ic and Id**), 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 areas in that the applicant has not satisfactorily addressed the aspect of adequacy of car parking provisions. DEP has no objection to the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimise any potential environmental impacts. Other relevant Government departments consulted, including DFEH, CE/MN of DSD, CE/C of WSD and D of FS, have no adverse comment on or no objection to the application.
- 11.4 The Site is the subject of two previous applications (No. A/NE-MUP/19 and 54) for temporary open storage and temporary warehouse for storage of ceramic tiles uses respectively (**Plan A-1**). Both applications were rejected on review by the Board in 1997 and 2008 mainly on the grounds that the developments were not in line with the planning intention of the “AGR” zone. There is one similar application No. A/NE-MUP/152 for the same use within the same “AGR” zone in the vicinity of the Site (**Plan A-1**). It was rejected by the Committee on 4.9.2020 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the applicant fails to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; and the setting of undesirable precedent for similar applications in the area. The planning circumstances of the current application are similar to that rejected application No. A/NE-MUP/152.

- 11.5 The Site is largely covered by an enclosed structure which is mainly used for storage use. CTP/CEP, PlanD advises that part of the Site is subject of an UD for storage use. Since the UD has not been discontinued despite that the registered owner of the Site was prosecuted and convicted for non-compliance with the EN in December 2020, further prosecution action may be instigated by the Planning Authority.
- 11.6 Regarding the adverse public comments as detailed in paragraph 10 above, Government departments' comments and planning assessments above are relevant.

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

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, 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 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 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 traffic impact on the surrounding areas; and
  - (c) the approval of the application would set an undesirable precedent for the similar applications within the "AGR" zone. The cumulative effect of approving such similar applications would result in a general degradation of the 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 22.1.2024. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 22.7.2021;
- (c) in relation to (b) 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 22.10.2021;

- (d) 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 22.7.2021;
- (e) in relation to (d) 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 22.10.2021;
- (f) 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 22.7.2021;
- (g) in relation to (f) 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 22.10.2021;
- (h) 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;
- (i) if any of the above planning conditions (b), (c), (d), (e), (f) or (g) 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
- (j) 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 V**.

### **13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant 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**  
**Appendix Ia**

Application Form with attachments received on 1.9.2020  
Supplementary Information received on 4.9.2020

<b>Appendix Ib</b>	Letter received on 20.10.2020 requesting for deferment of consideration of the application
<b>Appendix Ic</b>	FI received on 27.11.2020
<b>Appendix Id</b>	FI received on 6.1.2021
<b>Appendix II</b>	Previous s.16 Applications
<b>Appendix III</b>	Similar s.16 Application
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
JANUARY 2021**