

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

**APPLICATION NO. A/NE-WKS/13**

- Applicant** : Ms. LUAN See Kao represented by M&D Planning and Surveyors Ltd.
- Site** : Lot 1275 RP (Part) in D.D. 79, Wo Keng Shan, New Territories
- Site Area** : About 1,774 m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Wo Keng Shan Outline Zoning Plan (OZP) No. S/NE-WKS/10
- Zoning** : “Green Belt”(“GB”)
- Application** : Partial Filling of Land and Pond for the Proposed Temporary Public Vehicle Park (Excluding Container Vehicle) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for partial filling of land and pond for the proposed temporary public vehicle park (excluding container vehicle) for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “GB” on the approved Wo Keng Shan OZP No. S/NE-WKS/10. According to the Notes of the OZP, ‘public vehicle park (excluding container vehicle)’ is a Column 2 use within the “GB” zone while any filling of land and pond including that to effect a change of use specified in Column 2 both require planning permission from the Town Planning Board (the Board).
- 1.2 According to the applicant’s submission, about 1,200m<sup>2</sup> of land within the Site had been filled up by 1m to 1.2m. The proposed car park covering the entire Site will operate 24 hours daily with 47 parking spaces (2.5m x 5m each) for private cars. Five temporary single-storey (2.8m in height) structures with a total floor area of about 94.59 m<sup>2</sup> are proposed for guard room, shroff office, staff rest room and toilet uses respectively. The Site is accessible from Wo Keng Shan Road at its northeast. The location plan and layout plan submitted by the applicant are at **Drawings A-1 to A-2**. The Site is currently not used for the applied use but occupied by open storage of converted containers, construction machinery and materials without planning permission.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with Attachment received on 29.4.2020 (Appendix I)
  - (b) Supplementary Information received on 5.5.2020 (Appendix Ia)

(c) Further Information received on 10.6.2020

(Appendix Ib)

## 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 and attachment at **Appendix I**. They can be summarized as follows:

- (a) the original farmland at the Site was destroyed by torrential rain in August 2018 and is no longer suitable for cultivation. The applicant indicated that the cause of flood damage was due to CEDD's failure in taking care of the building materials at the adjacent construction site. The proposed development allows optimization of valuable land resource;
- (b) since the Site is damaged and not suitable for cultivation, the applicant has undertaken filling of land and pond with an area of about 1,200m<sup>2</sup> and depth of about 1m to 1.2m. If the application is approved, the applicant will not perform any further filling of land and pond;
- (c) the proposed development would not frustrate the long-term planning intention of the "GB" zone since it is a Column 2 use and only on temporary basis;
- (d) there is a lack of public vehicle park in the vicinity to serve the local villagers in Wo Keng Shan Village and Ping Yeung Village. The proposed development would help reduce the illegal car parking problem in the area; and
- (e) the proposed development will not generate significant adverse traffic, drainage and landscape impacts to the surrounding areas. Adequate mitigation measures including landscape planting and drainage facilities will be provided. Besides, the application does not involve any car washing, vehicle repair or dismantling activities.

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

The applicant is the sole "current land owner" of the lot. 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) advised that the Site is part of the subject of a planning enforcement action against unauthorized developments involving filling of land and storage use (including deposit of containers). Enforcement Notices were issued on 28.5.2020 requiring the discontinuance of the unauthorized land filling and storage use by 4.6.2020 and 28.8.2020 respectively.

## 5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines No. 10 for 'Application for Development within "GB" Zone under Section 16 of the Town Planning Ordinance' (TPB PG-No.10) are relevant to this application. The relevant assessment criteria are summarized as follows:

- (a) there is a general presumption against development (other than redevelopment) in a

“GB” zone;

- (b) an application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (f) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

## **6. Previous Application**

There is no previous application for the Site.

## **7. Similar Application**

There is no similar application in the “GB” zone in the vicinity of the Site in the Wo Keng Shan area.

## **8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photos on Plans A-3a to A-3b and site photos on Plans A-4a to A-4b)**

8.1 The Site is:

- (a) hard paved and fenced off;
- (b) currently used for storage of converted containers, construction machinery and materials without valid planning permission;
- (c) located to the south of Wo Keng Shan Village at a distance of about 520m and southeast of Ping Yeung Village at a distance of about 670m (**Plan A-1**); and
- (d) accessible from Wo Keng Shan Road at its northeast.

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) to its immediate east and north is Heung Yuen Wai Highway;

- (b) to its immediate west are vacant land and fallow agricultural land;
- (c) to its further northwest across Ng Chow Road are some temporary domestic structures; and
- (d) to its immediate south are fallow agricultural land and to the further south across Ng Chow Road is an area zoned “Open Storage” (“OS”) with warehouse, workshops and open storage of recycling materials.

## **9. Planning Intention**

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

## **10. Comments from Relevant Government Departments**

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

### **Land Administration**

10.1.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the lot is an Old Schedule lot held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make her own arrangement of acquiring access, and there is no guarantee that any adjoining Government Land (GL) will be allowed for the vehicular access of the proposed use;
- (b) existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under the lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
- (c) the development schedule indicates that portable toilets will be erected on the Site. The applicant should note that any proposed toilet facilities should meet current health requirements;
- (d) the applicant should take precautionary measures to restrict the scale of land/pond filling activity so as to ensure no private lot(s)/GL adjacent to the Site would be disturbed. Besides, the applicant should also comply with all the land/pond filling requirements imposed by relevant Government department(s), if any;
- (e) it is noted that the vehicular access to the Site would route through the GL managed by CEDD. In this regard, the applicant has to obtain consent from CEDD. The Government does not guarantee any right of way and access to the Site;

- (f) according to Land Registry records, his office noticed that the lot under application is having a legal dispute over the ownership;
- (g) any existing and/or proposed structures to be erected on the Site could not be used for domestic purpose; and
- (h) if the planning application is approved, the owner of the Site shall apply to his office for a Short Term Waiver (STW) covering the structures. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its 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 his office.

### **Traffic**

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

- (a) he cannot render support to the application from the traffic engineering perspective unless the applicant could satisfactorily address his following comments:
  - (i) the applicant should substantiate the traffic generation and attraction from and to the site as quoted in the application and advise the traffic impact to the nearby road links and junctions;
  - (ii) the applicant should demonstrate the satisfactory manoeuvring of vehicles entering and exiting from the Site, preferably using a swept path analysis;
  - (iii) the applicant should advise the management/control measures to be implemented to ensure no queueing of vehicles outside the Site; and
  - (iv) the applicant should advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (b) the vehicular access between the Site and Wo Keng Shan Road is not managed by TD.

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

- (a) the proposed access road leading to the Site will pass through a strip of unallocated government land (UGL) (**Plan A-2**). The applicant is required to sort out the land issues with relevant land authority and clarify whether he will design and construct the proposed access road if the application is approved. He notes that the proposed access road will have interface with CEDD's road works in the vicinities; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

## **Environment**

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

the applicant is advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Uses’ issued by DEP.

## **Landscape Aspect**

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

- (a) she has reservation on the application from the landscape planning perspective;
- (b) the Site is located in an area of rural inland plain landscape character. To the north and east of the Site across Wo Keng Shan Road and Heung Yuen Wai Highway, large areas of vegetation are found within the “GB” zone. To the southwest of the Site, hard paved areas and temporary structures are found within the “OS” zone (**Plan A-2**). The applied use is considered not entirely compatible with the landscape character of the area;
- (c) based on the aerial photo taken in 2017 (**Plan A-3a**), the Site comprised of cultivated land, a pond and a temporary structure. Based on site photos taken in May 2020 (**Plans A-4a to A-4b**), it is noted that land filling and pond filling have been implemented and the Site was paved. Adverse landscape impact has been made prior to planning approval;
- (d) a large group of trees at undeveloped area is observed to the southeast of the Site. There is a concern that approval of the application would set an undesirable precedent and would encourage similar developments within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment within the “GB” zone; and
- (e) should the Board approve the application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of the public realm is not apparent.

## **Drainage**

### 10.1.6 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 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 area; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Building Matters**

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

- (a) there is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application; and
- (b) there is also no record of submission of the proposed building/ structure to BD for approval. His advisory comments are at **Appendix III**.

### **Fire Safety**

10.1.8 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 fire-fighting being provided to 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 FSD 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 Buildings Ordinance (Cap. 123), detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

### **Agriculture / Nature Conservation**

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

- (a) it is noted that the Site is currently paved. While he has no adverse comment on the application from nature conservation point of view, it should be considered whether the proposed development is in line with the planning intention of the “GB” zone; and
- (b) from agricultural point of view, 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 agricultural activities such as greenhouses, plant nurseries, etc. As such, the Site possesses potential for agricultural rehabilitation.

### **Project Interface**

10.1.10 Comments of the Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD):

- (a) he has no comment on the application from the project interface point of view; and
- (b) a public complaint has been received by his Office regarding the flooding incident on 29.8.2018 as mentioned by the applicant. Subsequently, his Office has undertaken follow-up actions including investigation, joint site inspection and meeting with the complainant. Such complaint has been settled and the cause of flooding is unrelated to his Office's works.

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

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

he has consulted the locals regarding the application. The first Vice-Chairman of Ta Kwu Ling District Rural Committee, the four Indigenous Inhabitant Representatives (IRR) of Ping Yeung and the IIR of Wo Keng Shan object to the application as the Site is not suitable for car park use. The incumbent North District Council (NDC) member, the Resident Representative (RR) and IIR of Ping Che and the RR of Wo Keng Shan have no comment on the application.

10.2 The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no comment on the application.

## **11. Public Comments Received During Statutory Publication Period**

On 8.5.2020, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix II**). The Chairman of Sheung Shui Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society and two individuals object to the application mainly on the grounds that the proposed development is not in line with the planning intention of "GB" zone; approval of the application would set an undesirable precedent to the future similar applications within the "GB" zone; and the Site is currently subject to unauthorized filling of land and storage use.

## **12. Planning Considerations and Assessments**

12.1 The application is for partial filling of land and pond for the proposed temporary public vehicle park (excluding container vehicle) for a period of three years on a Site falling entirely within "GB" zone on the OZP. The proposed development is not in line with the planning intention of "GB" zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is also a general presumption against development within this zone. There are no strong justifications in the submission to justify a departure from the planning intention of the "GB" zone, even on a temporary basis.



- 12.2 CTP/UD&L has reservations on the application from the landscape planning perspective. Since the existing natural landscape on the Site has been affected, the application does not comply with TPB PG-No. 10. The proposed development is considered not entirely compatible with the surrounding rural landscape character. A large group of trees at undeveloped area is observed to the southeast of the Site (**Plans A-3a to A-3b**), the approval of the application would also set an undesirable precedent for similar applications within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment within the “GB” zone.
- 12.3 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 public vehicle park will not cause adverse traffic impact on the surrounding areas in that the applicant has not satisfactorily addressed his comments on the aspects of traffic generation/attraction from and to the Site, traffic impact to the nearby junctions and pedestrian crossing, and the provision of traffic and pedestrian safety measures. DEP has no objection to the application as the Site will not involve parking of heavy goods vehicle nor container truck, but advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimize any potential environmental impacts to the nearby residents. Filling of land and pond has been undertaken and the Site is currently subject to planning enforcement action against unauthorized developments involving filling of land and storage use (including deposit of containers) respectively. Other Government departments consulted, including CE/C of WSD, D of FS and CE/MN of DSD have no adverse comment on or no objection to the application.
- 12.4 Regarding the local objection conveyed by DO(N), HAD and adverse public comments as detailed in paragraphs 10.1.11 and 11 above, the Government departments’ comments and planning assessments above are relevant.

### **13. Planning Department’s Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local objection conveyed by DO(N), HAD and public comments mentioned in paragraphs 10.1.11 and 11 above respectively, the Planning Department does not support the application for the following reasons:
- (a) the proposed temporary development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
  - (b) the proposed development is not in line with the Town Planning Board Guidelines No. 10 for ‘Application for Development within “GB” zone under section 16 of the Town Planning Ordinance’ in that the existing natural landscape has been affected;
  - (c) the applicant fails to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; and
  - (d) the approval of the application will set an undesirable precedent for similar

applications within the same “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

- 13.2 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 26.6.2023. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no vehicle without valid licence issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (b) only private car 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;
- (c) a notice should be posted at a prominent location of the Site to indicate that only private car, 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) no car washing, vehicle repair, dismantling, paint spraying or other workshop activities, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (e) the provision of peripheral 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 26.12.2020;
- (f) 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 26.12.2020;
- (g) in relation to (f) 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 26.3.2021;
- (h) the submission of proposals for water supplies for firefighting 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 26.12.2020;
- (i) in relation to (h) above, the provision of water supplies for firefighting and fire service installations within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 26.3.2021;
- (j) the submission of 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 26.12.2020;
- (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 **26.3.2021**;

- (l) if any of the above planning conditions (a), (b), (c) or (d) 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 (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 be revoked immediately without further notice; and
- (n) upon the 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**.

### **14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

### **15. Attachments**

<b>Appendix I</b>	Application Form with Attachment received on 29.4.2020
<b>Appendix Ia</b>	Supplementary Information received on 5.5.2020
<b>Appendix Ib</b>	Further Information received on 10.6.2020
<b>Appendix II</b>	Public Comments
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Plan showing the Extent of Filling of Land and Pond
<b>Drawing A-2</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plans A-3a to A-3b</b>	Aerial Photos
<b>Plans A-4a to A-4b</b>	Site Photos