

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/58

<u>Applicant</u>	Best Mark International Development Limited represented by Metro Planning and Development Company Limited
<u>Site</u>	Lot 540RP (Part) in D.D. 92 and Adjoining Government Land, Castle Peak Road, Kwu Tung, Sheung Shui, New Territories
<u>Site Area</u>	630 m ² (about) (including about 15 m ² of Government Land (about 2%))
<u>Lease</u>	Old Schedule Agricultural Lots held under the Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kwu Tung North Outline Zoning Plan No. S/KTN/2
<u>Zoning</u>	“Agriculture” (“AGR”) (about 83.7%) and “Other Specified Uses” annotated “Amenity Area” (“OU(A)”) (about 16.3%)
<u>Application</u>	Proposed Temporary Shop and Services (Selling of Converted Container and Showrooms for Koi, Steel Door and Aluminium Window) and Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (selling of converted container and showrooms for koi, steel door and aluminium window) and office for a period of 3 years. The Site falls within an area mainly zoned “AGR” with minor portion in “OU(A)” zone on the Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2. According to the Notes of the OZP, temporary use not exceeding a period of three years requires permission of the Town Planning Board (the Board). The Site is currently mainly used for office and open area showroom for Koi, without valid planning permission.
- 1.2 The Site is the subject of 4 previous applications No. A/NE-KTN/59, 65 and 162 and A/KTN/21. The last application No. A/KTN/21 submitted by the current applicant for temporary shop and services (real estate agency and showrooms for steel door and aluminium window) and office was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 22.1.2016 for a period of 3 years. All approval conditions for

the last application have been complied with and the planning permission lapsed on 23.1.2019. The current application is slightly different from the previous application in the proposed use, structures and layout.

- 1.3 According to the applicant's submission, the proposed development involves 4 structures (Structure 1 to 4 on **Drawing A-1**) of 1 to 2 storeys with a total floor area of about 764 m² for shops, guard room, offices, showroom, store room, conference room and rain shelter. The proposed development involves a showroom for displaying steel door and aluminium window and an uncovered area at the northern portion of the Site for showing Koi. No converted container will be displayed on site while only photos and catalogue will be provided. One loading/unloading bay for light goods vehicle and two parking spaces for private cars are proposed in the Site (**Appendix Ie**). The operating hours of the proposed development is from 9:00 a.m. to 8:00 p.m. daily. No medium goods/heavy goods vehicle and container trailer/tractor will access the Site (**Appendix Id**). No workshop use will be carried out at the Site. The proposed landscape and tree preservation plan and as-built drainage plan for the development are at **Drawings A-2** and **A-3**.
- 1.4 In support of the application, the applicant has submitted the following documents:
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|-----|---|------------------------|
| (a) | Application Form received on 30.11.2018 | (Appendix I) |
| (b) | Supplementary planning statement received on 30.11.2018 | (Appendix Ia) |
| (c) | Supplementary information dated 30.11.2018 | (Appendix Ib) |
| (d) | Supplementary information dated 3.12.2018 | (Appendix Ic) |
| (e) | Further Information (FI) dated 3.1.2019 | (Appendix Id) |
| (f) | FI dated 14.3.2019 | (Appendix Ie) |
- 1.5 The application was originally schedule for consideration by the Committee on 18.1.2019. On 18.1.2019, the Committee agreed to defer a decision on the application as requested by the applicant to allow time for the applicant to prepare FI to address departmental comments. Upon receipt of the FI on 14.3.2019, the application is rescheduled for consideration by the Committee at this meeting on 3.5.2019.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices Ia to Ic**. They are summarised as follows:

- (a) The Site is the subject of two planning permissions for similar uses for a period of 3 years with conditions. The applicant has complied with all the planning conditions in the last planning application No. A/KTN/21.
- (b) The Site is abutting Castle Peak Road – Kwu Tung Section and 100m away from Yin Kong Village, and has been formed for about a decade. The Site is suitable for shop and services use due to the geographical advantage. The proposed

development would serve the daily need of the nearby residents and generate economic value and would not hamper the agricultural activities.

- (c) Considering the layout, non-polluting nature and small scale of the proposed development, the proposed development is compatible with the surrounding environment and would not affect the character of the nearby village.
- (d) As the proposed development is temporary in nature, it would not frustrate the future development of the Kwu Tung North New Development Area (KTN NDA).
- (e) The estimated traffic generation and attraction rate at peak hours for the proposed development is insignificant. No adverse traffic impact is anticipated.
- (f) The Site has been paved and no workshop activity will be carried out at the Site. No adverse environmental impact is anticipated.
- (g) The as-built drainage facilities were implemented to the satisfaction of Drainage Services Department (DSD). All the implemented drainage facilities will be maintained by the applicant's own expense.

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

The applicant is the sole "current land owner" of the private land within the Site. For the portion of Government Land, the "Owner's Consent/Notification" Requirements is not applicable. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is currently not a subject of any active enforcement case. Should there be sufficient evidence to prove that the current use on the Site constitutes an Unauthorized Development under the Town Planning Ordinance, enforcement action would be taken.

5. Previous Applications

- 5.1 The Site involves 4 previous applications No. A/NE-KTN/59, 65 and 162 and No. A/KTN/21. Details of the applications are summarised at **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 Applications No. A/NE-KTN/59 and 65 for temporary car repair workshop and ancillary office and temporary open lorry park respectively (first application involves a larger site area) both for a period of 12 months were rejected by the Committee on 11.9.1998 and 14.5.1999 respectively mainly on the grounds of no strong justification in the submissions for a departure from the planning intention of the "AGR" zone even on a temporary basis, no information to demonstrate no adverse environmental, transport and drainage impacts, and the setting of undesirable precedents.

- 5.3 Applications No. A/NE-KTN/162 and A/KTN/21 involving almost the same site as the current application for temporary shop and services (real estate agency and showroom) and office for a period of 3 years were both approved with conditions on 21.12.2012 and 22.1.2016 respectively mainly on the grounds that the concerned Government departments had no adverse comment on the applications, and temporary use would not jeopardise the long-term planning intention of KTN NDA. For both applications, all the approval conditions relating to drainage facilities, fire service installations (FSI) and tree preservation and landscape proposal have been complied with. The planning permission for the last application lapsed on 23.1.2019.

6. Similar Application

There is no similar application for temporary shop and services in the same “AGR” zone on the OZP.

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 and A-4b)

7.1 The Site is:

- (a) fenced and paved with temporary structures mainly for office and Koi showroom uses; and
- (b) accessible directly from Castle Peak Road – Kwu Tung.

7.2 The surrounding areas have the following characteristics:

- (a) Castle Peak Road – Kwu Tung is running along the southern side of the Site;
- (b) areas in both sides of the Site along Castle Peak Road are mainly workshop and open storage uses while a domestic structure is located to its immediate west;
- (c) the areas to the north are mainly vacant chicken sheds, unused/vacant land, domestic structures and some fallow/active agricultural land; and
- (d) to the further northwest are residential developments in Yin Kong Village and the proposed Long Valley Nature Park.

8. Planning Intentions

- 8.1 The planning intention of the “AGR” zone 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. It is stated in the Explanatory

Statement of the OZP that the subject “AGR” site at the southern portion of Long Valley is predominantly dry active agricultural land intermixed with abandoned farmland/grassland, fruit trees and is to allow the continuation of the existing farming practices and to provide a buffer for the Long Valley to its north.

- 8.2 The planning intention of the “OU(A)” zone is primarily for the provision of landscaping and planting to enhance the environment.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views are summarised as follows:

Land Administration

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

- (a) the Site comprises a private lot, namely Lot No. 540 RP (part) in D.D. 92, and adjoining Government land. The lot is an Old Schedule lot held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access, and covered by Short Term Waiver (STW) No. 1466 for the purposes of plant nursery, agricultural activities and ancillary office, storeroom, guard room and showroom. Meanwhile, the applicant should make his/her own arrangement for acquiring access. The Government should accept no responsibility in such arrangement. According to land search record, the applicant is the current registered owner of the Lot;
- (b) the actual occupation boundary does not tally with the planning application boundary;
- (c) unauthorized structures were erected on the Lot and the adjoining Government land without prior approval from his office;
- (d) the total built-over areas of the aforesaid structures is larger than the one mentioned in the planning parameters and the maximum permitted site coverage stipulated in STW No. 1466;
- (e) the aforesaid structures are not acceptable under the Lease and STW No. 1466 concerned and his office reserves the right to take necessary enforcement actions against the irregularities; and
- (f) an application for modification of STW No. 1466 had been received by his office. The application for modification of STW will be considered by the Government in its landlord’s

capacity and there is no guarantee that it will be approved. If the planning application is approved, the owner of the lot concerned should apply to his office a Short Term Tenancy (STT) to cover all the actual occupation area. If the STW/STT are approved, their commencement date would be backdated to the first date of occupation and they would 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):

- (a) he considers that the application can be tolerated from traffic engineering viewpoint; and
- (b) the applicant is reminded that the local track leading to the Site is not managed by his department. The land status, management and maintenance responsibility of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

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

there is an unallocated Government land (UGL) which is not maintained by his department between the ingress/egress of the Site and Castle Peak Road – Kwu Tung. If the applicant is required to gain access from the UGL to the Site, he/she should sort out the access issue with the lands authority.

Future Development

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

he has no comment on the application from the project interface point of view. Part of the Site falls within the Remaining Packages of KTN NDA project.

Environment

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

- (a) The applicant is advised to follow the environmental mitigation measures as recommended in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize the potential environmental impacts on the adjacent area; and

- (b) there is no environmental complaint case related to the Site in the past 3 years.

Landscape

- 9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) compared the aerial photo of 2016 to the latest photo of 2018, there is no significant change in the rural landscape character where the Site is located. The surrounding area comprises of temporary structures, open storage, car parks and some clustered tree groups. The proposed use is considered not incompatible with the landscape setting in proximity;
 - (b) according to site visit conducted on 13.12.2018, the Site was fenced off and hard paved. 5 existing trees were found within the Site, in which 2 trees were topped. According to the landscape plan enclosed in the application, replacement trees were proposed as compensation. As further significant landscape impact due to the proposed development is not anticipated, he has no objection from landscape planning perspective to the application;
 - (c) should the Board approve the application, he suggests including the condition requiring submission and implementation of landscape proposal in the planning approval; and
 - (d) his other advisory comments are at **Appendix III**.

Drainage

- 9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
- (a) he has no objection in-principle to the application from the public drainage point of view; and
 - (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. The general requirements in the drainage submission are at **Appendix III**.

Building Matters

- 9.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
- (a) there is no record of submission of the proposed temporary

buildings/structures to the Building Authority for approval;

- (b) the proposed temporary container converted building/structure and shelter structure are subject to the control of Part VII of the Building (Planning) Regulations and require prior approval and consent under the Buildings Ordinance (BO); and
- (c) his advisory comments under the BO are at **Appendix III**.

Agriculture

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

the Site and its vicinity are currently occupied by temporary structures and workshops. As the potential of the Site for agricultural rehabilitation is low, he has no strong view on the application from agricultural development point of view.

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 and water supplies for firefighting being provided to the satisfaction of his department. Emergency Vehicular Access (EVA) arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Town Gas Safety

9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

he has no adverse comment on the application and in view of a high pressure underground town gas transmission pipeline in the vicinity of the Site, he advises the applicant to note his advisory comments at **Appendix III**.

District Officer's Comments

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

he has consulted the locals from 13.12.2018 to 28.12.2018. The Chairman of Sheung Shui District Rural Committee, the Resident Representative (RR) of Kwu Tung (North) and the North District

Council (NDC) member of the subject Constituency have no comment on the application. The RR of Kwu Tung (South) objects to the application mainly on the grounds that the proposed development may increase the traffic loading on Castle Peak Road and will have adverse road safety and noise impacts on the surrounding environment.

9.2 The following Government department(s) have no comment on the application:

- (a) Head of the Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (c) the Commissioner of Police (C of P).

10. Public Comments

On 7.12.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 28.12.2018, a total of 4 public comments from 3 individuals and a member of the NDC are received (**Appendices IVa to IVd**). The NDC member objects to the application as he received Indigenous Inhabitant Representative (IRR) of Yin Kong's comment stating that the development may have adverse fengshui, traffic and pollution impacts to the village. 2 individuals have no comment on the application. The remaining comment objects to the application on the grounds that the proposed development is not in line with planning intention of "AGR" zone, and the continuous brownfield use should not be encouraged and should be phased out.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (selling of converted container and showrooms for koi, steel door and aluminium window) and office for a period of 3 years. The Site mainly falls within an area zoned "AGR" with minor portion in "OU(A)" on the Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). The applied use is not in line with the planning intention of the above zonings. However, DAFC has advised that the Site and its vicinity are currently occupied by temporary structures and workshops and the agricultural rehabilitation potential is low. He has no strong view on the application. PM/N, CEDD has advised that the Site falls within the Remaining Packages of KTN NDA projects and he has no objection to the application in relation to the implementation of the NDA. In view of this, approval of the application on a temporary basis would not jeopardize the long-term development of the concerned zoning in the area.
- 11.2 The proposed uses are considered not incompatible with the surrounding land uses which comprise mainly open storage yards, vacant chicken sheds, domestic structures, unused land and some agricultural land (**Plan A-2**).
- 11.3 Other concerned departments, including DEP, C for T, D of FS, CE/MN, DSD and CTP/UD&L, PlanD have no adverse comment on the application. To

mitigate any potential environmental impacts, approval conditions restricting operation hours, type of vehicle to access the Site, and activity in the Site are recommended in paragraph 12.2 (a) to (c). The applicant is advised to follow the environmental mitigation measures as recommended in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimise the potential environmental impacts on the adjacent area.

- 11.4 The Site is the subject of 4 previous applications No. A/NE-KTN/59, 65 and 162 and A/KTN/21. The last application No. A/KTN/21 for temporary shop and services (real estate agency and showrooms) and office was approved with conditions by the Committee on 22.1.2016 for a period of 3 years. The permission lapsed on 23.1.2019. All approval conditions for the last application have been complied with. The current application is slightly different from the last application in terms of uses, structure and layout. Approval of the current application is generally in line with the previous decisions of the Committee.
- 11.5 There are 1 local comment conveyed by DO(N) and 4 public comments (as stated in paragraphs 9.1.12 and 10), of which 3 object to the application mainly on the grounds that the development is not in line with the planning intention on OZP and it may have adverse fengshui, traffic and pollution impacts to the nearby village. Relevant Government departments’ comments and planning considerations set out in paragraph 11.1 to 11.3 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the local views and public comments mentioned in paragraph 9.1.12 and 10, the Planning Department considers that the temporary shop and services (selling of converted container and showrooms for koi, steel door and aluminium window) and office could be tolerated for a period of 3 years.
- 12.2 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 year until 3.5.2022. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/ trailers, as defined in the Road Traffic Ordinance are allowed to enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no workshop activities are allowed within the Site, as proposed by the

applicant, at any time during the planning approval period;

- (d) the submission of proposal 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 **3.11.2019**;
- (e) in relation to (d) above, the implementation of proposal 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 **3.2.2020**;
- (f) 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 **3.11.2019**;
- (g) in relation to (f), the implementation of drainage proposal 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 **3.2.2020**;
- (h) the submission of landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **3.11.2019**;
- (i) in relation to (h) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **3.2.2020**;
- (j) if any of the above planning conditions (a), (b) or (c) is not complied with during the planning approval period, the approved hereby given shall cease to have effect and shall be revoked without further notice;
- (k) if any of the above planning conditions (d), (e), (f), (g), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) upon 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 attached at **Appendix III**.

12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the applied uses are not in line with the planning intentions of "AGR", which is intended primarily to retain and safeguard good quality agricultural

land/farm/fish ponds for agricultural purposes, and “OU(A)” zone, which is mainly for the provision of landscaping and planting to enhance the environment. No strong justification has been given in the submission for departure from the planning intentions, even on a temporary basis.

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 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 received on 30.11.2018
Appendix Ia	Supplementary Planning Statement received on 30.11.2018
Appendix Ib	Supplementary Information dated 30.11.2018
Appendix Ic	Supplementary Information dated 3.12.2018
Appendix Id	FI dated 3.1.2019
Appendix Ie	FI dated 14.3.2019
Appendix II	Previous Applications
Appendix III	Advisory Clauses
Appendices IVa to IVd	Public Comments
Drawing A-1	Layout Plan
Drawing A-2	Proposed Landscape and Tree Preservation Plan
Drawing A-3	As-built Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos