

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LT/672

- Applicant** : Linkjet Investment Limited represented by Ratio Architecture & Planning Company Limited
- Site** : Lot 432 in D.D. 10, Pak Ngau Shek, Lam Tsuen, Tai Po, New Territories
- Site Area** : 3,989 m² (about)
- Lease** : (a) Block Government Lease (demised for agricultural use)
(b) Short Term Waiver (STW) No. 612 commenced on 1.5.1989 in respect of a portion of Lot 432 in D.D. 10 for a one-storey “bean sprouting factory” with total site coverage of not more than 1,230m² and maximum height of 4.11m
- Plan** : Approved Lam Tsuen Outline Zoning Plan (OZP) No. S/NE-LT/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Warehouse for Storage of Construction Materials (Tiles) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary warehouse for storage of construction materials (tiles) for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Lam Tsuen OZP No. S/NE-LT/11. According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is currently being used for the applied use without a valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 According to the applicant, the applied use consists of six single-storey structures (Structures No. 1 to 6) for the storage of tiles and two single-storey structures for ancillary office (Structure No. 7) and for toilet and store room (Structure No. 8). All structures are with a height not exceeding 4.11m. Structures No. 1 to 7 are under the cover of a large corrugated sheet roof forming a large temporary warehouse with a total covered area of about 1,384m². The Site is accessible via a local track leading to Lam Kam Road. There are two ingress/egress points located at the southern boundary of the Site. Two loading/unloading bays (measuring 11m(L) x 3.5m(W)) are provided for medium goods vehicles and the loading/unloading activities will take place within the

Site. The remaining open area of the Site is used for circulation and manoeuvring to facilitate vehicular movements. Six existing trees are found along the periphery of the Site and more trees will be planted along the site boundary to enhance the screening effect for the existing warehouse. The operation hours are between 7:00am and 4:00pm from Mondays to Saturdays, and the Site will be closed on Sundays and public holidays. Site plan, landscape proposal, vehicular access plan and proposed drainage facilities submitted by the applicant are at **Drawings A-1 to A-4** respectively.

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

- (a) application form with supplementary planning statement received on 25.7.2019 **(Appendices I & Ia)**
- (b) further information (FI) received on 6.9.2019 providing responses to departmental comments **(Appendix Ib)**
- (c) FI received on 13.9.2019 providing responses to departmental comments **(Appendix Ic)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 4 of the Supplementary Planning Statement and FI at **Appendices Ia to Ic**. They can be summarized as follows:

- (a) all single-storey structures have been in existence before the gazettal of the Lam Tsuen Interim Development Permission Area (IDPA) Plan No. IDPA/NE-LT/1 on 31.8.1990. The STW for bean sprouting factory had been issued for the Site since 1991. The bean sprouting factory had ceased operation and then converted into warehouse use for the storage of construction materials (tiles) in mid-1990s. Therefore, approval of this application will not set an undesirable precedent even though there are no similar applications for temporary warehouse within the “AGR” zone and in the vicinity of the Site in Lam Tsuen;
- (b) the surrounding area is mainly characterized by village houses and single-storey structures. The application only involves utilization of existing one-storey structures without additional structures nor any change in development intensity. The applied use is compatible with the surrounding area;
- (c) the local track connecting the Site to Lam Kam Road is of low traffic volume. The Site would not open to the public and no visitors are expected. Only 4 daily trips to/from the Site by one medium goods vehicle are expected in non-peak hours. Also, there is sufficient space for manoeuvring of vehicles and loading/unloading within the Site, hence the development would not cause adverse traffic impact;
- (d) the development involves no effluent discharge. The storage of tiles is non-polluted, non-dangerous and inflammable in nature. To address relevant departments’ concerns on sewage and noise issues, the applicant has submitted FI (**Appendices Ib and Ic**) advising that portable chemical toilet will be used to replace the existing toilet facility with septic tank; sound reduction fabric will be provided along the site boundary to reduce noise generated by vehicular traffic; and mitigation measures will be implemented to ensure no overall material increase in pollution within WGG. Hence,

the potential impact on the environment from the development is minimal; and

- (e) the development has no conflict with the existing trees and more trees will be planted according to the landscape proposal. Besides, adequate openings and u-channels are found along the periphery of the Site to collect and discharge surface runoff to the stream course nearby directly. Therefore, the development would not cause adverse landscape and drainage impacts to the area.

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.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is not subject to any active enforcement action. However, one previous Enforcement Notice against open storage use at the southwestern portion of the Site was issued on 27.4.2018 and Compliance Notice was subsequently issued on 6.12.2018. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under Town Planning Ordinance, enforcement action would be taken.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application for the same use within the same “AGR” zone.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4b)

7.1 The Site is:

- (a) fenced off, hard paved and occupied by a large temporary warehouse currently occupied for the applied use without valid planning permission;
- (b) adjoining two natural water courses at its northern and eastern boundaries; and
- (c) accessible from Lam Kam Road via a local track.

7.2 The surrounding areas are predominantly rural in character with village houses, active/abandoned farmland and scattered tree groups. To the immediate southeast is a temporary real estate agency accommodated in a converted container approved under application No. A/NE-LT/664. To the west is the village cluster of Pak Ngau Shek Ha Tsuen.

8. Planning Intention

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.

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/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of Lot No. 432 in D.D. 10, Lam Tsuen, which is held under Block Government Lease demised for agricultural purpose, no structure shall be erected thereon without prior approval from LandsD;
- (c) STW No. 612, commencing on 1.5.1989 in respect of a portion of the Lot, was issued on 22.3.1991 for a one-storey “bean sprouting factory” with total site coverage of not more than 1,230m² and maximum height of 4.11m. The applied use is in breach of the lease conditions and the STW conditions. Warning letters have been issued to the applicant due to the breach of STW conditions;
- (d) a STW application for “temporary warehouse for storage of construction materials (tiles)” has been received by LandsD; and
- (e) should the Board approve the application, LandsD would consider the STW application. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered appropriate. There is no guarantee to the grant of a right of way to the Site or approval of Emergency Vehicular Access (EVA) thereto.

Traffic

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

- (a) no in-principle objection to the application from traffic engineering viewpoint; and
- (b) the applicant is reminded that loading/unloading spaces should be provided within the Site and the vehicular access between Lam Kam

Road and the Site is not managed by Transport Department. The applicant shall seek agreement/comment from the responsible party for the management and maintenance measures to be implemented for the vehicular access.

Environment

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

- (a) does not support the application as it will generate heavy vehicle traffic and there are existing residential uses within 100m of the site boundary which will be subject to noise nuisance;
- (b) as the Site is within water gathering ground (WGG), the use of septic tank and soakaway system should be avoided in accordance with Chapter 9 of the Hong Kong Planning Standards and Guidelines. Besides, the Site is at a lower level than the nearest sewerage manhole. Having reviewed the FI submitted by the applicant (**Appendix Ib**) that portable chemical toilet will be used to replace the existing toilet facility with septic tank, she has no comment on the sewage issue;
- (c) while the applicant has proposed in the FI (**Appendix Ic**) that sound reduction fabric will be provided along the site boundary, in view of the presence of domestic structures immediately fronting the access road leading to the Site, noise nuisance to these domestic structures due to heavy vehicle traffic on the access road cannot be effectively mitigated;
- (d) there is no environmental complaints against the Site during the past three years; and
- (e) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open storage and Temporary Uses”.

Landscape

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

- (a) no objection to the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising scattered tree groups, active and abandoned farmlands. A natural water course is recorded adjoining northern and eastern site boundary. Given only single-storey structures are involved, the development is not incompatible with the surrounding environment; and
- (c) the Site is hard paved and occupied with eight existing single-storey structures. Numbers of existing trees are found within the Site, including one *Bischofia javanica* (秋楓), three *Ficus microcarpa* (細葉榕), one *Ficus variegata* (青果榕), one *Platyclusus orientalis* (側柏) and six young

common fruit trees such as *Artocarpus heterophyllus* (菠羅蜜), *Clausena lansium* (黃皮), *Dimocarpus longan* (龍眼) and *Mangifera indica* (芒果). All existing trees are in good to fair conditions and not in direct conflict with the development. Referring to the aerial photo of June 1999, existing single-storey structures have already existed since 1999. According to the application and submitted layout plan, no alteration or extension of existing structures are proposed. Further significant adverse impact on landscape resources arising from the development is not anticipated; and

- (d) the Site is not bounded by prominent public frontage, should the Board approve the application, it is considered unnecessary to impose any condition for submission and implementation of landscape proposal.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, a condition should be included to request the applicant to submit and implement the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area;
- (c) there is no public drain maintained by DSD in the vicinity of the Site. The development should have its own stormwater collection and discharge systems to cater for the runoff generated within the Site and overland flow from surrounding of the Site. The applied use will increase the impervious area, resulting in a change of the flow pattern and an increase of the surface runoff and thus the flooding risk in the area. The applicant should take this into account when preparing the drainage proposal. The applicant/owner is also required to maintain such systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant/owner shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) the applicant should design the drainage proposal based on the actual site conditions for DSD's comment/agreement. In the design, the applicant should consider the workability, the impact to the surrounding environment and seek comments from other concerned parties/departments if necessary. The applicant should make sure no adverse impact will be caused to the area due to the proposed works. The existing natural streams, village drains, ditches and the adjacent areas should not be adversely affected; and
- (e) there is no public sewer connection available in the vicinity of the development.

Building Matters

- 9.1.6 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
- (a) if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;
 - (b) for UBW erected on leased land, enforcement action may be taken by the BD to mobilize 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;
 - (c) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
 - (d) in connection with (c) above, the Site shall be provided with means of obtaining access thereto from a street and EVA in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively; and
 - (e) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.

Agriculture

- 9.1.7 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- the Site is paved and partially occupied by an existing warehouse. Nevertheless, there are active agricultural activities in the vicinity, agricultural infrastructure such as water source and road access is available, and the Site possesses potential for agricultural rehabilitation. As such, the application is not supported from agricultural development point of view.

Water Supply

- 9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):
- (a) objects to the application;
 - (b) the Site is within upper indirect WGG. Apart from the storage of tiles and the operation of warehouse, the application also involves loading/unloading activities as well as provision of a chemical portable toilet;

- (c) for the proposed use of chemical portable toilet, it is considered that there is a high risk of pollution to WGG. Therefore, the provision of the chemical portable toilet is not supported;
- (d) regarding the storage of tiles, the operation of the warehouse and the loading/unloading activities, there are risks of contamination to WGG due to human activities, dust, tyre scrap and oil. As the surface run off from the Site will also be directly discharged to the Lam Tsuen River, in order to safeguard the raw water quality in WGG, the applicant shall provide information to prove and demonstrate to the satisfaction of Water Authority that there is no overall material increase in pollution effect resulting from the development and activities. In particular, the applicant shall provide evidences and/or control measures to ensure the following items are met:
 - (i) no discharge of effluent or foul water into adjoining land, storm water drain, channel, stream or river course is allowed. Such foul water or effluent shall be collected and disposed of outside the WGG;
 - (ii) all solids and sludge arising from the development shall be disposed of properly outside WGG;
 - (iii) the use and storage of pesticides, toxicants, flammable solvents, tar and petroleum oil are strictly prohibited within WGG;
 - (iv) no chemicals including laticidal oil, rodenticide and fertilizers shall be used without the prior approval from the Water Authority;
 - (v) oil leakage or spillage shall be prevented within WGG at all times;
 - (vi) the loading/unloading spaces under the development shall be as far away from any water course as possible;
 - (vii) fencing shall be erected on the sides facing the nearest stream course to trap all wind-blown litters such as paper, plastic bags, bottles and boxes within the Site;
 - (viii) the loading and unloading spaces shall be surrounded by kerbs and drains. Drainage traps such as grease traps and petrol interceptors shall be installed at each of the drainage outlets and shall be under proper maintenance;
 - (ix) oil and grease decontamination kit such as absorbent pads shall be made available by the vehicle park owner to decontaminate any possible oil leakage or spillage; and
 - (x) no activity other than storage of tile, operation of the warehouse and the loading/unloading activities specified shall be allowed; and

- (e) having reviewed the FI submitted by the applicant (**Appendix Ic**), it is considered that some of the items in (d) above cannot be fully addressed. Considering the overall proposal, he would object to the application.

Fire Safety

9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installation (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the applied use, FSIs are anticipated to be required. The applicant is advised to submit relevant layout plans incorporated with the proposed FSIs for his approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy, and 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.

Town Gas Safety

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

- there is a high pressure underground town gas transmission pipeline (running along Lam Kam Road) in the vicinity of the Site. The project proponent/consultant/works contractor shall therefore liaise with the Hong Kong and China Gas Company Limited in respect of the exact locations of existing or planned gas pipes/gas installations in the vicinity of the Site and any required minimum set back distance away from them during the design and construction stages of development. Also, they are required to observe the Electrical and Mechanical Services Department's requirements on the "Avoidance of Damage to Gas Pipes 2nd Edition" for reference.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Project Manager (North), Civil Engineering and Development Department;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department; and
- (d) District Officer (Tai Po), Home Affairs Department.

10. Public Comment Received During Statutory Publication Period (Appendix II)

On 2.8.2019, the application was published for public inspection. During the statutory public inspection period, one public comment from an individual was received objecting to the application mainly on the grounds that temporary storage use should be accommodated in industrial parks and no temporary operations should be tolerated in the New Territories.

11. Planning Considerations and Assessments

- 11.1 The application is for a temporary warehouse for storage of construction materials (tiles) for a period of three years at the Site falling entirely within “AGR” zone on the OZP. The applied use is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fishponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as water source and road access is available, and the Site possesses potential for agricultural rehabilitation. No strong planning justification has been given in the submission to justify for a departure from the planning intention of the “AGR” zone, even on a temporary basis.
- 11.2 The Site is hard paved and currently occupied by some temporary structures. The surrounding area is rural in landscape character comprising scattered tree groups, active and abandoned farmland and some village houses. CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective as all existing trees within the Site are not in direct conflict with the development.
- 11.3 DEP does not support the application as the development will generate heavy vehicle traffic and there are domestic structures in the vicinity of the Site which will be subject to noise nuisance (**Plan A-2**). While the applicant has proposed to provide sound reduction fabric along the site boundary, DEP advises that, in view of the presence of domestic structures immediately fronting the access road leading to the Site, noise nuisance to these domestic structures due to heavy vehicle traffic on the access road cannot be effectively mitigated. WSD also objects to the application as the storage of tiles, the operation of the warehouse, the loading/unloading activities and the provision of chemical portable toilet will have risks of contamination/pollution to WGG. In this regard, the applicant fails to demonstrate that the development located within the WGG would not cause adverse impact on the water quality in the area. Other relevant Government departments consulted, including DLO/TP of LandsD, C for T, D of FS and CE/MN of DSD, have no objection to or no adverse comment on the application.
- 11.4 There is no similar application for temporary warehouse within the same “AGR” zone. Approval of the application would set an undesirable precedent for other similar applications in the “AGR” zone, the cumulative effect of which would result in a general degradation of the environment of the area.
- 11.5 Regarding the public comment objecting to the application on the grounds as detailed in paragraph 10, 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 comment mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
- (a) the 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. It is also intended to retain fallow arable land

with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;

- (b) the applicant fails to demonstrate in the submission that the development would not cause adverse noise impact on the surrounding areas;
- (c) the applicant fails to demonstrate that the development located within the water gathering ground would not cause adverse impact on the water quality in the area; and
- (d) the approval of the application would set an undesirable precedent for other similar applications within the same “AGR” zone. The cumulative effect of approving such 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 20.9.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 4:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicle dismantling, inspection, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (d) the development should not cause any water pollution to the upper indirect water gathering ground at any time during the planning approval period;
- (e) the submission of drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.3.2020;
- (f) in relation to (e) above, 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 20.6.2020;
- (g) the submission of fire service installations and water supplies for fire-fighting proposal 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 20.3.2020;
- (h) in relation to (g) above, the implementation of fire service installations and water supplies for fire-fighting proposal 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 20.6.2020;

- (i) 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; and
- (j) if any of the above planning conditions (e), (f), (g) or (h) 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 III**.

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 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	Application Form received on 25.7.2019
Appendix Ia	Supplementary Planning Statement
Appendix Ib	FI submitted by the Applicant on 6.9.2019
Appendix Ic	FI submitted by the Applicant on 13.9.2019
Appendix II	Public Comment
Appendix III	Recommended Advisory Clauses
Drawing A-1	Location Plan submitted by the Applicant
Drawing A-2	Site Plan submitted by the Applicant
Drawing A-3	Landscape and Vehicular Access Plan submitted by the Applicant
Drawing A-4	Drainage Plan submitted by the Applicant
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a & 4-b	Site Photos