

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKLN/95

- Applicants** : Messrs. MAN Sun Kwai and MAN Sun Choi represented by Man Chi Consultants and Construction Limited
- Site** : Lot 390 RP (Part) in D.D. 78 and Adjoining Government Land (GL), Tsung Yuen Ha, Ta Kwu Ling North, New Territories
- Site Area** : About 338.8m² (including about 125m² of GL or about 36.9% of the Site)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ta Kwu Ling North Outline Zoning Plan (OZP) No. S/NE-TKLN/2
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Shop and Services (Local Provision Store) and Associated Filling of Land for a Period of Three Years

1. The Proposal

- 1.1 The applicants seek planning permission for proposed temporary shop and services (local provision store) and associated filling of land for a period of three years at the application site (the Site) zoned “AGR” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years, and filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is largely vacant and hard-paved with a vacant temporary structure.
- 1.2 The Site is accessible via a footpath leading to Lin Ma Hang Road (**Plan A-2**). According to the applicants, the proposed use comprises two single-storey structures (building height of not more than 2.6m) with a total floor area of about 178.1m² for local provision store. No vehicle could enter the Site. No parking and loading/unloading spaces will be provided at the Site and no loading/unloading activities will be carried out within the Site. The operation hours are between 8:00 a.m. to 8:00 p.m. daily, including public holidays. The applicants also apply for regularisation of filling of land with concrete (about 0.15m in depth) at the entire site for site formation. The layout plan submitted by the applicants is shown in **Drawing A-1**.
- 1.3 In support of the application, the applicants have submitted the following documents:
- | | |
|--|----------------------|
| (a) Application Form with attachment received on 27.1.2025 | (Appendix I) |
| (b) Further Information (FI) received on 24.2.2025* | (Appendix Ia) |

(c) FI received on 24.4.2025*

(Appendix Ib)

(d) FI received on 14.5.2025*

(Appendix Ic)

**accepted and exempted from publication and recounting requirements*

- 1.4 On 14.3.2025, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicants' request to defer making a decision on the application for two months.

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the application are detailed in the Application Form and FIs at **Appendix I to Ic**, as summarised below:

- (a) the proposed use is intended to provide local retail and community services to nearby villagers and cross-boundary travellers and would meet the need of the villagers. In view of the developments of Heung Yuen Wai Boundary Control Point (HYW BCP) and New Territories North, the proposed use will help the nearby villagers to tap into the opportunities brought by the developments in the surrounding areas. The proposed local provision store will only be operating in a small scale and selling dry goods (i.e. drinks, canned food and other local convenience goods) without cooked food, poultry and wet goods;
- (b) as the Site is highly accessible by nearby villagers and in the vicinity of HYW BCP, it is an ideal location for provision of local retail and community services. The proposed use is not incompatible with the surrounding areas with temporary shop and services, canteen and office uses, and village houses;
- (c) the Site is land locked by Lin Ma Hang Road and public car parks. The chance of re-inhabitation of agricultural activities is very slim. Being temporary in nature, the proposed use would not jeopardise the long-term planning intention of the "AGR" zone; and
- (d) the proposed use is small in scale and no adverse traffic, landscape and drainage impacts are expected. The applicant will apply to Lands Department (LandsD) for Short Term Tenancy (STT) and Short Term Wavier (STW) once the application is approved.

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

The applicants are the sole "current land owner". Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) is not applicable.

4. Background

Site inspection revealed that vehicles were found at the Site. Warning poster was posted on site. The Site and its vicinity will be monitored according to the established practice.

5. Previous Application

The Site is not subject to any previous application.

6. Similar Application

There is no similar application within the same “AGR” zone in the vicinity of the Site in the past five years.

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

7.1 The Site is:

- (a) largely vacant and hard-paved with a vacant temporary structure; and
- (b) accessible via a footpath leading to Lin Ma Hang Road.

7.2 The surrounding areas are of rural character comprising mainly carparks and vacant land. A bus terminus along Lin Ma Hang Road is located to the immediate west of the Site, and HYW BCP is located across the road. The village cluster of Tsung Yuen Ha is located to the further southeast.

8. Planning Intention

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.

8.2 According to the Explanatory Statement of the OZP, as filling of land within the “AGR” zone may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices II** and **III** respectively.

9.2 The following government departments object to or have adverse comments on the application:

Land Administration

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

- (a) he objects to the application;

- (b) the Site comprises Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allow to be erected without the prior approval of the Government. No right of access via GL is granted to the Site;
- (c) the following irregularities covered by the planning application have been detected by his office:

unauthorised structure within the said private lot covered by the planning application

there is unauthorised structure on the private lot extended to adjoining GL. The lot owners should immediately rectify the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

unlawful occupation of GL adjoining the said private lot with unauthorised structure covered by the planning application

no consent is given for inclusion of GL (about 125m² as mentioned in the Application Form) in the Site. Part of the GL within the Site was illegally occupied with an unauthorised structure without any permission. Any occupation of GL without Government's prior approval is an offence under Cap. 28. LandsD objects to the planning application since there is illegal occupation of GL which regularisation would not be considered according to the prevailing land policy. The lot owner(s) should immediately cease the illegal occupation of GL and remove the unauthorised structures as demanded by LandsD. His office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (d) the lot owner(s) shall cease the illegal occupation of the GL immediately; and, subject to the approval of the Board to the planning application which shall have reflected the rectification as aforesaid required, apply to his office for STW to permit the structure(s) erected/to be erected. The application for STW will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW, if approved, will be on a whole lot basis and subject to such terms and conditions including the payment of back-dated waiver fee from the first date the unauthorised structure was erected and administrative fee as considered appropriate to be imposed by LandsD. In addition, LandsD reserves the right to take enforcement action against the lot owners for any breach of the lease conditions, including the breaches already in existence or to be detected at any point of time in future and land control action for any unlawful occupation of GL. Besides, given the proposed use is temporary in nature, only erection of temporary structure(s) will be considered;
- (e) unless and until the unauthorised structure and the unlawful occupation of GL are duly rectified by the lot owners, his office objects to the application which must be brought to the attention of the Board when it considers the application; and

- (f) his advisory comment are at **Appendix III**.

Agriculture

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

- (a) the application is not supported from the agricultural perspective; and
- (b) the Site falls within the “AGR” zone and is generally vacant. Agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plan nurseries, etc. The Site possesses potential for agricultural rehabilitation.

10. Public Comments Received During Statutory Publication Period

On 7.2.2025, the application was published for public inspection. During the statutory public inspection period, three comments were received (**Appendix IV**). One comment from an individual objects to the application mainly on the grounds that other sites are available for the proposed use in the “Village Type Development” (“V”) zone. One comment from an individual provided views that there is no need of the proposed use in the area and the Site being located at the vehicular access of Tsung Yuen Ha Village is not suitable for the proposed use. The remaining comment from a member of the North District Council indicates no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services (local provision store) and associated filling of land for a period of three years at the Site zoned “AGR” on the OZP. The proposed 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/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 perspective as the Site possesses potential for agricultural rehabilitation. Notwithstanding the above, the applicants advise that the proposed use is intended to serve the nearby villagers and cross-boundary travellers. Taking into account the planning assessments below, there is no objection to the proposed use and associated filling of land on a temporary basis of three years.
- 11.2 The application involves regularisation of filling of land with concrete of about 0.15m in depth at the entire Site for site formation. Filling of land within “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North of Drainage Services Department and Director of Environmental Protection have no objection to the application from the public drainage and environmental perspectives respectively. As the Site is zoned “AGR”, an approval condition requiring the reinstatement of the Site upon expiry of the planning permission so as to uphold the planning intention of the “AGR” zone and restore greenery of the area is recommended should the Committee decide to approve the application.

- 11.3 The Site is located in an area of rural character comprising mainly car parks and vacant land. A bus terminus at Lin Ma Hang Road and HYW BCP are situated to the immediate west of the Site, while to the further southeast is the village cluster of Tsung Yuen Ha. The proposed use is considered not entirely incompatible with the surrounding areas. The Chief Town Planner/Urban Design and Landscape of Planning Department has no adverse comment on the application from the landscape planning perspective and considers that significant adverse impact on the landscape character and existing landscape resources within the Site arising from the proposed use is not anticipated.
- 11.4 Other relevant government departments consulted, including the Commissioner for Transport, Chief Engineer/Construction of Water Supplies Department and Director of Fire Services have no objection to or no adverse comment on the application. To address the technical requirements of concerned departments, relevant approval conditions are recommended in paragraph 12.2 below. Regarding DLO/N, LandsD's concern on the unauthorised structure erected within the Site and the illegal occupation of GL, the applicants will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.
- 11.5 Regarding the public comments on the application as detailed in paragraph 10, the 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 in paragraph 10 above, the Planning Department has no objection to the application.
- 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 three years until 20.6.2028. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) 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 20.12.2025;
- (b) in relation to (a) 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 20.3.2026;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (d) the submission of a fire service installations 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 20.12.2025;
- (e) in relation to (d) above, the implementation of the fire service installations 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 20.3.2026;

- (f) if the above planning condition (c) 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;
- (g) if any of the above planning condition (a), (b), (d) or (e) 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
- (h) upon expiry of the planning permission, the reinstatement of the Site, including the removal of fill materials and hard-paving, and grassing of the Site to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The Recommended Advisory Clauses are 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 proposed use with associated filling of land 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 the planning intention, 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 the 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 applicants.

14. Attachments

Appendix I	Application Form with Attachment received on 27.1.2025
Appendix Ia	FI received on 24.2.2025
Appendix Ib	FI received on 24.4.2025
Appendix Ic	FI received on 14.5.2025
Appendix II	Government Departments' General Comments
Appendix III	Recommended Advisory Clauses
Appendix IV	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan

Plan A-3
Plan A-4

Aerial Photo
Site Photos

PLANNING DEPARTMENT
JUNE 2025