

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/85

<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)
<u>Land Status</u>	:	Old Schedule Agricultural Lot 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>Zonings</u>	:	“Agriculture” (“AGR”) (about 83.7%) and “Other Specified Uses” annotated “Amenity Area” (“OU(A)”) (about 16.3%)
<u>Application</u>	:	Temporary Shop and Services (Convenience Store, Selling of Construction Materials and Showroom for Koi) 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 temporary shop and services (convenience store, selling of construction materials and showroom for koi) and office for a period of 3 years. The Site falls within an area mainly zoned “AGR” with a 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 used for the applied use without any planning permission. The Site is the subject of 5 previous applications (No. A/NE-KTN/59, 65&162 and A/KTN/21&58). The last planning application No. A/KTN/58 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 lapsed on 4.5.2022 with all planning conditions complied with. The Site is currently used for the applied use without planning permission.
- 1.2 According to the applicant’s submission, the proposed development involves 4 structures (**Drawing A-1**) with building height of not more than 7m (1 to 2 storeys) and a total floor area of about 764m² for shops (including a convenience

store and a shop for selling construction materials), offices, showroom and rain shelter. There is also an uncovered showroom for koi.

- 1.3 The Site is accessible from Castle Peak Road – Kwu Tung. (**Plan A-2**). There are 1 loading/unloading bay for light goods vehicle and 1 private car parking space within the Site (**Drawing A-1**). The current application is slightly different from the previous planning permission No. A/KTN/58 in the proposed use, site layout, number of private car parking space and operation hours, which is from 9:00a.m. to 11:00p.m. daily under the current application. The proposed layout plan for the development is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 8.4.2022 (**Appendix I**)
 - (b) Further Information (FI) (1) of 2.5.2022[#] (**Appendix Ia**)
 - (c) FI (2) dated 9.6.2022 [#] (**Appendix Ib**)
[#]accepted and exempted from publication
- 1.5 On 20.5.2022, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer a decision on the application, upon the request of the applicant, to allow more time for the applicant to submit FI to address departmental comments. Upon receipt of the FI on 9.6.2022, the application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** as summarized below:

- (a) The Site is the subject of three planning permissions for similar uses for a period of 3 years with conditions. The proposed development is not a development on green site. All planning conditions imposed to the last planning permission A/KTN/58 have been complied with.
- (b) The Site is abutting Castle Peak Road – Kwu Tung Section and 100m away from Yin Kong Village which exists a demand for grocery and construction materials.
- (c) The proposed development in temporary nature would not jeopardize the planning intention of “AGR” and “OU(A)” zones.
- (d) The shop is selling construction materials including pvc pipes and small hardware accessories such as locks, without significant sized construction materials. The convenience store is selling canned drinks, grocery and alike.
- (e) The proposed development is compatible with the surrounding environment.
- (f) Insignificant drainage impact, environmental and noise impact, and minimal traffic impact are anticipated.

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

The applicant is the sole “current land owner” of the private land within the Site. Detailed information would be deposited at the meeting for Members’ inspection. For the portion of Government Land, the “Owner’s Consent/Notification” requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) is not applicable to the application.

4. **Background**

The Site is currently not subject to any active enforcement action.

5. **Previous Applications**

- 5.1 The Site involves 5 previous applications No. A/NE-KTN/59, 65 and 162 and No. A/KTN/21 and 58. Application details are summarized 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 both for a period of 12 months were rejected by the Committee on 11.9.1998 and 14.5.1999.
- 5.3 Applications No. A/NE-KTN/162 and A/KTN/21 both for temporary shop and services (real estate agency and showroom) and office for a period of 3 years were 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 and temporary use would not jeopardize the long-term planning intention. The last application No. A/KTN/58 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 was approved with conditions on 3.5.2019 on similar considerations. All planning conditions have been complied with. The planning permission was lapsed on 4.5.2022. Compared with the scheme in A/KTN/58, there are minor changes in the proposed use with a new convenience store, site layout and operation hours and increase in private car parking space.

6. **Similar Applications**

There is no similar applications within the “AGR” zone in the vicinity of the Site in the past 5 years.

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

7.1 The Site is:

- (a) Used for the applied use, shop, convenience store, office; and
- (b) accessible from Castle Peak Road – Kwu Tung.

7.2 The surrounding areas have the following characteristics:

- (a) to the north are vacant chicken sheds, domestic structures and some agricultural land;
- (b) to the west are open storage yards; to the further northwest is village settlements of Yin Kong Village and Long Valley Nature Park;
- (c) to the south is Castle Peak Road – Kwu Tung and Fanling Highway; and
- (d) to the east are a workshop, open storage yards and active agricultural land.

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 (ES) 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 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 in **Appendices III and IV** respectively.

9.2 The following government departments do not support/ have concern on / objection to the application.

Agriculture and Nature Conservation

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

- (a) the agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view; and
- (b) from nature conservation point of view, DAFC has no comment on the application.

Long Term Development

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

The Site partially falls within the study area of KTN New Development Area – Remaining Phase. According to the latest implementation programme of the project, it is aimed to commence the construction works for the Remaining Phase in 2024. Therefore, the period of the application should be ended on or before end 2023.

District Officer's Comments

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

- (a) The locals have been consulted. Two Indigenous Inhabitant Representative (IIRs) of Kam Tsin and one Resident Representative (RR) of Kam Tsin objected on the grounds that a canteen without license was operating at the Site before. The RR of Kwu Tung (South) also objected.
- (b) The Chairman of Sheung Shui District Rural Committee, the incumbent North District Councilor of the subject Constituency, the Chairman of Fung Shui Area Committee, the IIR and the RR of Yin Kong had no comment.

10. Public Comments Received During Statutory Publication Period (Appendix V)

10.1 The application was published for public inspection. During the statutory public inspection period, a total of 3 public comments (**Appendix V**) from individuals were received. 1 individual indicates no comment and 2 comments object to the application mainly for the following reasons:

- (a) Commercial activities in an area with many houses would cause pollution and increase fire risk, affecting the safety of villagers and quality of life.

- (b) The application is not in line with the planning intention of “AGR” zone. The previous application was a brownfield use and should not be given another 3-year term.

11. Planning Considerations and Assessments

- 11.1 The Site mainly falls within an area zoned “AGR” with a portion in “OU(A)” zone. 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. The applied use is not in line with the planning intention of the above zonings. DAFC does not support the applied use falling within the “AGR” zone as the Site has potential for agricultural rehabilitation for greenhouse, plant nursery, etc. Nevertheless, as the application is temporary in nature, it is considered that approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “AGR” zone. The Site partially falls within the area of the Remaining Phase of the KTN NDA Project, and the construction works for which is tentatively scheduled for commencement in 2024. Should the application be approved, an advisory clause stating that the Site may be resumed by the Government at any time during the planning approval period for the implementation of government project is recommended.
- 11.2 The applied use is 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 Concerned departments, including Director of Environmental Protection, Commissioner for Transport, Director of Fire Services, Director of Drainage Services and Chief Town Planner/Urban Design and Landscape of PlanD have no adverse comment on the application. The approval conditions recommended by concerned departments are in paragraphs 12.2 below. 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” to minimize the potential environmental impacts on the adjacent area.
- 11.4 The Site is the subject of 5 previous applications No. A/NE-KTN/59, 65 and 162 and A/KTN/21 and 58, of which 3 were approved by the Committee as stated in paragraph 5. The last application No. A/KTN/58 for temporary shop and services (selling of converted container and showrooms for koi, steel door and aluminum window) and office was approved on 3.5.2019 for a period of 3 years. All approval conditions have been complied with and the application lapsed on 4.5.2022. The current application is slightly different from the last application as stated in paragraph 5.3. Approval of the current application is generally in line with the previous decisions of the Committee.
- 11.5 There are 3 public comments as stated in paragraph 10, of which 2 object to the application. Relevant Government departments’ comments and planning considerations above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary shop and services (convenience store, selling of construction materials and showroom for koi) 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 three years until 29.7.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the existing drainage facilities on the application site should be properly maintained and rectified, if they are found inadequate/ineffective, at all times during the planning approval period;
- (b) the submission of a condition record of the existing drainage facilities within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 29.10.2022;
- (c) the submission of proposals for 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 29.1.2023;
- (d) the provision of 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 29.4.2023;
- (e) if planning condition (a) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (f) if any of the above planning conditions (b), (c) or (d) 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 IV**.

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

the applied use is not in line with the planning intention of "AGR", which is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. 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 with attachments received on 8.4.2022
Appendix Ia	FI dated 2.5.2022
Appendix Ib	FI dated 9.6.2022
Appendix II	Previous applications
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comments
Drawing A-1	Layout plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a to A-4b	Site photos

**PLANNING DEPARTMENT
JULY 2022**