

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/244

- Applicants** : Messrs. TO Tak Fai (a manager of Sam Wo Tong), YU Chau Ming, YU Chi Shing, YU Fuk Hau and Ms. SIN Oi Hing, all represented by Metro Planning & Development Company Limited
- Site** : Lots 360A S.A (Part), 360A RP (Part), 360B S.A (Part), 360B RP (Part), 360C S.A (Part), 360D S.A (Part) and 360D RP (Part) in D.D. 87, Ta Kwu Ling, New Territories
- Site Area** : About 1,917m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/18 (currently in force)

Draft Fu Tei Au and Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/17 (at the time of submission)
- Zoning** : “Agriculture” (“AGR”)

[No change to the “AGR” zone under the current OZP]
- Application** : Proposed Temporary Open Storage of Construction Materials for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicants seek planning permission for proposed temporary open storage of construction materials for a period of three years and associated filling of land at the application site (the Site). The Site falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the 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 currently fenced off, largely hard-paved and generally vacant with some temporary structures.
- 1.2 The Site is accessible by a local road leading to Kong Nga Po Road (**Plan A-1**). According to the submission, the proposed use consists of two temporary structures, with one single-storey structure of not exceeding 5m in height with a total floor area of not exceeding 230m² for storage use, and one two-storey structure of not exceeding 6m in height with a total floor area of not exceeding 50m² for site office. One loading/unloading

bay (L/UL) space (7m x 3.5m) for light goods vehicles (LGVs) is proposed within the Site. The remaining uncovered area is mainly for open storage of construction materials as well as circulation space for LGVs. The operation hours of the proposed use are between 9:00 a.m. and 7:00 p.m. from Mondays to Fridays including public holidays. The layout plan submitted by the applicants is shown in **Drawing A-1**.

- 1.3 According to the applicants, a 7.3m-wide ingress/egress is proposed at the south of the Site and sufficient space will be provided within the Site for manoeuvring of vehicles. To ensure pedestrian safety, various traffic management measures, including erection of signboards outside the Site, and flashing light and inward doorways at the ingress/egress of the Site, would be implemented. A staff will be deployed to instruct the LGV entering the Site and to ensure that there is no queuing/parking of vehicles outside the Site.
- 1.4 The applicants also applies for regularisation of land filling of the entire site with concrete by about 0.2m in depth for site formation purpose (**Drawing A-2**). A drainage proposal (**Drawing A-3**), with the provision of U-channels and catchpits at the Site, is submitted by the applicants in support of the application. A 3m clearance will be provided from the existing natural watercourse to the north of the Site, along with a 375mm stepped U-channel for discharging the site surface runoff to the existing natural watercourse to the north of the Site. A 10cm gap will be reserved at the toe of site hoarding to allow for unobstructed flow of surface runoff.
- 1.5 In support of the application, the applicants have submitted the following documents:
 - (a) Application Form with attachments received on 27.3.2024 (**Appendix I**)
 - (b) Further Information (FI) received on 19.7.2024* (**Appendix 1a**)
 - (c) FI received on 15.10.2024* (**Appendix Ib**)

** accepted and exempted from publication and recounting requirements*

- 1.6 On 24.5.2024 and 8.9.2024, the Rural and New Town Planning Committee (the Committee) of the Board decided to defer making a decision on the application as requested by the applicants for two months each to address departmental comments.

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 **Appendices I to Ib**, as summarised below:

- (a) there is insufficient supply to meet the urgent demand for open storage and warehouse space in Ta Kwu Ling;
- (b) the Site falls within Category 2 areas under the Town Planning Board Guidelines No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13G), which is considered suitable for open storage and port back-up uses;
- (c) the Site is in close proximity to other open storage yards. The proposed use is considered not incompatible with the surrounding areas which are intermixed with open storage yards and warehouses; and

- (d) no significant adverse impacts in terms of environmental, traffic, noise, etc. are anticipated.

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

The applicants are the sole “current land owner” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

TPB PG-No. 13G promulgated on 14.4.2023 is relevant to this application. The Site falls within Category 2 areas under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site was the subject of a planning enforcement case (No. E/NE-FTA/201) against an unauthorised development (UD) involving storage use (including deposit of containers) (**Plan A-2**). An Enforcement Notice was issued on 29.11.2023. Subsequent site inspection revealed that the UD has been discontinued. The Compliance Notice was issued on 16.5.2024.

6. Previous Applications

- 6.1 The Site is the subject of two previous applications (No. A/NE-FTA/195 and 205) for temporary warehouse and open storage of containers and temporary animal boarding establishment (dog kennel) respectively both for a period of three years.
- 6.2 Application No. A/NE-FTA/195 was rejected by the Committee on 6.3.2020 for the reasons that the proposed use was not in line with the planning intention of the “AGR” zone; being failed to demonstrate that the proposed use would not induce traffic impacts on the surrounding areas; setting an undesirable precedent for similar application within the “AGR” zone; and not complying with Town Planning Board Guidelines No. 13E in that the site fell within Category 3 areas.
- 6.3 The other application No. A/NE-FTA/205 was approved by the Committee on 27.8.2021. The planning permission was subsequently revoked on 27.2.2023 due to non-compliance with approval conditions. As the application was for a different use, the considerations are not relevant to the current application.
- 6.4 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 There were two similar applications (No. A/NE-FTA/246 and 251) for temporary open storage within the same “AGR” zone in the vicinity of the Site in the past five years. Both applications were approved by the Committee in October 2024 mainly on the grounds that no major adverse departmental comments were received on the applications; the

concerns of the relevant government departments could be addressed through implementation of approval conditions; and complying with TPB PG-No. 13G.

- 7.2 Details of the similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

8. 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)

- 8.1 The Site is:

- (a) fenced off, largely hard-paved and generally vacant with some temporary structures;
- (b) located to the immediate east of a temporary warehouse (excluding dangerous goods godown) with ancillary facilities with associated filling of land with a valid planning permission under application No. A/NE-FTA/253; and
- (c) accessible by a local road leading to Kong Nga Po Road.

- 8.2 The surrounding areas are of rural character intermixed with pigsties, temporary structures, warehouses, storage yards, and vegetated land. There is a watercourse to the north of the Site and further north across the watercourse is a site for proposed temporary open storage of construction material and machinery with associated filling of land with a valid planning permission under application No. A/NE-FTA/246.

9. Planning Intention

- 9.1 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.
- 9.2 According to the Explanatory Statement of the OZP for “AGR” zone, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government department as set out in paragraph 10.2 below, other government 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 V and VI** respectively.
- 10.2 The following government departments do not support/have concern to the application.

Land Administration

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

- (a) the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via Government land (GL) is granted to the Site;
- (b) the applicants mentioned in the FI that the GL has been excluded from the revised proposal but no photo records on cessation of illegal occupation of GL has been provided. The applicants should not be encouraged to graphically exclude the illegal occupation of GL in his submission;
- (c) the following irregularity covered by the subject planning application have been detected by her office:

- (i) unauthorised structures within the said private lots covered by the planning application

LandsD has reservation on the planning application since there are unauthorised structures on the private lots which are already subject to lease enforcement actions according to case priority. The lot owners should rectify the lease breaches as demanded by LandsD;

- (d) the following irregularities not covered by the subject planning application have been detected by her office:

- (i) unauthorised structures within/extended from the said private lots not covered by the planning application

there are unauthorised structures within and extended from the said private lots not covered by the subject planning application. The lot owner should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

- (ii) unlawful occupation of GL not covered by the planning application

the GL adjoining the said private lots has been fenced off/illegally occupied with unauthorised structures without permission. Any occupation of GL without Government's prior approval is an offence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28). Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

- (e) the lot owners shall either remove the unauthorised structures and cease the illegal occupation of the GL immediately, or include the unauthorised structures in the subject planning application for the further consideration by the relevant departments and subject to the approval of the Board to the planning application which shall have reflected the rectification of amendment as aforesaid required, apply to her office for Short Term Waiver (STW) to permit the structures erected/to be erected. The application of 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 subject to such terms and conditions including the

payment of waiver fee 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 section for any unlawful occupation or GL. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered;

- (f) unless and until the unauthorised structures and the unlawful occupation of GL are duly rectified by the lot owner or entirely included in the subject planning application, her office has objection to the application and it must be brought to the attention of the Board when the application is being considered; and
- (g) the applicants should comply with all the land filling requirements imposed by relevant government departments. GL should not be disturbed unless with prior approval.

Agriculture

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

- (a) as the Site possesses potential for agricultural rehabilitation, the proposed use is not supported from agricultural perspective;
- (b) the Site falls within the “AGR” zone and is generally occupied by some structures; and
- (c) 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 open-field cultivation, greenhouses, plant nurseries, etc.

Landscape

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

- (a) with reference to site photos, the Site is fenced off and hard paved with some temporary structures. Significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated; and
- (b) based on the aerial photos of 2022 and 2023, the Site is located in an area of miscellaneous rural fringe landscapes landscape character comprising of temporary structures, vehicle parking, vegetated areas, cluster of trees and woodlands to the further east within the “Green Belt” (“GB”) zone. There is a concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone.

11. Public Comments Received During Statutory Publication Period

On 9.4.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix VII**). One comment from an individual objects to the application mainly on the grounds of not being in line with the planning intention of the “AGR” zone; and being the subject of a previously revoked application due to non-compliance of approval conditions. The remaining one from a member of the North District Council indicates no comment on the application.

12. Planning Considerations and Assessments

12.1 The application is for proposed temporary open storage of construction materials for a period of three years and associated filling of land. 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 agricultural perspective as the Site possesses potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.

12.2 The applicants also applied for regularisation of land filling of the entire site with a depth of about 0.2m. Filling of land within “AGR” zone requires planning permission 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 (CE/MN, DSD) has no objection to the application from the public drainage viewpoint, while DEP has no objection to the filling of land from environmental perspective. Should the application be approved, approval conditions requiring the applicants to provide drainage facilities and reinstate the Site to an amenity area are recommended in paragraph 13.2 below.

12.3 The Site falls within Category 2 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of three years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

12.4 The Site is largely hard-paved and generally vacant with some temporary structures. The surrounding areas are of rural character intermixed with pigsties, temporary structures, warehouses, storage yards, and vegetated land. To its immediate north is a watercourse. While CTP/UD&L, PlanD considers that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone, she considers that significant adverse impact on the existing landscape resources within the Site is not anticipated.

12.5 The Site is accessible by a local road leading to Kong Nga Po Road. The Commissioner for Transport (C for T) has no comment on the application from traffic engineering perspective. Other relevant departments consulted, including the Director of Fire Services, the Director of Environmental Protection and the Chief Engineer/Construction,

Water Supplies Department, have no objection to or no adverse comment on the application. Regarding DLO/N, LandsD's concern on the unauthorised structures erected within and outside 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.

- 12.6 The application generally complies with the TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments can be address through implementation of approval conditions.
- 12.7 The Site is the subject of a previous application (No. A/NE-FTA/195) for temporary warehouse and open storage of containers, which was rejected by the Committee on 6.3.2020 mainly for the reasons that the site fell within Category 3 areas under the then TPB PG-No. 13E and there was adverse departmental comment. Nevertheless, since the subject "AGR" zone was reclassified as Category 2 under TPB PG-No. 13G, there were two similar applications (No. A/NE-FTA/246 and 251) for temporary open storage approved by the Committee in 2024 in the close vicinity mainly on the grounds that they generally complied with TPB PG-No. 13G. The planning circumstances of the current application are similar to those of the approved applications. As such, approval of the subject application is generally in line with the Committee's previous decisions.
- 12.8 Regarding the adverse public comments mentioned in paragraph 11, the government departments' comments and the planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11 above, the Planning Department considers that the proposed use could be tolerated for a period of three years.
- 13.2 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 6.12.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) the submission of a revised 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 6.6.2025;
- (b) in relation to (a) above, the implementation of the 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 6.9.2025;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (d) the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.1.2025;

- (e) 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 6.6.2025;
- (f) in relation to (e) 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 6.9.2025;
- (g) 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;
- (h) if any of the above planning condition (a), (b), (d), (e) or (f) 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
- (i) upon 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.

13.3 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 and 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.

Advisory Clauses

The recommended advisory clauses are at **Appendix VI**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to 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.
- 14.3 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.

15. Attachments

Appendix I	Application Form with attachments received on 27.3.2024
Appendix Ia	FI received on 19.7.2024
Appendix Ib	FI received on 15.10.2024

Appendix II	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comments
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Land Filling Plan
Drawing A-3	Proposed 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

PLANNING DEPARTMENT
DECEMBER 2024