

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-FTA/246**

<b><u>Applicant</u></b>	: Able New Development Limited represented by R-riches Property Consultants Limited
<b><u>Site</u></b>	: Lots 357 (Part) and 359 (Part) in D.D. 87, Hung Lung Hang, New Territories
<b><u>Site Area</u></b>	: 3,110m <sup>2</sup> (about)
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Fu Tei Au & Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/18
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: Proposed Temporary Open Storage of Construction Material and Machinery for a Period of Three Years and Associated Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary open storage of construction material and machinery for a period of three years and associated filling of land at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the OZP. 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). Filling of land within the “AGR” zone also requires planning permission from the Board. The Site is vacant, partly hard-paved and partly covered with grass (**Plan A-4**).
- 1.2 The Site is accessible from its west via a local track leading to Kong Nga Po Road (**Plan A-1**). According to the submission, about 1,698m<sup>2</sup> (about 55%) of the Site is proposed for open storage of construction material and machinery. The proposal also consists of a single-storey temporary structure for storage of construction material and machinery, site office and washroom uses, which has a floor area of about 216m<sup>2</sup> and a building height of about 5m. Two private car parking spaces and one loading/unloading space for medium goods vehicles are proposed within the Site. A solid metal fence wall of 2.5m high will be erected along the site boundary. A 6m-wide vehicular access is proposed at the western boundary of the Site. Various traffic management measures, including deployment of on-site management staff and installation of traffic signs to ensure pedestrian safety, are proposed. Sufficient manoeuvring space will also be provided within the Site and no queuing of vehicle on the public road will be allowed. The operation hours are from 8:00 a.m. to 7:00 p.m. from Mondays to Saturdays, with no

operation on Sundays and public holidays. The layout plan submitted by the applicant is shown in **Drawing A-1**.

- 1.3 The applicant also applies for filling of land of the entire site with concrete by about 0.2m in depth for site formation purpose. A drainage proposal (**Appendix Ib**), with provision of catchpits at the Site and U-channels along the site boundaries, is submitted by the applicant in support of the application. In addition, the proposed works will be at least 3m away from the top of the bank of the existing streamcourse to the east and south of the Site (**Drawing A-1**). The drainage plan submitted by the applicant is shown in **Drawing A-2**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 18.6.2024 (**Appendix I**)
  - (b) Further Information (FI) received on 23.7.2024\* (**Appendix Ia**)
  - (c) FI received on 2.9.2024^ (**Appendix Ib**)

*\* accepted and exempted from publication and recounting requirements*

*^ accepted but not exempted from publication and recounting requirements*

- 1.5 On 16.8.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's request to defer making a decision on the application for two months to address departmental comments.

## **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 summarised below:

- (a) the proposed use is to support the construction industry for developments in the New Territories;
- (b) the application, which is only on a temporary basis, would better utilise land resources and not frustrate the long-term planning intention the "AGR" zone;
- (c) 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;
- (d) the proposed use is considered not incompatible with the surrounding areas which are intermixed with open storage yards and warehouses;
- (e) the applicant will strictly comply with all environmental protection/pollution control ordinances at all times during the planning approval period; and follow relevant mitigation measures and requirements in the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (COP) issued by the Environmental Protection Department (EPD) to minimise adverse environmental impacts and nuisance to the surrounding area; and
- (f) adequate mitigation measures will be provided, i.e. submission of drainage, traffic management and fire service installations proposals, and no significant nuisance to the surrounding areas will be created.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in 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) by posting site notice and sending a notice to Sheung Shui District Rural Committee. 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 is not subject to any active planning enforcement action.

### **6. Previous Application**

The Site is not the subject of any previous application.

### **7. Similar Applications**

- 7.1 There were two similar applications (No. A/NE-FTA/195 and 251) for temporary open storage use within the same “AGR” zone in the vicinity of the Site in the past five years (**Plan A-1**). Application No. A/NE-FTA/195 was rejected by the Committee on 6.3.2020 mainly for reasons of not complying with the then TPB PG-No. 13E in that the site fell within Category 3 areas and no previous planning approval was granted to the site; there were adverse departmental comments and local objections on the application; and failure to demonstrate that the development would not generate adverse traffic impact on the surrounding areas.
- 7.2 Application No. A/NE-FTA/251 was approved with conditions by the Committee on 4.10.2024 after the relevant site was reclassified from Category 3 to Category 2 under TPB PG-No. 13G. It generally complied with TPB PG-No. 13G in that no major adverse departmental comments were received on the applications; and the concerns of the relevant government departments could be addressed through implementation of approval conditions.
- 7.3 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

## **8. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

8.1 The Site is:

- (a) vacant, partly hard-paved and partly covered with grass; and
- (b) accessible via a local track to its west leading to Kong Nga Po Road.

8.2 The surrounding areas are intermixed with warehouses, open storages yards (the one to the immediate west is subject to an approved application No. A/NE-FTA/251), a pigsty, fallow agricultural land, vacant land and tree clusters. There is a watercourse adjoining the eastern and southern boundaries of the Site.

## **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 departments as set out in paragraph 10.2 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 IV** and **V** respectively.

10.2 The following government departments do not support or have concern on 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 Lot 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) her office notes that there were construction materials and unauthorised structure on site. The applicant should provide survey report prepared by Authorized Land Surveyor and clear site photos to prove his declaration that the Site is vacant without unauthorised structure erected and no operation has been conducted;

- (c) the following irregularity covered by the subject planning application has been detected by her office:
  - (i) Unauthorised structure within the Lot No. 357 in D.D. 87 covered by the planning application

there are unauthorised structures on Lot No. 357 in D.D. 87. 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;
- (d) the following irregularity not covered by the subject planning application have been detected by her office:
  - (i) Unlawful occupation of GL not covered by the planning application

the GL adjoining the Site has been illegally occupied by unauthorised structures without permission. Any occupation of GL without Government's prior approval is an offence under 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/applicant shall remove the unauthorised structure and cease the illegal occupation of the GL not covered by the subject planning application immediately; and subject to the approval of the Board to the planning application which shall have reflected the rectification as aforesaid required, apply to her office for Short Term Waiver (STW) to permit the structures 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 subject to such terms and conditions including the payment of back-dated waiver fee from the first date the unauthorised structures were 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/applicant 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 structures will be considered;
- (f) unless and until all the unauthorised structures and the unlawful occupation of GL (which regularisation could not be considered according to prevailing policy) are duly rectified by the lot owners/applicant or entirely included in the subject 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 applicant should comply with all land filling requirements imposed by relevant Government departments. GL should not be disturbed unless with prior approval.

### **Agriculture and Nature Conservation**

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

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation;
- (b) 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 and plant nurseries, etc.; and
- (c) according to the aerial photo, the eastern portion of the Site (i.e. Lot 359 in D.D. 87) is covered with vegetation and adjacent to a semi-natural watercourse, while the northern portion of the Site is largely paved. Having reviewed the FI submitted by the applicant, he has no further comment on the application from nature conservation perspective.

### **Environment**

#### 10.2.3 Comments of the Director of Environmental Protection (DEP):

- (a) does not support the application as there are sensitive users in the vicinity of the Site (the nearest domestic structure being about 80m away) (**Plan A-2**), and environmental nuisance is expected as the proposed use involves use of heavy vehicles;
- (b) no comment on the filling of land from environmental planning perspective;
- (c) no substantiated environmental complaint pertaining to the Site received in the past three years; and
- (d) should the application be approved, the applicant is advised to follow the latest COP.

### **Landscape**

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

- (a) with reference to the site photos, the Site is partly hard-paved and partly covered by wild grasses and self-seeded vegetation. 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 photo of 2023, the Site is located in an area of miscellaneous rural fringe landscapes landscape character comprising temporary structures, vegetated areas, cluster of trees and woodlands to the further west and east within the “Green Belt” zone. There is 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 Periods**

On 25.6.2024 and 13.9.2024, the application was published for public inspection. During the statutory public inspection periods, five public comments were received (**Appendix VI**). Three comments from the Kadoorie Farm and Botanic Garden Corporation and an individual object to the application on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; the Site is not the subject of any previous planning approval; the proposed use will induce adverse drainage and environmental impacts on the watercourse nearby; brownfield should not be extended to the “AGR” zone; and the Board should investigate whether the Site is the subject of an active enforcement case. A Member of 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 material and machinery for a period of three years and associated filling of land 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 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 proposed use involves land filling of the entire site with concrete by about 0.2m in depth. Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, the Chief Engineer/Mainland North of Drainage Services Department has no objection to the application from public drainage perspective, while DEP has no particular comment on the land filling. Should the application be approved, approval conditions requiring the applicant to implement the drainage proposal 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 vacant, partly hard-paved and partly covered by grass. The proposed use is considered not entirely incompatible with the surrounding land uses intermixed with warehouses, open storages yards, a pigsty, fallow agricultural land, vacant land and tree clusters. While CTP/UD&L, PlanD concerns 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 via a local track leading to Nga Po Road. The Commissioner for Transport has no comment on the application from traffic engineering perspective. DEP does not support the application as the proposed use involves the use of heavy vehicles and environmental nuisance on the sensitive receivers (i.e. domestic structures) in the vicinity of the Site is expected (**Plan A-2**). In this regard, the applicant will be advised to follow the COP to minimise the possible environmental impacts on the surrounding areas. Other relevant departments consulted, including the Director of Fire Services, have no objection to or no adverse comment on the application. In response to DLO/N, LandsD's comments regarding the presence of unauthorised structures within the Site and unlawful occupation of GL, the applicant undertakes that application for STW for the proposed structure will be submitted should the application be approved by the Committee and no GL will be involved. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 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 addressed through implementation of approval conditions.
- 12.7 There was a similar application (No. A/NE-FTA/251) for temporary open storage use approved by the Committee on 4.10.2024 to the immediate west of the Site as mentioned in paragraph 7.2 above. Regarding the rejected similar application (No. A/NE-FTA/195), it fell within Category 3 areas under the then TPB PG No. 13E and the applicant failed to demonstrate no adverse traffic impact from the proposed use. Since the Site now falls within Category 2 areas under TPB PG-No. 13G as stated in paragraph 12.3 above, the planning circumstances of the current application are similar to those of the approved application. As such, approval of the current application is generally in line with the Committee's previous decision.
- 12.8 Regarding the adverse public comments mentioned in paragraph 11 above, the government department's comments and the planning assessment 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 mentioned 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 25.10.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

#### Approval Conditions

- (a) the implementation of the accepted 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 25.7.2025;
- (b) in relation to (a) above, the implemented drainage facilities should be maintained at all times during the planning approval period;



- (c) the implementation of the traffic management measures, as proposed by the applicant, within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 25.7.2025;
- (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 6.12.2024;
- (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 25.4.2025;
- (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 25.7.2025;
- (g) if the above planning condition (b) 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), (c), (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.

#### Advisory Clauses

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

- 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 justification in the submission for a departure from such planning intention, even on a temporary basis.

## **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 applicant.

**15. Attachments**

<b>Appendix I</b>	Application Form with attachment received on 18.6.2024
<b>Appendix Ia</b>	FI received on 23.7.2024
<b>Appendix Ib</b>	FI received on 2.9.2024
<b>Appendix II</b>	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
<b>Appendix III</b>	Similar s.16 Applications for Temporary Open Storage within the “AGR” zone in the vicinity of the Site in the Fu Tei Au and Sha Ling Area
<b>Appendix IV</b>	Government Departments’ General Comments
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Appendix VI</b>	Public Comments
<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Drainage Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
OCTOBER 2024**