

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-FTA/256

<u>Applicant</u>	:	M&D Development (Hong Kong) Co., Ltd. represented by M&D Planning and Construction Consultant Limited
<u>Site</u>	:	Lots 140 (Part) and 142 (Part) in D.D. 52 and Adjoining Government Land (GL), Fu Tei Au, Sheung Shui, New Territories
<u>Site Area</u>	:	About 2,170m ² (including GL of about 136m ² , or 6.3% of the Site)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Fu Tei Au & Sha Ling Outline Zoning Plan (OZP) No. S/NE-FTA/18
<u>Zoning</u>	:	“Other Specified Uses” annotated “Port Back-up Uses” (“OU(PBU)”)
<u>Application</u>	:	Proposed Temporary Container Storage and Repair Yard with Ancillary Office for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary container storage and repair yard with ancillary office for a period of three years at the application site (the Site), which falls within an area zoned “OU(PBU)” on the OZP (**Plan A-1**). According to the Notes of the OZP, ‘Container Storage/Repair Yard’ is a Column 2 use within the “OU(PBU)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is hard-paved, fence-off and currently partly occupied by containers and construction materials without valid planning permission (**Plans A-4a to A-4c**).
- 1.2 The Site is accessible from Man Kam To Road via a local access (**Plans A-1 and A-2**). According to the applicant, the proposed use involves four single-storey temporary structures with building heights (BHs) ranging from 2.6m to 5m and a total floor area of about 135m² for container vehicle repair yard, office, storeroom, traffic control room and portable toilet use. The uncovered area of the Site would be used for storage of containers and vehicular maneuvering space. Five parking spaces including two for private cars (5m (L) x 2.5m (W)) and three for container vehicles (11m (L) x 3.5m (W)) are provided within the Site. The operations hours of the proposed use are between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. Traffic

management measures, including (i) deployment of staff to manage the traffic entering/exiting the Site; and (ii) provision of traffic signage at a prominent location of the Site are proposed to ensure the traffic and pedestrian safety. The layout plan submitted by the applicant is in **Drawing A-1**.

- 1.3 Part of the Site or the Site is the subject of two previous applications (No. A/NE-FTA/143 and 209) for temporary open storage and port back-up use respectively as detailed in paragraph 6 below. The last application (No. A/NE-FTA/209) submitted by a different applicant for the same use as the current application was approved with the conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 1.4.2022, whilst its planning permission was revoked on 1.10.2023 due to non-compliance with approval conditions. A comparison of the major development parameters of the current application and the last approved application is summarised as follows:

Major Development Parameters	Approved Scheme under Application No. A/NE-FTA/209 (a)	Proposed Scheme under Current Application (b)	Differences (b) – (a)
Site Area	About 2,170m ²	About 2,170m ²	No change
No. of Structures	6	4	-2
Total Floor Area	423m ²	134m ²	-289m ²
BH	2.6m to 5m, one storey	2.6m to 5m, one storey	No change
Parking Space for Private Cars	2	2	No change
Parking Space for Container Vehicles	3	3	No change

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

- (a) Application Form with attachments received on 15.10.2024 (**Appendix I**)
- (b) Supplementary Information (SI) received on 18.10.2024 (**Appendix Ia**)
- (c) Further Information (FI) received on 18.11.2024[^] (**Appendix Ib**)
- (d) FI received on 26.11.2024[^] (**Appendix Ic**)
- (e) FI received on 28.11.2024[^] (**Appendix Id**)

[^] accepted and exempted from the publication and recounting requirements

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form, SI and FIs at **Appendices I to Id** as summarised below:

- (a) the proposed use is to provide container inspection/repairing services on-site, which is considered in line with the planning intention of the “OU(PBU)” zone. It could fully utilise the land resources and create employment opportunities for port-back up sector;
- (b) the Site entirely falls within the Category 1 areas under the Town Planning Board Guidelines on ‘Application for Open Storage and Port Back-up Uses’ (TPB PG-No.

13G). Besides, the Site is the subject of a previously approved application No A/NE-FTA/209 for the same use;

- (c) the proposed use is not incompatible with the surrounding areas, and would not induce adverse traffic, landscape and drainage impacts on the surrounding areas. Besides, the applicant will impose relevant traffic management measures to ensure traffic and pedestrian safety; and
- (d) the applicant, being the new tenant of the Site, has undertaken to comply with all of the approval conditions imposed should the application be approved.

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. For the GL within the Site, TPB PG-No. 31B is not applicable to the application.

4. Town Planning Board Guidelines

TPB PG-No. 13G promulgated on 14.4.2023 is relevant to this application. The Site falls within Category 1 areas under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

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

6. Previous Applications

- 6.1 Part of the Site or the Site is the subject of two previous applications (No. A/NE-FTA/143 and 209) submitted by two different applicants respectively. Application No. A/NE-FTA/143, with a smaller site area covering the northern part of the Site, for proposed temporary open storage of construction machinery and construction materials for a period of three years was approved with conditions by the Committee on 17.10.2014 mainly on considerations that the proposed use was generally in line with the planning intention of the “OU(PBU)” zone; it was not incompatible with the surrounding areas; and it generally complied with the then TPB PG-No.13E in that there were no major adverse departmental comments or concerns of the relevant government departments could be addressed through implementation of approval conditions.
- 6.2 The last application (No. A/NE-FTA/209) for the same use as the current application was approved with conditions by the Committee on 1.4.2022 mainly on considerations the proposed use was generally in line with the planning

intention of the “OU(PBU)” zone; it was not incompatible with the surrounding areas; and the proposed use generally complied with the then TPB PG-No.13F in that there were no major adverse departmental comments or concerns of the relevant government departments or concerns of the relevant government departments could be addressed through implementation of approval conditions. However, the planning permission was revoked on 1.10.2023 due to the non-compliance with approval conditions in relation to the submission and/or implementation of drainage, fire services installations and traffic management proposals. Compared with the last approved application, the current application mainly involves a revision of the proposed layout with the corresponding changes in major development parameters as detailed in paragraph 1.3 above.

- 6.3 Details of the applications are summarised at **Appendix III** and their location are shown on **Plan A-1**.

7. Similar Application

There is no similar application within the same “OU(PBU)” zone.

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

- 8.1 The Site is:

- (a) hard-paved, fence-off and currently partly occupied by containers and construction materials without valid planning permission; and
- (b) accessible from Man Kam To Road via a local access.

- 8.2 The surrounding areas are of rural character mainly intermixed with open storage yards, workshops, fallow/active agricultural land, vacant land/unused land covered with tree groups and vegetation, some temporary domestic structures and a temple.

9. Planning Intention

The planning intention of “OU(PBU)” is primarily for accommodating the anticipated increasing cross-boundary freight traffic, especially the parking of container vehicles, including container trailers and tractors, and other port back-up uses.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraphs 10.2 and 10.3, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and recommended advisory clauses are provided at **Appendices IV** and **V** respectively.

10.2 The following government departments object to/do not support 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 GL;
- (b) the following irregularities covered by the application have been detected:

Unauthorised structures within the said private lots covered by the application

there are unauthorised structures on the private lots. The lot owner should immediately rectify/regularise the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice; and

Unlawful occupation of GL adjoining the said private lots covered by the application

the GL within the Site (about 136m²) has been fenced off and illegally occupied without any 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;

- (c) the following irregularities not covered by the application have been detected:

Unauthorised structures within the said private lots not covered by the application

there is an unauthorised structure encroaching to Lot. 140 in D.D. 52 which is not covered by the application (i.e. outside the Site). The lot owners should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice; and

Unlawful occupation of Government land not covered by the application

the GL adjoining the Site has been fenced off and illegally occupied without permission. The GL being illegally occupied is not included in the application. 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;

- (d) the lot owners shall either (i) remove the unauthorised structures and cease the illegal occupation of the GL not covered by the application immediately; or (ii) include the unauthorised structures and the adjoining GL being illegally occupied in the application for the further consideration by the relevant departments and, subject to the approval of the Board to the application which shall have reflected the rectification or amendment as aforesaid required, apply to her office for Short Term Waiver (STW) and Short Term Tenancy (STT) to permit the structures erected/to be erected and the occupation of the GL. The applications for STW and STT will be considered by the Government in its capacity as a landlord and there is no guarantee that they will be approved. The STW and STT, if approved, will be on whole lot basis and subject to such terms and conditions including the payment of backdated waiver fee/rent from the first date of when the unauthorised structures were erected and the GL was occupied as well as 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 will be considered; and
- (e) unless and until the unauthorised structures and the unlawful occupation of GL are duly rectified by the lot owners 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 considering the application.

Environment

10.2.2 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 20m away) (**Plan A-2**), and environmental nuisance is expected as the proposed use involves use of heavy vehicles (i.e. container vehicles);
- (b) there is no substantiated environmental complaint case related to the Site in the past three years; and
- (c) should the application be approved, the applicant is advised to follow the revised 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (COP) and the Environmental Protection Department's

Practice Note for Professional Person (ProPECC) PN 2/23
“Construction Site Drainage”.

- 10.3 The following government department has conveyed local views on the application:

Local Views

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

a member of North District Council (NDC) objects to the application mainly on the grounds that the proposed use at the Site would result in adverse traffic, environmental and drainage impacts as well as slope safety issue on the surrounding areas (**Appendix IVa**).

11. Public Comment Received During Statutory Publication Period

On 22.10.2024, the application was published for public inspection. During the statutory public inspection period, one public comment was received from a member of NDC indicating no comment on the application (**Appendix VI**).

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary container storage and repair yard with ancillary office for a period of three years at the Site zoned “OU(PBU)” (**Plan A-I**). The proposed use is considered generally in line with the planning intention of the “OU(PBU)” zone which is primarily for accommodating the anticipated increasing cross-boundary freight traffic, especially the parking of container vehicles, including container trailers and tractors, and other port back-up uses.
- 12.2 The Site, being accessible from Man Kam To Road via a local access, is situated in an area of rural character mainly intermixed with open storage yards, workshops, fallow/active agricultural land, vacant land/unused land covered with tree groups and vegetation, some temporary domestic structures and a temple. The proposed use is considered not incompatible with the surrounding land uses.
- 12.3 The Site falls within the Category 1 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:

Category 1 areas: considered suitable for open storage and port-backup uses. Favourable consideration will normally be given to applications within these areas, subject to no major 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 should be submitted if the proposed uses may cause significant environmental and traffic concerns.

- 12.4 The Commissioner for Transport has no comment on the application from traffic engineering perspective. Whilst 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, there was no substantiated environmental complaint case concerning the Site received by DEP in the past three years. Besides, the operation of the proposed use is also subject to the relevant pollution control ordinances. The applicant will be advised to follow the COP to minimise possible environmental nuisances generated by the proposed use should the application be approved. Other relevant departments consulted, including the Chief Engineer/Mainland North of Drainage Services Department and Director of Fire Services have no objection to or no adverse comment on the application. Regarding DLO/N, LandsD's concern on the unauthorised structure erected within and outside the Site and the illegal occupation of GL, the applicant will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.

- 12.5 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 relevant departments can be addressed through implementation of approval conditions. To address the technical requirements of concerned departments, appropriate approval conditions are recommended in paragraph 13.2 below.
- 12.6 The Site is the subject of two previously approved applications (No. A/NE-FTA/143 and 209) for open storage and port back-up use respectively as detailed in paragraph 6 above. The last approved application (No. A/NE-FTA/209) was submitted by a different applicant for the same use. Despite a revision of the proposed layout with the corresponding changes in major development parameters as detailed in paragraph 1.3 above, the planning circumstances of the current application are similar to that of the last approved application. As such, approval of the current application is generally in line with the Committee's previous decisions.
- 12.7 Regarding the local views as conveyed by DO(N), HAD in paragraph 10.3.1 above, 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 11 and having taken into account the local views as conveyed by DO(N), HAD in paragraph 10.3.1 above, the Planning Department has no objection to the application.
- 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 (b) above, the implementation of the revised 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 6.9.2025;
- (c) in relation to (c) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the submission of a revised 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;
- (e) in relation to (d) above, the implementation of the revised 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;
- (f) 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 6.9.2025;
- (g) in relation to (f) above, the implemented traffic management measures shall be maintained at all times during the planning approval period;
- (h) if any of the above planning condition (c) and (g) 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
- (i) 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.

Advisory Clauses

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

13.3 There is no strong reason to recommend rejection to the application.

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

Appendix I	Application Form with Attachments received on 15.10.2024
Appendix Ia	SI received on 18.10.2024
Appendix Ib	FI received on 18.11.2024
Appendix Ic	FI received on 26.11.2024
Appendix Id	FI received on 28.11.2024
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Previous Applications
Appendix IV	Government Departments' General Comments
Appendix IVa	Local Comment conveyed by HAD
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comment
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2024**