

RNTPC Paper No. A/NE-MKT/25A
For Consideration by the
Rural and New Town Planning
Committee on 8.9.2023

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/25

- Applicant** : Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lot 664 S.A in D.D. 90, Lin Ma Hang Road, Man Kam To, New Territories
- Site Area** : About 2,040m²
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Open Storage and Warehouse for Storage of Construction Materials for a Period of Three Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary open storage and warehouse for storage of construction materials for a period of three years and filling of land at the application site (the Site), which falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP for the “AGR” zone, temporary use or development of any land or buildings not exceeding a period of three years, and filling of land require planning permission from the Town Planning Board (the Board). The Site is hard-paved, fenced off and currently used for the applied uses without valid planning permission.
- 1.2 The Site is divided into two portions (i.e. the northern and southern portions) bisected by a streamcourse (**Plan A-2**). According to the applicant, a single-storey structure of about 7m in height with a total floor area of about 300m² is proposed in the southern portion of the Site for storage of construction materials (**Drawing A-1**). The remaining uncovered area of about 1,740m² (i.e. about 85.3% of the Site) would be mainly used for open storage purpose. The applicant also applies for regularization of filling of land for paving the entire site with concrete by 0.2m in depth for site formation of structure. One loading/unloading (L/UL) space for medium goods vehicles is proposed within the Site. The Site is accessible via Lin Ma Hang Road to the south. The operation hours of the development will be from 9:00 a.m. to 5:00 p.m. from Mondays to Friday, with no operation on Saturdays, Sundays and public holidays. The layout plan submitted by the applicant is shown in **Drawing A-1**.

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

- (a) Application Form with attachments received on 20.3.2023 (Appendix I)
 - (b) Further Information (FI) received on 20.7.2023* (Appendix Ia)
 - (c) FI received on 7.8.2023* (Appendix Ib)
- * accepted and exempted from the publication and recounting requirements*

1.4 On 19.5.2023, the Rural and New Town Planning Committee (the Committee) 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 at **Appendix I**, as summarized below:

- (a) the Site can be used for relocation of brownfield operations that are displaced by government-led projects;
- (b) the proposed development would bring job opportunity to the local residents;
- (c) the Site has been left vacant for years. The proposed development would not induce adverse traffic and environmental impact on the surrounding areas; and
- (d) the applicant undertakes to improve the drainage and landscape conditions of the surrounding areas should the application be approved by the Committee.

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.31A) by posting site notice and sending notice to the Ta Kwu Ling District Rural Committee by registered mail.

4. Background

Majority of the Site is subject to active enforcement action against unauthorized developments (UDs) for filling of land and storage use (No. E/NE-MKT/31 and 41). Enforcement Notices (ENs) were issued on 1.9.2022 and 22.2.2023 respectively. Since the UD was not discontinued, the Site is under close monitoring by the Planning Authority.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13G) promulgated by the Board on 14.4.2023 are relevant to the application. The Site falls within Category 3 areas under the TPB PG-No. 13G. The relevant extracts of the Guidelines are at **Appendix II**.

6. Previous Application

There is no previous application at the Site.

7. Similar Application

There is one similar application (No. A/NE-MKT/26) located to the further northeast of the Site within the same “AGR” zone in the Man Kam To area. The application for proposed temporary warehouse for storage of electronic products and open storage of packaging tools for a period of three years and filling of land was rejected by the Rural and New Town Planning Committee (the Committee) on 23.6.2023 for being not in line with the planning intention of the “AGR” zone; and the applicant failed to demonstrate that the development would not induce adverse traffic impact on the surrounding areas. Details of the similar application are at **Appendix III** and its location is shown on **Plan A-1**.

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

8.1 The Site is:

- (a) hard-paved and fenced off;
- (b) currently used for the applied use without valid planning permission;
- (c) divided into two portions bisected by a streamcourse. Part of the existing streamcourse has been decked over by metal plates to form a platform allowing access from the south to the northern portion of the Site (**Plans A-4a and A-4c**); and
- (d) accessible via Lin Ma Hang Road to the south.

8.2 The surrounding areas are characterized by temporary domestic structures, storage yards, active/fallow agricultural land, vegetated areas and tree clusters. Man Kam To Boundary Control Point and Ma Kam To Livestock Monitoring Station are located to the northwest and southwest of the Site respectively (**Plans A-1 and A-2**).

9. Planning Intention

- 9.1 The planning intention of the “AGR” zone in the Fu Tei Au and Sha Ling area 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, permission from the Board is required for filling of land within the “AGR” zone, as the activity may cause adverse drainage impacts on the adjacent areas and adverse impact on the natural environment.

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 comments 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 have objection to/adverse comments 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. There is no guarantee that any adjoining Government Land (GL) shall be allowed for access to the Site;
- (b) there are unauthorized structure(s) erected on the Site. The lot owner(s) should immediately rectify the lease breaches and this office reserves the rights to take necessary lease enforcement action against the lease breaches without separate notice; and
- (c) the adjoining GL with an existing watercourse has been filled and fenced off without any permission. Any disturbance and occupation of GL without Government's prior approval are offences under law. His office has objection to the application since there are illegal land filling and occupation of GL in which regularization would not be considered according to the prevailing land policy. The lot owner/applicant should immediately reinstate the watercourse and cease the occupation of GL and this office reserves the rights to take any appropriate action against the illegal land filling and occupation of GL without separate notice.

Landscape

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

- with reference to the aerial photo of 2022, the Site is located in an area of rural inland plains landscape character comprising temporary domestic structures/village houses of San Uk Ling, vegetated areas, tree groups and storage/open storage yards. To the immediate northwest is a woodland within an area zoned "Green Belt" on the same OZP. Compared the aerial photo of 2022 and our site record taken on 17.4.2023, vegetation clearance has been taken place. The Site is hard-paved and currently occupied by temporary structure. Change of landscape character and adverse impact on the existing landscape resources have been taken place.

Environment

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

- (a) does not support the application because there are sensitive receivers in the vicinity of the Site (the nearest residential dwelling being located in about 32m away) (**Plan A-2**) and the proposed use involves the use of heavy vehicles. Environmental nuisance is expected; and
- (b) four substantiated environmental complaints in relation to waste pollution were received in 2021 and 2022.

Agriculture and Nature Conservation

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

Agriculture

- (a) does not support the application from agricultural perspective; and
- (b) the Site is occupied by some construction materials. The 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, plant nurseries etc. The Site possesses potential for agricultural rehabilitation.

Nature Conservation

- (a) no strong view on the application from nature conservation perspective; and
- (b) the Site is largely paved and disturbed, with a watercourse located in the middle of the Site. There is a suspected UD for filling of land at the Site. As no sign of tree felling was observed in the Site, no follow-up action has been taken by this department. The Board may consider if approval of the application would set an undesirable precedent which should not be encouraged.

Drainage

10.2.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) does not support the application from public drainage perspective unless the applicant can submit satisfactory stormwater drainage and site formation proposals to demonstrate that adequate measures would be provided by the applicant to avoid the Site from being eroded and flooded, as well as to ensure the capacity of the streamcourse and flooding susceptibility of the adjoining areas would not be adversely affected by the proposed development;

- (b) the Site is located in close proximity to an existing streamcourse and the vehicular run-in/out appears to encroach upon the existing streamcourse; and
- (c) site inspection reveals that the Site was filled up and hard-paved for storage use and the stream traversing the middle part of the Site was covered/blocked without prior consent from DSD. It was also observed that the proposed development has adversely interfered with the free flow condition of the existing drains, channels in the vicinity of the Site and water ponding was identified outside the hoarding. The concerned land owner(s) and operator is requested to reinstate the streamcourse to its original condition. Besides, the drainage blockage and water ponding issue should be resolved by the concerned land owner(s) and operator as matter of urgency to avoid potential flooding and mosquito breeding situation in this wet season.

Traffic

10.2.6 Comments of the Commissioner for Transport (C for T):

- (a) the applicant should provide the following information/assessment for his consideration:
 - (i) to justify the adequacy of the parking spaces and L/UL spaces so provided by relating to the number of vehicles visiting the Site;
 - (ii) to advise the width of the vehicular access;
 - (iii) to demonstrate the satisfactory manoeuvring of vehicles entering to and existing from the Site, manoeuvring within the Site and into/out of the parking and L/UL spaces, preferably using the swept path analysis;
 - (iv) to advise the management/control measures to be implemented to ensure no queueing of vehicles outside the Site;
 - (v) to advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (vi) the vehicular access appears to encroach into the existing stream/river channel, further information should be provided.

District Officer's Comments

10.2.7 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) the Indigenous Inhabitant Representatives (IIRs) and the Resident Representatives (RRs) of Muk Wu, San Uk Ling and the Chairman of Ta Kwu Ling Sha Ling 居民福利會 object to the application mainly on grounds that the proposed development would induce adverse drainage and traffic impacts, and air pollution; and poses threats to pedestrian safety;

- (b) the Chairman of Fung Shui Area Committee and the incumbent North District Councilor of N16 Constituency have no comment on the application; and
- (c) Ta Kwu Ling District Rural Committee does not reply.

11. Public Comments Received During Statutory Publication Period

On 28.3.2023, the application was published for public inspection. During the statutory public inspection period, five public comments were received (**Appendix VI**), including one from a member of the North District indicating no comment on the application with Kadoorie Farm & Botanic Garden Corporation and three individuals objecting to the application mainly on grounds that the proposed development would induce adverse traffic, drainage and environmental (air and noise pollutions) impacts; the Site is the subject of active enforcement cases; and it is a ‘destroy first, develop later’ case.

12. Planning Considerations and Assessments

- 12.1 The application is for a temporary open storage and warehouse for storage of construction materials for a period of three years and filling of land at the Site zoned “AGR” on the OZP. The planning intention of the “AGR” zone is 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. The proposed development is considered not in line with the planning intention of the “AGR” zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 12.2 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, CE/MN of DSD has objection to the applied filling of land from public drainage perspective and advises that the Site is located in close proximity to the existing streamcourse and the vehicular run-in/out of the proposed development appears to encroach onto the streamcourse. Besides, site inspection reveals that the applied use at the Site has adversely interfered with the free flow condition of the existing drains/channels and water ponding was identified outside the hoarding of the Site. The applicant is required to submit a drainage proposal to demonstrate that the applied use and the associated filling of land at the Site would not induce adverse drainage impact on the surrounding area. However, no such proposal has been submitted by the applicant. It should be noted that the Site is the subject of enforcement case for filling of land. DAFC advises that approval of the application may result in undesirable precedent which should not be encouraged.
- 12.3 The Site falls within Category 3 area under the TPB PG-No. 13G promulgated by the Board on 14.4.2023. The following conditions in the Guidelines are relevant:
 - Category 3 areas: application would normally not be favourably considered unless the applications are on sites with previous planning approvals (irrespective of whether the application is submitted by the applicant of previous approval or a different applicant). Sympathetic consideration may be given if genuine efforts have been demonstrated in compliance with approval conditions of the previous

applications and/or relevant technical assessments/proposals have been included in the fresh applications, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. 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, planning permission could be granted on a temporary basis up to a maximum period of three years.

- 12.4 The Site is located in an area of rural inland plains landscape character comprising domestic structures, storage yards (without planning permission), fallow agricultural land, vegetated/vacant land and tree clusters and woodland within the “GB” zone to the immediate northeast. CTP/UD&L of PlanD advises that compared with the aerial photo of 2022 and the site inspection record of 2023, it is observed that vegetation clearance has been taken place. Change of landscape character and adverse impact on the existing landscape resources have occurred.
- 12.5 C for T advises that information/assessment in relation to traffic generation/attraction, width of vehicular access, manoeuvring of vehicles, adequacy of parking and L/UL spaces and management of pedestrian facilities, etc. should be provided, without which potential traffic impact arising from the proposed development could not be ascertained. DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures, in the vicinity of the Site (the closest one located 32m away from the Site) and the proposed use involves the use of heavy vehicles. There are four substantial environmental complaints relating to waste pollution recorded in 2020 and 2021. DLO(North), LandsD objects to the application as there are illegal land filling and occupation of GL, in which regularization would not be considered according to the prevailing land policy. Other government departments consulted, including D of FS and CE/C of WSD, have no comment on/no objection to the application.
- 12.6 There is one similar application for proposed warehouse for storage of electronic products and open storage of packaging tools for a period of three years and filling of land in the vicinity of the Site in the same “AGR” zone, which was rejected by the Committee in June 2023 for being not in line with the planning intention of the “AGR” zone; and the applicant failed to demonstrate that the development would not induce adverse traffic impact on the surrounding areas. The planning circumstances of the current application is similar to the rejected application.
- 12.7 The application does not comply with TPB PG-No. 13G in that the Site is not the subject of any previous approval and there are adverse departmental comments and local objections to the application. The applicant has failed to demonstrate that the applied use would have no adverse traffic, drainage and environmental impacts on the surrounding areas.
- 12.8 Regarding the public comments objecting to the application as detailed in paragraph 11 and the local views/comments conveyed by DO(N) in paragraph 10.2.7 above, the government departments’ comments and 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 local views conveyed by DO(N), HAD and the public comments mentioned in paragraphs 10.2.7 and 11 respectively, the Planning Department does not support the application for the following reasons:

- (a) the development 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;
- (b) the development does not comply with TPB PG-No. 13G for “Application for Open Storage and Port Back-up Uses” in that no previous approval has been granted to the Site and there are adverse departmental comments and local objections; and
- (c) the applicant fails to demonstrate in the submission that the development would not generate adverse traffic, drainage and environmental impacts on the surrounding areas.

13.2 Alternatively, 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 8.9.2026. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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 8.3.2024;
- (d) in relation to (c) 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 8.6.2024;
- (e) in relation to (d) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (f) 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 20.10.2023;
- (g) the submission of proposals for fire service installations and water supplies for firefighting 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 8.3.2024;

- (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 8.6.2024;
- (i) the submission of a traffic management proposal within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.3.2024;
- (j) in relation to (i) above, the implementation of the traffic management proposal within **9** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.6.2024;
- (k) the submission of the design of vehicular run-in/run-out to the Site within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 8.3.2024;
- (l) in relation to (k) above, the provision of vehicular run-in/run-out to the Site within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 8.6.2024;
- (m) if any of the above planning condition (a), (b) or (e) 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;
- (n) if any of the above planning condition (c), (d), (f), (g), (h), (i), (j), (k) or (l) 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;
- (o) upon expiry of the planning permission, the reinstatement of the run-in and run-out to their original state to the satisfaction of Director of Highways or of the Town Planning Board;
- (p) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

15. Attachments

Appendix I	Application Form received on 20.3.2022
Appendix Ia	FI received on 20.7.2023
Appendix Ib	FI received on 7.8.2023
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Similar Application
Appendix IV	Government Department's Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4 and A-4c	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2023**