

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MKT/36

<u>Applicant</u>	: Wan Chun Tours Company Limited
<u>Site</u>	: Lots 473, 474, 475 RP, 476 S.A RP and 518 in D.D. 90 and Adjoining Government Land (GL), Lin Ma Hang Road, Man Kam To, New Territories
<u>Site Area</u>	: About 5,056m ² (including about 317m ² of GL, or about 6.3% of the Site)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Vehicle Repair Workshop and Open Storage of Vehicles (Coaches Only) for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary vehicle repair workshop and open storage of vehicles (coaches only) 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 approved Man Kam To OZP No. S/NE-MKT/4 (**Plan A-1**). According to the covering 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 hard-paved and occupied by the applied use without valid planning permission.
- 1.2 The Site is abutting Lin Ma Hang Road to the north (**Plan A-2**). According to the submission, the applied use is for a repairing workshop for cross-boundary coaches in support of land passenger transport industry. The applied use consists of three structures with a total floor area of not more than 1,262m², including (i) one single-storey temporary structure of about 7m in height (i.e. floor area of about 634m²) mainly for bus repair workshop; (ii) one single-storey temporary structure of about 7m in height (i.e. floor area of about 548m²) mainly for maintenance workshop and warehouse; and (iii) one two-storey structure of about 14m in height (i.e. floor area of about 40m²) for ancillary office. The remaining uncovered area would be used for open storage of coaches (about 20 coaches to be stored at the Site), visitor car parking spaces and circulation space. Three ingress/egresses are proposed at the Site. Various traffic management measures, including deployment of on-site management staff and installation of warning signs and convex mirror for pedestrian and drivers near the entrance of the Site, are proposed.

Sufficient manoeuvring space and visitor car parking spaces will be provided within the Site and there will be no queuing or waiting of vehicle on the public road. The operation hours of the applied use are between 9:00 a.m. and 5:00 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 regularization of land filling of the entire Site (about 5,056m²) with concrete by about 0.1m in depth for site formation purpose. A drainage proposal (**Drawing A-2**), with the provision of U-channels and catchpits at the Site, is submitted by the applicant in support of the application. The intercepted stormwater shall discharge to the existing drainage system. In addition, as the Site is located in an area without any public sewerage connection available, a septic tank system will be provided on-site to treat the sewage produced from the proposed washroom/toilet.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 22.4.2024 (Appendix I)
 - (b) Further Information (FI) received on 21.5.2024* (Appendix Ia)
 - (c) FI received on 30.7.2024* (Appendix Ib)
 - (d) FI received on 9.8.2024* (Appendix Ic)

** accepted and exempted from publication and recounting requirements*

- 1.5 On 21.6.2024, 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 applicant for two months.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I to Ic**, as summarized below:

- (a) the applicant is a fellow member of the China Hong Kong and Macau Boundary Crossing Bus Association. His previous business operation at Ping Che Road, Ta Kwu Ling was forced to relocate due to the downturn of business during the pandemic and rising rental costs ;
- (b) the Site is situated at a strategic location which is highly accessible to both Man Kam To Boundary Control Point (MKT BCP) and Liantang/Heung Yuen Wai Boundary Control Point (LT/HYW BCP) via Lin Ma Hang Road. The applied use could meet the surging demand for cross-boundary travel between the Mainland and Hong Kong; and
- (c) the Site is located far away from the residential area and there will be no nuisance to the residents arising from the vehicle repairing works. No significant adverse impacts in terms of environmental, traffic, drainage, landscape, etc. are anticipated.

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 sending notice to the Ta Kwu Ling District Rural Committee by registered mail and posting notice at the Site. Detailed information would be deposited at the meeting for Member's inspection. For the GL within the Site, TPB PG-No. 31B is not applicable to the application.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines on Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13G) promulgated on 14.4.2023 is relevant to the application. The Site falls within Category 3 areas under the Guidelines, relevant extract of which is at **Appendix II**.

5. Background

- 5.1 Majority of the Site is subject to planning enforcement actions against unauthorized developments (UDs) involving intensification of storage use (including deposit of containers) (No. E/NE-MKT/35), and workshop use and use for place for parking of vehicles (No. E/NE-MKT/45) (**Plan A-2**).
- 5.2 For enforcement case No. E/NE-MKT/35, a Reinstatement Notice (RN) was issued on 26.6.2023 requiring reinstatement of the concerned site. Recent site inspections revealed that a part of the site was not reinstated upon expiry of the notice, the site is under monitoring.
- 5.3 For enforcement case No. E/NE-MKT/45, an Enforcement Notice (EN) was issued on 20.11.2023 requiring discontinuation of the UD. Since the UD was not discontinued upon expiry of the EN, prosecution action had been taken. The site is currently under monitoring. If the EN is still not complied with, further prosecution action would be considered.

6. Previous Application

- 6.1 Part of the Site is the subject of a previous application (No. A/NE-MKT/26) submitted by a different applicant for proposed temporary warehouse for storage of electronic products and open storage of packaging tools for a period of three years and associated filling of land, which was rejected by the Board on review on 1.12.2023 mainly on the grounds that the proposed use was not in line with the planning intention of the "AGR" zone; and the applicant failed to demonstrate that the proposed use would not generate adverse traffic and environmental impacts on the surrounding areas.
- 6.2 Details of the previous application are summarized at **Appendix III** and the location is shown on **Plan A-1**.

7. Similar Applications

- 7.1 There were two similar applications (No. A/NE-MKT/25 and 32) for temporary vehicle repair workshop/open storage and warehouse within the same "AGR" zone in the vicinity of the Site in the past five years (**Plan A-1**). Both applications were rejected by the Committee in 2023 mainly for the reasons that the developments were not in line with the planning intention of the "AGR" zone; the applicants failed to demonstrate that the

development would not generate environmental and drainage and/or landscape impacts on the surrounding areas; and/or the application did not comply with the TPB PG-No. 13G in that adverse comments from relevant Government departments and local objections had been received.

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

8. The Site and Its Surrounding Areas (Plans A-1 to A-2, aerial photos on Plans A-3a and 3b and site photos on Plans A-4a to 4d)

- 8.1 The Site is:

- (a) currently occupied by the applied use without valid planning permission and subject to active planning enforcement actions;
- (b) hard-paved and fenced-off; and
- (c) abutting Lin Ma Hang Road to the north.

- 8.2 The surrounding areas are of rural character comprising temporary domestic structures, open storages¹, a vehicle park², fallow agricultural land, vegetated areas and tree clusters. To the south of the Site is a densely vegetated knoll zoned “Green Belt” (“GB”), which is a permitted burial ground for indigenous villagers.

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, 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 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.

¹ An open storage to the east of the Site is subject to planning enforcement action against an UD for storage use (enforcement case No. E/NE-MKT/36). EN was issued on 28.11.2022. Recent site inspection revealed that the UD was not discontinued on the site upon expiry of the notice. The site is under monitoring under the established practice.

² A vehicle park to the immediate east of the Site is subject to planning enforcement action against an UD for use for place for parking of vehicles (enforcement case No. E/NE-MKT/37). EN was issued on 28.11.2022. Recent site inspection revealed that the UD was not discontinued on part of the site upon expiry of the notice. The site is under monitoring under the established practice.

10.2 The following government departments have adverse comments on the application.

Land Administration

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

- (a) she objects to the application as there is illegal occupation of GL which regularisation would not be considered according to the prevailing land policy;
- (b) 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 is granted to the Site;
- (c) the Site is already being used for the uses under application. The approach of first illegal occupation and then regularisation should not be encouraged;
- (d) there are unauthorized structures on the private lots. 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
- (e) the GL within the Site (about 317m² as mentioned in the application form) has been fenced-off and illegally occupied with unauthorized structure without any permission. Any occupation of GL without Government's prior approval is an offence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28). The lot owner(s) should immediately cease the illegal occupation of GL and remove the unauthorized structures as demanded by LandsD. LandsD reserves the rights to take necessary land control action against the illegal occupation of GL without further notice.

Landscape

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

- (a) the Site is hard paved with temporary structures and being used for parking of vehicles. No significant landscape resources are observed within the Site. Significant adverse impact on the existing landscape resources within the Site arising from the applied use is not anticipated; and
- (b) according to the aerial photo of 2023, the Site is located in an area of rural inland plains character comprising temporary structures, vegetated areas, tree clusters and woodland within the "GB" zone to the south. There is a concern that approval of the application may alter the landscape character and degrade the landscape quality of the surrounding area.

Agriculture

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

- (a) the Site is generally occupied by some structures and is being used for car parking; and
- (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, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the applied use is not supported from agricultural perspective.

Environmental

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

- (a) according to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and open Storage Sites” (the COP), the application should not be supported as the applied use involves the use of heavy vehicles (i.e. coaches) and there are sensitive receivers in the vicinity of the Site (the nearest domestic structure is located in the immediate south of the Site) (**Plan A-2**);
- (b) no objection to the filling of land from environmental perspective; and
- (c) no substantiated environmental complaint against the Site has been received over the past three years.

Traffic

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

having reviewed the FI submitted by the applicant, the applicant should further provide the following information/assessment for his consideration:

- (a) to illustrate the car parking spaces, including private car spaces, loading and unloading spaces for goods vehicles, each parking lot on the site layout plan;
- (b) to clarify the numbers of goods vehicles for delivery or any loading/unloading spaces and illustrate on the site plan; and
- (c) to demonstrate on satisfactory maneuvering of all vehicles, including private car spaces and buses, loading and unloading spaces for goods vehicles.

11. Public Comments Received During Statutory Publication Period

- 11.1 On 26.4.2024, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received

(Appendix VII). Among which, three supporting comments were received from a member of Legislative Council, China Hong Kong and Macau Boundary Cross Bus Association and Hong Kong Non Franchised Bus Association. Their supporting views are summarised as follows:

- (a) the social incidents and the pandemic causing cross-boundary travel restriction in recent years had severely affected the business of passenger transport industry. With the rapid development of the New Territories in recent years, many coaches repairing workshops were forced to cease operation due to the Government's land resumption programme. There is an emerging demand for provision of coach parking spaces and vehicle repair workshops in support of the land passenger transport industry; and
- (b) the Site is highly suitable for the applied use given its sizable area and the high accessibility to MKT BCP and LT/HYW BCP.

- 11.2 For the remaining three public comments, two of them from Kadoorie Farm & Botanic Garden Corporation and an individual object 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 rejected application. The remaining public comment 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 temporary vehicle repair workshop and open storage of vehicles (coaches only) for a period of three years and associated filling of land at the Site zoned "AGR" on the OZP. The applied 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. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- 12.2 The applicant applied for regularization of land filling of the entire Site (about 5,056m²) with a depth of about 0.1m. 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, 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.
- 12.3 The Site falls with Category 3 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:
- Category 3 areas: applications 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 planning 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. Planning permission could be granted on a temporary basis up to a maximum period of 3 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.

- 12.4 The Site, located in an area intermixed with temporary domestic structures, open storages, a vehicle park, fallow agricultural land, vegetated areas and tree clusters, is hard-paved and currently occupied by the applied use without valid planning permission. A densely vegetated knoll zoned “GB” is in close proximity to the south of the Site (**Plans A-2 and A-3**). CTP/UD&L, PlanD advises there is a concern that approval of the application may alter the landscape character and degrade the landscape quality of the surrounding area.
- 12.5 In traffic terms, C for T advises that information/assessment in relation to vehicular access and maneuvering should be submitted. In view of C for T’s comments, there is insufficient information in the submission to demonstrate that the applied use would have no adverse traffic impact on the surrounding areas. Also, DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures, in the vicinity of the Site (**Plan A-2**), and the applied use involves use of heavy vehicles. Other relevant government departments including the Chief Engineer/Construction, Water Supplies Department and Director of Fire Services, have no objection to or no adverse comment on the application.
- 12.6 Part of the Site is the subject of a previous application (No. A/NE-MKT/26) submitted by a different applicant for proposed temporary warehouse for storage of electronic products and open storage of packaging tools. Furthermore, there were two similar applications (No. A/NE-MKT/25 and 32) for proposed temporary vehicle repair workshop/open storage and warehouse falling within the same “AGR” zone in the past five years. All of these applications were rejected by the Committee/the Board on review in 2023 mainly on the grounds that the applicants failed to demonstrate that the proposed uses would not generate adverse traffic and/or environmental impacts on the surrounding areas. The planning circumstances of the current application are similar to those of the rejected applications. As such, rejection of the current application is in line with the Committee’s previous decisions.
- 12.7 The applied use 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 impact on the surrounding areas.
- 12.8 Regarding the adverse public comments mentioned in paragraph 11, 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 in paragraph 11 above, the Planning Department does not support the application for the following reasons:
 - (a) the applied 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; and

- (b) the applied use does not comply with TPB PG-No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance 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 that the applied use would not generate adverse traffic impact 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 20.9.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) 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 20.3.2025;
- (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 20.6.2025;
- (c) in relation to (b) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (d) 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 20.3.2025;
- (e) in relation to (d) 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 20.6.2025;
- (f) the submission of a traffic management plan within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 20.3.2025;
- (g) in relation to (f) above, the implementation of the traffic management measures within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 20.6.2025;
- (h) in relation to (g) above, the implemented traffic management measures shall be maintained at all times during the planning approval period;
- (i) if any of the above planning condition (c) and (h) 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

- (j) if any of the above planning condition (a), (b), (d), (e), (f) or (g) 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 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 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 with attachments received on 22.4.2024
Appendix Ia	FI received on 21.5.2024
Appendix Ib	FI received on 30.7.2024
Appendix Ic	FI received on 9.8.2024
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Previous Application
Appendix IV	Similar Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comments
Drawing A-1	Layout Plan
Drawing A-2	Drainage Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and 3b	Aerial Photos
Plans A-4a to 4d	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2024**