

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/192

<u>Applicant</u>	Wader Seed Planting Company represented by Lanbase Surveyors Limited
<u>Site</u>	Lots 23, 24, 25 and 26 in D.D. 38 and Lot 803 in D.D. 46 and Adjoining Government Land (GL), Man Uk Pin, New Territories
<u>Site Area</u>	About 2,436m ² (including about 180m ² of GL (about 7.4%))
<u>Lease</u>	(i) Block Government Lease (demised for agricultural use) (ii) GL
<u>Plan</u>	Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Proposed Temporary Open Storage of Planters and Landscaping Materials and Site Office for a Period of Three Years

1. The Proposal

- 1.1. The applicant seeks planning permission to use the application site (the Site) for proposed temporary open storage of planters and landscaping materials and site office for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the OZP. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is vacant, fenced off and covered with vegetation and some container structures.
- 1.2. The Site is accessible via a local access road leading to Sha Tau Kok Road – Wo Hang with an ingress/egress point in the north (**Plan A-2**). According to the applicant, the majority of the Site will be used for open storage. The proposed development includes three 1-2 storeys open shed structures (about 6m to 6.5m in height) with a gross floor area of about 478m² for storage of planters, landscaping materials and site office uses. Part of the Site in the east (about 530m²) (**Drawing A-2**) is proposed for open storage of planters and landscaping materials. Part of the Site in the west is proposed for farming area (about 507m²). Two private car parking spaces and one loading/unloading (L/UL) bay for light goods vehicle (LGV) will be provided within the Site. The proposed development will operate 24 hours daily (including public holidays). L/UL activities will only be allowed

between 7:00 a.m. and 11:00 p.m. from Monday to Saturday. A layout plan of the proposed development 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 24.7.2023 (Appendix I)
- (b) Further Information (FI) received on 9.11.2023^ (Appendix Ia)
- (c) FI received on 27.11.2023^ (Appendix Ib)
- (d) FI received on 4.12.2023^ (Appendix Ic)

^ accepted and exempted from the publication and the recounting requirements

1.4 On 22.9.2023, 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 allow more time for the applicant 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 **Appendix I**. They can be summarized as follows:

- (a) the temporary nature of the use would not jeopardize the planning intention of the "AGR";
- (b) a small part of the Site will be used for growing flowers and plantings in support of landscaping business. The proposed use is generally in support of the agricultural use;
- (c) the proposed development is generally compatible with the surrounding areas, which are predominantly open storage use;
- (d) the application is generally in line with 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); and
- (e) no adverse drainage, environmental and traffic impacts 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.31A) by posting site notice and sending notice to the Sha Tau Kok District Rural Committee (STKDRC) by registered post. Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the "Owner's Consent/Notification" requirements are not applicable.

4. Town Planning Board Guidelines

TPB PG-No. 13G promulgated on 14.4.2023 is relevant to the application. The Site falls within Category 2 area under TPB PG-No. 13G, relevant extracts are at **Appendix II**.

5. **Background**

A small northern part of the Site is subject to planning enforcements action (No. E/NE-MUP/147) against an unauthorized development (UD) for storage use. Enforcement Notice was issued on 1.8.2023 requiring discontinuation of UD by 1.10.2023. Site inspection on 17.11.2023 revealed that it was largely vacant with two converted container structures and some miscellaneous items left, and the unauthorized storage use was partially discontinued. The case is under monitoring according to established procedures. If the notice is not complied with, prosecution action may be taken.

6. **Previous Application**

- 6.1. Part of the Site is the subject of a previous application (No. A/NE-MUP/148) for temporary wholesale trade (fruit and vegetable market), which was rejected by the Committee on 9.10.2020 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; and failure to demonstrate that the proposed development would have no adverse traffic 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 Application**

There are no similar applications within the same “AGR” zone in the vicinity over the past five years.

8. **The Site and Its Surrounding Areas** (Plans A-1, A-2 and photos on Plans A-3 and A-4a to A-4c)

8.1. The Site is:

- (a) vacant, fenced off, covered with vegetation and some container structures; and
- (b) accessible via a local access road leading to Sha Tau Kok Road – Wo Hang.

8.2. The surrounding areas are of rural inland plains landscape character comprising active/fallow agricultural lands, warehouse, temporary structures, village houses and woodland.

9. **Planning Intention**

The planning intention of the “AGR” zone is to primarily 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.

10. Comments from Relevant Government Departments

10.1. Apart from the government departments as set out in paragraphs 10.2 and 10.3 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 are provided at **Appendices IV** and **VI** respectively:

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

Land Administration

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

- the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains a 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;
- no consent is given for inclusion of GL for the proposed use. Regarding the the applicant's representative providing confirmation and photo records on cessation of illegal occupation of GL and application of Short Term Waiver (STW) after obtaining planning approval, please be advised that erection of unauthorized structure(s) first and then application for regularisation should not be encouraged. The lot owners should immediately rectify the lease breached and this office reserves the rights to take necessary lease enforcement action against the lease breaches without separate notice;
- there are doubts on the intention of extensive "open storage" as per the application with regard to the unauthorized structures erected 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 lease breaches without separate notice; and
- should planning approval be given to the subject planning application, the lot owners will need to apply to this office for a STW and a Short Term Tenancy (STT) to permit the structures to be erected within the subject private lots and the occupation of the GL. The applications will be considered by the LandsD acting in the capacity of the lessor and landlord at its sole discretion and there is no guarantee that such applications will be approved. If such applications are approved, their commencement date would be the first date of the occupation and they will be subject to such terms and conditions, including among others the payment of fee/rent and administrative fee, as may be imposed by the LandsD. Besides, given the proposed use is temporary in nature, only erection of temporary structure(s) will be considered.

Agriculture and Nature Conservation

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

- the Site falls within the “AGR” zone and is occupied by some structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the proposed development is not supported from an agricultural perspective.

Landscape

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

- a farmland within the Site for growing various flowers and plantings is proposed. Significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated. However, there is concern that approval of the application for open storage use may alter the landscape character and degrade the landscape quality of the area within the "AGR" zone.

10.3. The following government department has relayed the following local views on the application:

District Officer's Comments

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

- he has consulted the locals regarding the application. The Resident Representative (RR) of Man Uk Pin objects to the application; and
- the Chairman of STKDRC, the incumbent North District Councilor of N16 Constituency, the Chairman of Lung Shan Area Committee, the Indigenous Inhabitant Representative (IIR) and the RR of Loi Tung and the IIR of Man Uk Pin have no comment.

11. Public Comments Received During Statutory Publication Period

On 1.8.2023, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. An individual objects to the application on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; no previous approval; and there are farming activities in the area.

12. Planning Considerations and Assessments

- 12.1. The application is for proposed temporary open storage of planters and landscaping materials and site office for a period of three years. 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. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessments below, the proposed development on a temporary basis of three years could be tolerated.
- 12.2. The Site falls within Category 2 area under TPB PG-No. 13G promulgated by the Board on 14.4.2023. 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;
- 12.3. The Site is located in an area of rural inland plains landscape character comprising active/fallow agricultural lands, warehouse, temporary structures, village houses and woodland. The development is considered not incompatible with the surrounding environments (**Plan A-2**). While CTP/UD&L, PlanD, has concern that the landscape planning point of view as the approval of the application may alter the landscape character and degrade the landscape quality of the area. She indicates that significant adverse impact on the existing landscape resources arising from the proposed development is not anticipated. Noting that there are some warehouses/temporary structures in the vicinity of the Site, it is considered that the proposed development on a temporary basis could be tolerated.
- 12.4. Having considered the FI submitted by the applicant (**Appendix Ib**), C for T has no comment on the application from traffic engineering point of view. Although DLO/N of LandsD has concern on occupation of GL and unauthorized structures erected within the the Site, which are subject to land control and lease enforcement actions, the applicant advises that he would rectify the matters and settle the land issues accordingly with LandsD (**Appendix Ic**). DEP has no objection to the application and advises the applicant to follow the ‘Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites’ to minimize the possible environmental impacts on the surrounding areas. Other relevant government departments, including D of FS, CE/MN of DSD, CE/C, WSD, PM(NTE), CEDD and CBS/NTW, BD have no objection to or no comment on the application.
- 12.5. The application generally complies with 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 and local comments can be addressed through implementation of relevant approval conditions.

- 12.6. Part of the Site is the subject of a previously rejected application No. A/NE-MUP/148 for different use (i.e. proposed temporary wholesale trade (fruit and vegetable market)) which is not relevant to the application.
- 12.7. Regarding the adverse public comments as detailed in paragraph 11 and the local objection conveyed by DO(N), HAD in paragraph 10.3.1 above, the government department's comments and the planning assessments above are relevant.

13. Planning Department's Views

- 13.1. Based on the assessments made in paragraph 12 and taking into account the local objection conveyed by DO(N), HAD and public comments in paragraphs 10.3 and 11 above respectively, the Planning Department considers that the temporary development 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 22.12.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no loading/unloading activities between 11:00 p.m. and 7:00 a.m. from Monday to Saturday and at all times of Sundays and public holidays, as proposed by the applicant, are allowed on the Site during the planning approval period;
- (b) 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 22.6.2024;
- (c) in relation to (b) above, the implementation of the 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 22.9.2024;
- (d) in relation to (c) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (e) 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 2.2.2024;
- (f) 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 22.6.2024;
- (g) in relation to (f) 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 22.9.2024;
- (h) if any of the above planning conditions (a) or (d) 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;

- (i) if any of the above planning conditions (b), (c), (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; and
- (j) 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 VI**.

- 13.3. Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good 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. There is no strong planning justification in the submission for a departure from the 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 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 24.7.2023
Appendix Ia	FI received on 9.11.2023
Appendix Ib	FI received on 27.11.2023
Appendix Ic	FI received on 4.12.2023
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous Application
Appendix IV	Government Departments' General Comments
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Proposed 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 2023**