

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/193

<u>Applicant</u>	: Good Kind Investment Limited represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 25 (Part), 26 (Part) and 27 in DD. 38, Lots 802 (Part), 804 (Part), 806, 807, 808, 809, 811, 812, 813, 823 S.B RP, 824 S.B RP, 825, 826, 827, 828 S.B RP in D.D. 46 and Adjoining Government Land (GL), Sha Tau Kok, New Territories
<u>Site Area</u>	: 5,240m ² (about) (including about 228m ² of GL (or about 4.4% of the Site))
<u>Land Status</u>	: (a) Block Government Lease (demised for agricultural use) (b) Letter of Approval (LoA) No. L5312 (for erection of temporary structures)
<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 Logistics Centre for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a temporary logistics centre for a period of three years and associated 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 covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years and filling of land within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is largely hard-paved and covered by a temporary structure being used for warehouse use without planning permission.
- 1.2 The Site is accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicant, the temporary development will include one single-storey structure¹ (not exceeding 8m in height) with a total floor area of not more than 4,800m² for logistics centre, toilet and site office uses (**Drawing A-1**). Two private carparking spaces and two loading/unloading spaces for heavy goods vehicles and medium goods vehicles (HGV and MGW) will be provided within the Site (**Drawing A-1**). The operation hours of the Site are between 9:00a.m. and 7:00p.m. from Mondays to Saturdays and no operation on Sundays and public holidays.
- 1.3 The applicant also applies to regularize/propose to fill the land² (i.e. about 3,446m² or

¹ According to the applicant, the existing structure will be demolished upon approval of the current application. A new structure will be constructed in accordance with the layout plan at Drawing A-1.

² The Site is largely paved while a small portion at the eastern part of the Site is proposed for land filling.

about 66% of the Site) with concrete of about 0.2m in depth for construction of the proposed logistics centre (**Drawing A-2**).

- 1.4 The Site is the subject of nine previous planning applications (No. A/NE-MUP/19, 54, 55, 148, 152, 154, 166, 182 and 192) for different uses (details in paragraph 6 below).
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 17.8.2023 (**Appendix I**)
 - (b) Further Information (FI) received on 2.11.2023* (**Appendix Ib**)
 - (c) FI received on 22.1.2024* (**Appendix Ic**)
 - (d) FI received on 21.2.2024* (**Appendix Id**)
- * accepted and exempted from the publication and recounting requirements*
- 1.6 On 13.10.2023 and 22.12.2023, 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 each 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 at **Appendix I**, and summarized as follows:

- (a) the Site falls within Category 2 area under the Town Planning Board Guidelines No. 13G for "Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance" (TPB-PG No. 13G);
- (b) the Site is ideal for logistics centre use as it abuts Sha Tau Kok Road and is close to Heung Yuen Wai Highway. The proposed development meets the insufficient supply of open storage and warehouse in Sha Tau Kok which is close to the border;
- (c) majority of the Site has been occupied by warehouse use for a very long time, which makes conversion of the Site into agricultural use hardly possible. A significant portion of the Site has been approved for animal boarding establishment, implying that the Site can be deviated from agricultural use;
- (d) the proposed development is compatible with the surrounding environment;
- (e) significant impacts on traffic, environmental and noise are not anticipated. No workshop activities will be carried out at the Site. Container tractor/trailer will not be allowed to enter the Site; and
- (f) adequate circulation path is proposed near the ingress/egress for manoeuvring of HGV and MGV.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "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 notice and sending notice to the Sha Tau Kok District Rural Committee (STKDRC) by registered mail. 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. Background

A small eastern part of the Site is subject to planning enforcement action against an unauthorized development (UD) for storage use (**Plan A-2**). Compliance Notice has been issued on 8.2.2024 upon discontinuation of the UD.

5. Town Planning Board Guidelines

The TPG PG-No. 13G promulgated by the Board on 14.4.2023 are relevant to the application. The Site falls mainly within Category 2 area under the Guidelines. Relevant extracts of the Guidelines are at **Appendix II**.

6. Previous Applications

- 6.1 The Site is in part/in whole the subject of nine previous applications for different uses. Among them, six applications (No. A/NE-MUP/19, 54, 55, 148, 152 and 154) involved uses including temporary open storage of/warehouse for ceramic tiles, land filling for permitted agricultural use (plant nursery), temporary wholesale trade (fruit and vegetable market) and temporary shop and services (agricultural goods)/(selling of agricultural products) were rejected by the Committee or by the Board on review between 1997 and 2021 mainly on the grounds of not being in line with the planning intention of “AGR” zone, incompatibility with the surrounding areas, not meeting the traffic standard and approval of which would set an undesirable precedent for similar applications.
- 6.2 The remaining three applications were approved in 2023 including applications No. A/NE-MUP/166 and 182 for a different use (i.e. temporary animal boarding establishment (dog kennel)) which are considered not relevant to the current application. Application No. A/NE-MUP/192 for temporary open storage of planters and landscaping materials and site office was approved by the Committee on 22.12.2023 on considerations that the Site fell within Category 2 areas and it generally complied with TPB PG-No. 13G in that no major adverse departmental comments were received/ the concerns of the relevant government departments and local comments could be addressed through implementation of relevant approval conditions.
- 6.3 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7. Similar Application

There is no similar application within “AGR” zone in the vicinity of the Site in the past five years.

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

8.1 The Site is:

- (a) fenced-off, flat and partly hard-paved;

- (b) largely occupied by a temporary structure for warehouse use; and
 - (c) accessible via Sha Tau Kok Road – Wo Hang.
- 8.2 The surrounding areas are generally of rural inland plains landscape character comprising active farmlands and temporary structures. Village houses are found at the further southwest within “Village Type Development” zone and woodland to the further south within “Green Belt” zone.

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, permission from the Board is required for filling of land within the “AGR” zone as the activity may cause adverse drainage impact 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 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 at **Appendices IV** and **V** respectively.
- 10.2 The following government departments have comments on / conveyed local views 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 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 (**Plan A-2**);
 - (b) he has reservation on the planning application since there are unauthorized structures erected on private lots (i.e. Lot 806, 808, 809, 811, 812, 813, 823 S.B RP, 824S.B RP, 825 and 826 in D.D. 46) which are already subject to lease enforcement actions according to the case priority. The owners should immediately rectify the lease breaches as demanded by earlier letters and her office reserves the rights to take necessary lease enforcement action against the breaches without separate notice; and
 - (c) no consent is given for the inclusion of GL (about 228m² as mentioned in the application form) for the proposed use. The GL within the Site is

found occupied and fenced off without any permission. Any occupation of GL without Government's prior approval is an offence. The lot owners/the applicant should immediately cease the occupation of GL and his office reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice;

- (d) the Site is covered by a LoA No. L5312 which is issued for erection of temporary structures for watchman shed, shade and agricultural storage. His office reserves the rights to take enforcement action for irregularities and cancel the LoA as appropriate;
- (e) as land filling works are proposed in the planning application, the applicant should comply with all the filing requirements imposed by relevant Government departments. GL should not be disturbed unless with prior approval; and
- (f) the lot owner(s) will need to apply to this office for a Short Term Waiver (STW) and a Short Term Tenancy (STT) to permit the structures erected/to be erected and occupation of GL. Besides, given the proposed use is temporary in nature, only applications for regularization or erection of temporary structure(s) will be considered. The application will be considered by the LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

Agriculture

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

- (a) does not support the application from agricultural perspective; 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.

Landscape

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

- (a) significant adverse impact on the existing landscape resources within the site arising from the proposed use is not anticipated; and
- (b) there is a concern that approval of the application for proposed use may alter the landscape character and degrade the landscape quality of the area within the "AGR" zone.

Environment

10.2.4 Comments of the Director of Environment 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 there are residential buildings within 100m from the boundary of the application site and the use of heavy vehicle is involved. Environmental nuisance is anticipated; and
- (b) should the application be approved, the following measures in the recommended advisory clauses are to be included for the applicant to adopt: the applicant is advised to follow the environmental mitigation measures as set out in the latest COP issued by EPD in order to minimize any possible environmental nuisances; and
- (c) no environmental complaints received in the past three years.

District Officer’s Comments

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

- (a) the Resident Representative (RR) of Man Uk Pin objects to the application. The Chairman of STKDRC objects to the application on the grounds that support from the villagers must be obtained as the proposed development would induce heavy traffic to the village road;
- (b) the incumbent North District Councilor of N16 Constituency has no comment and indicates that the proposed use would have traffic impact on Sha Tau Kok Road and the applicant would need to address the land ownership issues arising from the Site; and
- (c) the Chairman of Lung Shan Area Committee, the Indigenous Inhabitant Representative (IIR) of Man Uk Pin, the IIR and the RR of Loi Tung have no comment.

11. Public Comments Received During Statutory Publication Period (Appendix VI)

On 25.8.2022, 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 states that the application should be considered in tandem with application No. A/NE-MUP/192 as their application sites overlap; it is a usual progressive approach to convert farmland to brownfield use as the Site is the subject of two approved applications for temporary animal boarding establishment use; and the proposed filling of land is not compatible with the planning intention of the “AGR” zone.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed temporary logistics centre for a period of three years and associated filling of land with concrete of about 0.2m in depth at the Site within the “AGR” zone on the OZP (**Plan A-1**). The proposed 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 the agricultural perspective as the Site possesses potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessment below, the proposed use could be tolerated on a temporary basis of three years.
- 12.2 Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North, Drainage Services Department and DEP have no adverse comments on/no objection to the application from drainage and environmental perspectives respectively. Relevant approval conditions requiring the applicant to submit and implement a drainage proposal for the Site is recommended.
- 12.3 The Site is largely hard-paved and situated in an area of rural landscape character comprising active farmlands, temporary structures and village houses (**Plan A-2**). While CTP/UD&L, PlanD has concern that approval of the application may alter the landscape character and degrade the landscape quality of the area, significant adverse impact on the existing landscape resources within the site arising from the proposed use is not anticipated.
- 12.4 The Site is accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**). Having considered the FI (**Appendices Ia and Ib**), Commissioner for Transport has no comment on the application from traffic engineering perspective. While DEP does not support the application as it involves heavy vehicles and there are residential buildings in the vicinity (**Plan A-2**), the Site is directly accessed through Sha Tau Kok Road without passing by the residential area; and DEP advises no complaint in the last three years. Relevant approval conditions restricting the operation hours and no operation on Sundays and public holidays during the planning approval period are recommended to address the concerns of DEP. Moreover, the applicant would be advised to follow the environmental mitigation measures set out in the COP.
- 12.5 DLO/N of LandsD has reservation on the application since there are unauthorized structures within the Site which are subject to lease enforcement actions and the GL within the Site is found occupied and fenced off without permission. In response, the applicant indicates that he has met representatives of DLO/N of LandsD on 20.2.2024 and as agreed, he has emptied the area adjoining GL within the Site and demolished the roof of the structures adjoining GL within the Site. The applicant also undertakes that he would demolish all the structures on GL within the Site in three weeks (**Appendix Ic**). The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land regime. Other relevant government departments consulted, including Director of Fire Services and Chief Engineer/Construction of Water Services Department have no adverse comment on/no objection to the application.
- 12.6 The Site falls within Category 2 areas under the TPB PG-No. 13G on ‘Application for Open Storage and Port Back-up Uses’ promulgated by the Board on 14.4.2023. The following considerations in the Guidelines are relevant:

- Category 2 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.
- 12.7 The application generally complies with the TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments and local residents can be addressed through implementation of approval conditions.
- 12.8 Among the nine previous applications, application No. A/NE-MUP/192 for temporary open storage of planters and landscaping materials and site office is considered relevant to the current application. It was approved on the grounds that it generally complied with TPB PG-No. 13G in that no major adverse departmental comments were received and the concerns of the relevant government departments and local comments could be addressed through implementation of relevant approval conditions. There has been no major change of planning circumstances since the approval of the last application in 2023.
- 12.9 Regarding the local and public comments on the application as detailed in paragraphs 10.2.5 and 11 above, government departments' comments and planning assessments above are relevant. In response to the public comment regarding the current application should be considered in tandem with application No. A/NE-MUP/192 (paragraph 6 refers), the application was approved with conditions by the Committee on 22.12.2023.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the local and public comments as detailed in paragraphs 10.2.5 and 11 above, the Planning Department considers that the applied use under the application 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 15.3.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m. from Mondays to Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on 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 15.9.2024;
- (d) in relation to (c) 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 15.12.2024;

- (e) in relation to (d) above, the implemented drainage facilities at the Site shall be maintained at all times during the planning approval period;
- (f) the submission of proposals for water supplies for fire-fighting and fire service installations 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 15.9.2024;
- (g) in relation to (f) above, the implementation of proposals for water supplies for fire-fighting and fire service installations 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 15.12.2024;
- (h) the implementation of 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 15.12.2024;
- (i) the submission of the design of vehicular run-in/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 15.9.2024;
- (j) in relation to (i) above, the provision of vehicular run-in/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 15.12.2024;
- (k) 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;
- (l) if any of the above planning condition (c), (d), (f), (g), (h), (i) or (j) 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
- (m) upon expiry of the planning permission, the reinstatement of part 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**.

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 intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 17.8.2023
Appendix Ia	FI received on 2.11.2023
Appendix Ib	FI received on 22.1.2024
Appendix Ic	FI received on 21.2.2024
Appendix II	Relevant Extracts of TPB-PG No. 13G
Appendix III	Previous Applications
Appendix IV	Government's Department's General Comments
Appendix V	Recommended Advisory Clauses
Appendix VI	Public Comments
Drawing A-1	Proposed Layout Plan
Drawing A-2	Filling of Land Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2024**