

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/194

<u>Applicant</u>	: Sing Wui Property Limited represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 231 RP (Part), 232, 278 S.A and 278 S.B in D.D. 38, Wo Hang, Sha Tau Kok, New Territories
<u>Site Area</u>	: About 6,496m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Man Uk Pin Outline Zoning Plan (OZP) No. S/NE-MUP/11
<u>Zonings</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Warehouse (Excluding Dangerous Goods Godown) with Ancillary Facilities for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary warehouse (excluding dangerous goods godown) with ancillary facilities 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 approved Man Uk Pin OZP (**Plan A-1**). According to the Notes of the OZP, 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 currently vacant.
- 1.2 The Site is accessible from its south via a local track leading to Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicant, the proposed use comprises four 1 to 2-storey temporary structures (building height of about 3m to 16.5m) with a total floor area of about 9,682m² for warehouses (excluding dangerous goods godown), office, washroom, canopy for loading and unloading (L/UL), fire service pump room and meter room. The proposed warehouse is intended for storage of miscellaneous goods (i.e. packaged food, apparel, footwear, electronic goods, furniture, etc.). No dangerous goods and workshop activities will be stored/conducted at the Site. The applicant proposes to erect fencing along the site boundary and set back at least 2m from the watercourse at the southeast portion of the Site and implement good site practices (**Appendix Ic**). Three private carparking spaces and one L/UL bay each for medium goods vehicle and container vehicle will be provided in the Site (**Drawing A-1**). Filling of land with concrete of not more than 0.2m (about) is proposed at the Site for erection of structures

and circulation space (**Drawing A-2**). The operation hours of the Site are from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays. There would be no operation on Sundays and public holidays. The proposed 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:

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|-----|---|---------------|
| (a) | Application Form with attachments received on 29.8.2023 | (Appendix I) |
| (b) | Further Information (FI) received on 19.12.2023* | (Appendix Ia) |
| (c) | FI received on 29.12.2023^ | (Appendix Ib) |
| (d) | FI received on 16.1.2024^ | (Appendix Ic) |
| (e) | FI received on 29.1.2024^ | (Appendix Id) |

^ accepted and exempted from the publication and the recounting requirements

** accepted but not exempted from the publication and the recounting requirements*

1.4 On 27.10.2023, 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.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed at **Appendix I** and summarized below:

- (a) there has been an increasing demand for warehouse floor space in recent years and the proposed use will support local warehouse and storage industry;
- (b) approval of the application will not set undesirable precedent within the "AGR" zone given that the Site is surrounded by temporary structures for workshop, warehouse, vacant land and open storage yards, and an approved planning application No. A/NE-MUP/185 for the same use (**Plan A-1**) is located at approximately 250m south of the Site. The proposed use is considered not incompatible with the surrounding areas; and
- (c) there is no active agricultural use within the Site, approval of the application on a temporary basis of three years would better utilize the fallow agricultural land and would not jeopardize the long-term planning intention of the "AGR" zone.

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 notice at the Site and sending notice to the Sha Tau Kok District Rural Committee (STK DRC) by registered mail. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is the subject of a planning enforcement action against unauthorized storage use (including deposit of containers) (UD) under case No. E/NE-MUP/145 (**Plan A-2**). Enforcement Notice (EN) was issued on 8.12.2022. The UD on the Site was subsequently discontinued with Compliance Notice for EN issued on 14.7.2023. Reinstatement Notice (RN) was issued on 13.9.2023 requiring reinstatement of the land concerned. Recent site inspection after expiry of the RN revealed that the site was partially reinstated as required by the RN with the northern portion yet to be fully grassed with some leftovers and concrete panels. The case is under monitoring according to established procedures. If the RN is not complied with, prosecution action may be taken.

5. Previous Application

The Site is the subject of a previous application No. A/NE-MUP/12 for temporary open storage of plant machinery/equipment and construction materials, which was rejected by the Board on review on 2.8.1996 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the proposed development was incompatible with the surrounding land uses; and approval of the application would set an undesirable precedent for similar applications and would result in a general degradation of the environment.

6. Similar Application

There is no similar application for the same use in the vicinity of the same “AGR” zone over the past five years in Man Uk Pin area.

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

7.1 The Site is:

- (a) fenced off;
- (b) vacant; and
- (c) accessible via a local track to its southwest leading to Sha Tau Kok Road – Wo Hang.

7.2 The Site is located in an area of rural inland plains landscape character comprising farmlands, vegetated areas, tree clusters and woodlands to the east and northwest. There are existing open storage yards to the southwest and east of the Site.

7.3 Planning application No. A/NE-MUP/185 for the same use, which is located within an area zoned “Residential (Group D)” (“R(D)”) across Sha Tau Kok Road – Wo Hang and is about 250m away from the Site, was approved by the Committee on 19.5.2023 mainly on the grounds that the applied use is not incompatible with the surround areas and no adverse departmental comments (**Plan A-1**).

7.4 There is a watercourse lying along the southeastern boundary of the Site (**Plan A-2**).

8. Planning Intention

- 8.1 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.
- 8.2 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 impacts on the natural environment.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government department as set out in paragraph 9.2 below, other 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 III** and **IV** respectively.
- 9.2 The following government department has the following comments on the application:

Land Administration

- 9.2.1 Comments of the District Lands Office/North, Lands Department (DLO/N, LandsD (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 Government Land (GL) is granted to the Site;
 - (b) there are unauthorized structures erected on the Site. The lot owner should immediately rectify the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without separate notice; and
 - (c) the GL adjoining the Site has been fenced off without any permission (**Plan A-2**). The illegally occupied GL is not included in the application but currently uses for access to the Site. Any occupation of GL without Government’s prior notice is an offence. The lot owner/the applicant should immediately cease the occupation. His office reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice;
 - (d) he has no further comment on the application as the applicant advises that he will rectify the matters and settle the land issues accordingly by applying Short Term Tenancy (STT)/ Short Term Waiver (STW) (**Appendix Ib**) and that the concerned structures on GL have been demolished (**Appendix Id**); and
 - (e) should planning approval be given to the subject application, the lot owner will need to apply to his office for a STW to permit the structures to be erected and regularize the irregularities on the Site. Besides, given that 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

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

- (a) the Site falls within the “AGR” zone and is generally vacant. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The subject site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the subject site possesses potential for agricultural rehabilitation, the proposed development is not supported from an agricultural perspective; and
- (b) there is a watercourse located to the southeast of the subject site (**Plan A-2**). Having reviewed the FI submitted by the applicant (**Appendix Ib**), he has no comment on the application from nature conservation perspective.

Landscape

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

- (a) no significant sensitive landscape resources is observed within the Site; and
- (b) the Site is located in an area of rural inland plains landscape character comprising active/fallow agricultural lands, vegetated areas, clusters of tree groups and woodlands. There is a concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone.

Environment

9.2.4 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.

Geotechnical

9.2.5 Comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):

- (a) the subject site is overlooked by steep natural terrain and meet the alert criteria for a natural terrain hazard study (NTHS). The applicant is required to submit a Geotechnical Planning Review Report (GPRR) in support of the planning application which includes a preliminary geotechnical review of the potential natural terrain hazards, assess the geotechnical feasibility of the proposed development, and where necessary, indicate the recommended extent of the NTHS study area and a commitment to undertake the NTHS and to carry out any necessary mitigation measures as part of the proposed development; and
- (b) having reviewed the FI submissions enclosing a GPRR (**Appendices Ia and Ic**), he has no comment on the application.

District Officer's Comments

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

- (a) the incumbent North District Councilor of N16 Constituency objects the application. The Resident Representative (RR) of Man Uk Pin and the Chairman of STK DRC object to the application and consider that the proposed use would attract more heavy vehicles which would pose danger to the elderly villagers and deteriorate the road condition; and
- (b) 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.

10. Public Comments Received During Statutory Publication Period (Appendix V)

- 10.1 On 8.9.2023 and 19.12.2023, the application was published for public inspection. During the statutory public inspection periods, nine comments were received, including two from the Chairman of Sheung Shui District Rural Committee indicating no comment on the application, and two from the Kadoorie Farm and Botanic Garden requesting the Board to investigate the current site status with relevant authorities, querying if it is appropriate to approve the application as ongoing enforcement action is being undertaken, urging the Board to reject the application and indicating the approval of the application would cause potential cumulative impacts on the "AGR" zone in the area. An individual objects to the application on the grounds that there was no previous approval at the Site and approval of the application would set an undesirable precedent. An occupier of the adjacent lots to the southwest of the Site objects to the application on the grounds that the proposed filling of land would increase the likelihood of flooding in the area; the increase of heavy vehicles arising from the proposed use will exceed the traffic capacity of the village road; the proposed use would lead to negative impacts on the environment; and set an undesirable precedent for similar applications in the "AGR" zone.

- 10.2 Three comments from the representative and the villagers of Man Uk Pin Village (**Plan A-1**) and residents in the vicinity object to the application on the grounds that the heavy vehicles arising from the proposed use would pose danger to the pedestrians and exceed the traffic capacity of the only village road which shares with the village; the large scale of the warehouse would cause negative impacts on the environment, drainage and biodiversity; and approval of the planning application would encourage a “destroy first, build later” scenario.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary warehouse (excluding dangerous goods godown) with ancillary facilities for a period of three years and associated filling of land by concrete of not more than 0.2m (about) at the Site within the “AGR” zone on the OZP (**Plan A-1**). The proposed temporary use is not in line with the planning intention of the “AGR” zone 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 possess potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessment below, the proposed use on a temporary basis of three years could be tolerated.
- 11.2 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, CE/MN, DSD and DEP have no adverse comments on/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 and reinstate the Site to an amenity area are recommended.
- 11.3 The Site is situated in an area of rural inland plains landscape character comprising active/fallow agricultural lands, vegetated areas, clusters of tree groups and woodland to the east and northwest. There are open storage yards in the southwest and east of the Site. (**Plans A-2 and A-3**). The proposed temporary use is considered not entirely incompatible with the existing landscape character in the surrounding areas. While CTP/UD&L, PlanD, has concern that approval of the application may alter further the landscape character and degrade the landscape quality of the area, no significant sensitive landscape resources is observed within the Site.
- 11.4 The Site is accessible via a local track leading to Sha Tau Kok Road – Wo Hang. Having considered the FI (**Appendix Ia**), C for T has no comment on the application from traffic engineering perspective. There is a watercourse located in the southeast of the Site (**Plan A-2**). In this regard, the applicant proposes to erect fencing along the site boundary and set back at least 2m from the watercourse at the southeast portion of the Site and implement good site practices (**Appendix Ic**), DAFC has no comment from nature conservation perspective. While DEP does not support the application as there are sensitive receivers, i.e. residential buildings, in the vicinity of the Site (**Plan A-2**), 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.
- 11.5 The subject site is overlooked by steep natural terrain and meet the alert criteria for a NTHS. In response to H(GEO) of CEDD’s comments, the applicant has submitted a

GPRR in which he undertakes to conduct a NTHS and to carry out any necessary mitigation measures as part of the proposed development (**Appendix Ic**). H(GEO) of CEDD has no further comment to the application and the applicant will be advised to conduct a NTHS and to carry out any necessary mitigation measures. In response to DLO/N, LandsD's comments regarding the presence of unauthorized structures on the Site and the occupation of GL which are subject to land control and lease enforcement actions, the applicant advises that he will rectify the matters and settle the land issues accordingly by applying STTSTW (**Appendix Ib**) and that the concerned structures on GL have been demolished (**Appendix Id**). DLO/N, LandsD has no further comment on the application. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land regime. Other relevant departments consulted, including CE/MN of DSD, CE/C of WSD and D of FS, etc. have no adverse comment on or no objection to the application.

- 11.6 While there is no similar application with the same "AGR" zone, an approved planning application No. A/NE-MUP/185 for the same use is located in proximity to the Site (**Plan A-1**) within an area zoned "R(D)".
- 11.7 Regarding the local objection conveyed by DO(N), HAD and the adverse public comments mainly on traffic and environmental aspects as detailed in paragraphs 9.2.6 and 10 above respectively, government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary use under the application could be tolerated for a period of three years.
- 12.2 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 16.2.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 9:00a.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 16.8.2024;
- (d) in relation to (c) above, the implementation of the mitigation measures identified in the approved 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 16.11.2024;

- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations and water supplies for fire-fighting 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 16.8.2024;
- (g) in relation to (f) above, the implementation of the fire service installations and water supplies for fire-fighting 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 16.11.2024;
- (h) if any of the above planning conditions (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;
- (i) if any of the above planning conditions (c), (d), (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 the Director of Planning or of the Town Planning Board.

Advisory Clauses

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

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

the proposed use and associated filling of land are 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. 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.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 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.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicants.

14. Attachments

Appendix I	Application Form with Attachment received on 29.8.2023
Appendix Ia	FI received on 8.12.2023
Appendix Ib	FI received on 19.12.2023
Appendix Ic	FI received on 16.1.2024
Appendix Id	FI received on 29.1.2024
Appendix II	Previous Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Area Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2024**