

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-MUP/199

<u>Applicant</u>	: Topup Oasis Limited represented by Euro Asia Construction Engineering Limited
<u>Site</u>	: Lot 755 RP in D.D. 46, Loi Tung, Ta Kwu Ling, New Territories
<u>Site Area</u>	: About 103.4 m 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>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Shop and Services (Real Estate Agency) for a Period of Three Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary shop and services (real estate agency) for a period of three years and filling of land at the application site (the Site). The Site falls within an area zoned “AGR” on the approved Man Uk Pin OZP No. S/NE-MUP/11. 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 require planning permission from the Town Planning Board (the Board). The Site is currently vacant, paved and fenced-off.
- 1.2 The Site is accessible via a local track leading to Sha Tau Kok Road – Wo Hang (**Plan A-2**). According to the applicant, the proposed use involves a single-storey temporary structure (not exceeding 2.4 m in height) for real estate agency use, with a total floor area not exceeding 14.8m². One parking space for private car will be provided at the Site (**Drawing A-1**). The applicant also applies to regularize filling of land at the whole Site with concrete of about 5 inches in depth (**Appendices Ic**). The operation hours of the Site are between 9:00 a.m. and 7:30 p.m. daily, including public holidays. The proposed layout plan is shown in **Drawing A-1**.
- 1.3 The Site is the subject of a previous application No. A/NE-MUP/167 for the same proposed use submitted by the same applicant which was approved by the Rural and New Town Planning Committee (the Committee) on 24.6.2022. It was revoked on 24.12.2023 for non-compliance with approval conditions relating to the provision of drainage facilities and implementation of proposals for fire service installations (FSI) and water supplies for firefighting. Details of the previous applications are set out in paragraph 5 below. Compared with application No. A/NE-MUP/167, the major development parameters and layout of the proposed use are the same as the current one.

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

- (a) Application Form with attachments received on 30.1.2024 (Appendix I)
 - (b) Further Information (FI) received on 15.2.2024, 16.2.2024 and 20.2.2024* (Appendix Ia)
 - (c) FI received on 28.2.2024* (Appendix Ib)
 - (d) FI received on 6.3.2024 and 11.3.2024* (Appendix Ic)
- * accepted and exempted from the publication and recounting requirements*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed at **Appendices I and Ia**, and summarized as follows:

- (a) the proposed use is temporary in nature and would not affect the long-term development in the area;
- (b) the proposed use would cater for the need for real estate agency among local villagers;
- (c) the proposed use is compatible with the surroundings and the village settings of the area;
- (d) no adverse traffic and environmental impacts on the area are anticipated; and
- (e) the application is the subject of a previous application No. A/NE-MUP/167 for the same use. The applicant was unable to comply with the approval conditions relating to provision of drainage facilities and implementation of FSI and water supplies for firefighting on time as the Short Term Waiver (STW) was still under processing by the District Lands Office/North of the Lands Department (DLO/N, LandsD). A fresh application is therefore submitted.

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 Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) by obtaining consents of the current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is not subject to any active enforcement actions.

5. **Previous Applications**

- 5.1 The Site is the subject of three previous applications (No. A/NE-MUP/6, 10 and 167) for different uses. Application No. A/NE-MUP/167 for the same proposed use of the current application was approved by the Committee on 24.6.2022 on considerations 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.

- 5.2 Applications No. A/NE-MUP/6 and 10 for a different use (i.e. temporary open storage of construction materials) were rejected by the Committee or the Board on review in 1995. They are considered not relevant to the current application.
- 5.3 Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are two similar applications within the “AGR” zone in the vicinity of the Site in the Man Uk Pin area. Applications No. A/NE-MUP/152 and 154 for proposed shop and services (selling of agricultural products) were rejected by the Committee between 2020 and 2021 mainly on considerations that the development was not in line with the planning intention of the “AGR” zone; adverse traffic impacts on the surrounding areas; and setting undesirable precedent for similar applications.
- 6.2 Details of the similar applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
 - (a) vacant, paved and fenced-off; and
 - (b) accessible via Sha Tau Kok Road – Wo Hang (**Plan A-2**).
- 7.2 The surrounding areas are generally of rural inland plains landscape character comprising farmlands, tree clusters and village houses within “Village Type Development” zone.

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 impact on the adjacent areas and adverse impact 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 IV** and **V** respectively.

9.2 The following government department has objection to the application.

Agriculture

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

- (a) the application is not supported from agricultural perspective;
- (b) the Site possesses potential for agricultural rehabilitation, and agricultural activities are active in the vicinity; and
- (c) agricultural infrastructures such as road access and water source are also available in the vicinity of the Site, which can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.

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

On 6.2.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received. A member of the North District Council indicates no comment on the application. An individual raises objection to the application mainly on the ground of non-compliance with approval conditions of the previous application.

11. Planning Consideration and Assessments

- 11.1 The application is for a proposed temporary shop and services (real estate agency) for a period of three years and filling of land at the Site zoned “AGR” on the OZP. The temporary development is considered 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. It is also intended 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 assessment below, the proposed use could be tolerated on a temporary basis of three years.
- 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, the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) 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.
- 11.3 The Site is situated in an area of rural inland plains landscape character comprising farmlands, tree clusters and village houses. Significant adverse impact on landscape character and existing landscape resources arising from the proposed use within the site is not anticipated. CTP/UD&L, PlanD has no objection from landscape planning perspective. DEP has no objection to the application and advises that the applicant

should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimize any potential environmental impacts.

- 11.4 The Site is the subject of a previous application No. A/NE-MUP/167 for the same use submitted by the same applicant. It was revoked on 24.12.2023 due to non-compliance with approval conditions relating to the provision of drainage facilities and implementation of proposals for FSI and water supplies for firefighting. The applicant indicates that he was unable to comply with the approval conditions on time as relevant STW was still under processing by DLO/N, LandsD. In this regard, proposals for drainage facilities and FSI and water supplies for firefighting have been submitted in support of the application (**Appendix Ia**). Relevant government departments including CE/MN, DSD and Director of Fire Services have no comment/no objection to the application. A submission for the implementation of traffic management measures is also provided at **Appendix Ia** in support of the application. Commissioner for Transport has no comment on the application. Relevant approval conditions requiring the applicant to implement FSI and water supplies for firefighting and traffic management measures are recommended. There has been no major change of planning circumstances since the approval of the last application in 2022. Should the Committee decide to approve the application, the applicant will be advised that should they fail to comply with any of the approval conditions resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application.
- 11.5 Regarding the public comment objecting to the application as detailed in paragraph 10 above, 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 comment mentioned in paragraph 10 above, the Planning Department considers that the proposed 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 15.3.2027. 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 15.9.2024;
- (b) in relation to (a) 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;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;

- (d) the implementation of the accepted proposals for fire service installations and water supplies for firefighting within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.12.2024;
- (e) the implementation of 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 15.12.2024; and
- (f) 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;
- (g) in relation to (f) 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;
- (h) if planning condition (c) 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 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.
- (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 IV**.

- 12.3 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 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 justification in the submission for a departure from such 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 applicant.

14. Attachments

Appendix I	Application form with attachments received on 30.1.2024
Appendix Ia	FI received on 15.2.2024, 16.2.2024 and 20.2.2024
Appendix Ib	FI received on 28.2.2024
Appendix Ic	FI received on 6.3.2024 and 11.3.2024
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comments
Drawing A-1	Proposed layout plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2024**