

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/655

<u>Applicant</u>	:	Man Tak Metal Company Limited represented by Metro Planning & Development Company Limited
<u>Site</u>	:	Lots 1504 S.B, 1505, 1506, 1509 RP and 1510 RP in D.D. 76 and adjoining Government Land, Sha Tau Kok Road – Ma Mei Ha, Ta Kwu Ling, New Territories
<u>Site Area</u>	:	About 2,980m ² (including about 153m ² of Government land)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Proposed Temporary Open Storage of Construction Material and Warehouse for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary open storage of construction material and warehouse for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the Plan. The Site is currently mostly vacant with some container vehicles found on the Site without valid planning permission.
- 1.2 The Site is accessible from Sha Tau Kok Road – Ma Mei Ha (**Plan A-2**). According to the applicant, the proposed development involves two 1-storey warehouse structures of 8.5m in height with a total floor area of about 408m² (**Drawing A-1**). The rest of the Site would be used for open storage of construction materials and maneuvering of vehicles. Three private car parking spaces for staff use and one loading/ unloading bay for heavy goods vehicles would be provided (**Drawing A-1**). The operation hours of the Site are between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays, and no operation on Sundays and public holidays.

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

- (a) Application form with attachments received by the Board on 4.1.2021 (Appendix I)
- (b) Further Information received on 31.3.2021^ (Appendix Ia)
- (c) Further Information received on 20.5.2021^ (Appendix Ib)

^ accepted and exempted from publication

1.4 On 5.2.2021, the Committee agreed to defer making a decision on the application for two months pending the preparation of further information to address the departmental comments. On 31.3.2021, the applicant submitted the further information (Appendix Ib). The application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

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

- (a) the Site is the subject of two previously approved applications No. A/NE-TKL/539 and 621 for proposed temporary open storage use;
- (b) the tenant of the last planning application No. A/NE-TKL/621 has terminated the tenancy due to business reason. A new tenant has requested two additional warehouses to store the construction materials and hence a fresh application has been submitted;
- (c) there are insufficient land supply to meet increasing open storage and warehouse demand in Ta Kwu Ling;
- (d) the Site falls within Category 2 area under the Town Planning Board Guidelines for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' (TPB PG-No. 13F) in that the planning permission could be granted on a temporary basis subject to no adverse departmental comments;
- (e) the proposed temporary development is not incompatible with the surrounding environment. It is similar to the previously approved planning permission except that two warehouses are proposed;
- (f) there would be no more than 4 vehicular trips generated during the peak hours. Sufficient spaces within the Site are provided so that there would be no queuing up of vehicle outside the Site. No adverse traffic impact would be induced by the proposed development;
- (g) a pedestrian path would be provided at the eastern side of the vehicular access to ensure the pedestrian safety; and
- (h) no container tractor/trailer will be allowed to access/ park at the Site and no workshop activity is proposed at the Site. No adverse environmental impact would be induced by the proposed development.

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 Ta Kwu Ling Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion within the Site, TPB PG-No.31A is not applicable.

4. **Background**

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), unauthorized container vehicle park was found within the Site. Subject to sufficiency of evidence, his office will take enforcement action as appropriate.

5. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13F) promulgated on 27.3.2020 is relevant to the application. The Site falls within Category 2 areas under the Guidelines. Relevant extract of the Guidelines is at **Appendix II**.

6. **Previous Applications**

6.1 The Site is the subject of two previously approved applications (No. A/NE-TKL/539 and 621) for proposed temporary open storage of construction materials for a period of 3 years submitted by different applicant as the current application. Both applications were approved by the Committee mainly on the grounds that the applications generally comply with the relevant TPB Guidelines (i.e. TPB PG No.13E) in that there is no major adverse departmental comments on the application; and the concerns of relevant government departments could be addressed through implementation of approval conditions. When compared with the last approved application No. A/NE-TKL/621, the current application, apart from the open storage use, has included two structures for warehouse use.

6.2 Details of the previous applications are summarized at **Appendix III** and its location is shown on **Plan A-1**.

7. **Similar Applications**

7.1 There are 5 similar applications involving 3 sites for temporary open storage uses falling within/ partly within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**).

7.2 Three applications (No. A/NE-TKL/377, 490 and 585) for temporary open storage of construction materials involving the same site falling mostly within Category 2 areas were approved by the Committee between 2011 and 2018 mainly on considerations that the applications complied with the then TPB PG-No.13E in that there were no major adverse

impacts or adverse departmental comments on the applications; there were previous planning approvals and the approval conditions had been complied with; and the renewal applications complied with the relevant TPB Guidelines.

- 7.3 Two applications (No. A/NE-TKL/418 and 624) for temporary open storage of construction materials, with their sites falling entirely within Category 3 areas, were rejected by the Committee on 24.5.2013 and 20.9.2019 respectively mainly on the grounds that the applications were not in line with the planning intention of “AGR” zone; the developments did not comply with the then TPB PG-No.13E in that there were adverse impacts or adverse departmental comments on the applications; and the proposed uses would generate adverse impacts on the surrounding areas.
- 7.4 Details of these 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 and A-2, aerial photo on Plan A-3 and site photo on Plan A-4)

8.1 The Site is:

- (a) mainly flat, fenced, hard paved;
- (b) mostly vacant with parking of container vehicles; and
- (c) abutting Sha Tau Kok Road - Ma Mei Ha.

8.2 The surrounding areas have the following characteristics:

- (a) rural in landscape character predominated by open storage yards and village houses;
- (b) to the immediate east and north is open storage of construction materials approved by the Committee (under application No. A/NE-TKL/585) in 2018;
- (c) the village proper of Leng Tsai Village is located across an existing drainage channel to the further northeast of the Site;
- (d) to the immediate west are mostly vacant land intermixed with a goods distribution centre, vacant land, an open storage yard and a few temporary structures; and
- (e) to the south of the Site, across Sha Tau Kok Road – Ma Mei Ha, are mainly vacant land with domestic structures and active/ fallow agricultural land.

9. Planning Intention

The planning intention of the “AGR” zone 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.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

10.1.1 Comment of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the Site comprises private lots and the adjoining Government land (GL). The lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of vehicular access, the applicant should make their own arrangement. The Government shall accept no responsibility in such arrangement and there is no guarantee that any adjoining GL will be allowed for the vehicular access of the proposed use;
- (b) according to her record, some existing structures were erected within the Site without approval of her office. The aforesaid structures are not acceptable under the Lease concerned and her office reserves the right to take lease enforcement actions against the aforesaid structures;
- (c) some GL adjoining the Site was also occupied without approval. Her office reserves the right to take necessary land control actions against the irregularities;
- (d) it is noted that there is proposed drainage works on GL in the development scheme. The applicant should be reminded that any excavation works on GL should not be commenced without prior approval of her office; and
- (e) if the planning application is approved, the owners of the lots concerned shall apply to her office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The applications for STW and STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by her office.

Traffic

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

- (a) having reviewed the further information as submitted by the applicant including the information on a swept path analysis illustrating the vehicular movement within the Site, width of ingress/egress, vehicle trips estimation, proposed traffic management measures to ensure pedestrian safety, she has no further comment on the application from the traffic engineering point of view and considered that the traffic impact induced by the proposed development is tolerable; and

- (b) should the application be approved, the applicant is required to implement the traffic management measure, i.e. the provision of pedestrian path at the eastern side of the vehicular access as proposed by the applicant, to her satisfaction.

Environment

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest ones are located to the south across Sha Tau Kok Road at a distance of about 30m (**Plan A-2**);
- (b) there was no substantiated environmental complaints against the Site during the past three years; and
- (c) the applicant should be advised to follow the environmental mitigation measures as set out in the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' (CoP) in order to minimize any possible environmental nuisances.

Urban Design and Landscape

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

- (a) it is noted that the Site is the subject of a previous planning application No. A/NE-TKL/621 for the similar use which was approved in September 2020. Also, there are some temporary structures and village houses in the vicinity of the Site, and the scale of the proposed development is low-rise and temporary in nature. In view of the above, the proposed development is considered not incompatible with the surrounding context and adverse visual impact is not anticipated.
- (b) based on aerial photo of 2020, the Site is situated in an area of rural landscape character surrounded by a mix of farmlands, village houses, tree clusters and some open storage yards in the proximity. The proposed use is considered not entirely incompatible with the surrounding environment. The layout of the proposed warehouses and parking space is not in direct conflict with the existing trees on the Site. No significant adverse impact to the existing landscape resource arising from the proposed use is anticipated;
- (c) she has no objection to the application from the urban design and landscape planning perspectives; and
- (d) should the Board approve the application, it is not necessary to impose a landscape condition as no significant landscape impact arising from the proposed development is envisaged.

Drainage

10.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection to the application from the public drainage point of view;
- (b) should the application be approved, the applicant is required to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area. Detailed comments are appended in **Appendix VI**; and
- (c) there is public sewerage near the Site.

Building Matters

10.1.6 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) he has no objection to the application;
- (b) there is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application; and
- (c) there is also no record of submission of the proposed building/ structure to BD for approval. His advisory comments are at **Appendix VI**.

Agriculture

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

he does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries etc.

Water Supply

10.1.8 Comments of Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) existing water mains are inside the proposed lot and will be affected (**Plan A-2**). The applicant is required to either divert or protect the water mains found on the Site. Detailed comments are appended in **Appendix VI**.

Fire Safety

10.1.9 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations and water supplies for firefighting being provided to his satisfaction; and
- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans. Detailed comments are appended in **Appendix VI**.

District Officer's Comments

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

he has consulted the locals regarding the application. The 1st Vice-Chairman and the 2nd Vice Chairman of Fanling District Rural Committee (FDRC), the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Hung Leng, the RR of Leng Tsai and the RR of Kan Tau Tsuen and a group of villagers (with 19 signatures) objected to proposal on the grounds that the proposed development would cause traffic impact to the surroundings; not in line with the planning intention of "AGR"; and the heavy goods vehicular traffic would cause safety issues to the villagers.

10.2 The following Government departments have no comment on / no objection to the application:

- (a) Chief Highway Engineer/New Territories East, Highways Department; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

11. Public Comments Received During Statutory Publication Periods (Appendix V)

On 12.1.2021, the application was published for public inspection. During the statutory public inspection period, six public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Chairman of North District Council, the 1st Vice-chairman and the 2nd Vice-chairman of Fanling District Rural Committee, a group of villagers (with 19 signatures) and one individual object the application mainly on the grounds that the heavy goods vehicular traffic would cause further congestions on the road junction; the warehouse structures would create visual impact to the surrounding areas; noting that there were some land disputes in the vicinity of the Site in the past, approval of the application may trigger further conflicts with the local villagers; the increase of heavy goods vehicular traffic would cause safety issues to the villagers; and there are adverse departmental comments on the application.

12. Planning Considerations and Assessments

- 12.1 The application is for a proposed temporary open storage of construction materials and warehouse for a period of three years at the Site zoned “AGR” on the OZP. 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. DAFC does not support the application as the Site has potential for agricultural rehabilitation. Nonetheless, it is noted that the Site is currently hard paved and is the subject of previously approved applications for similar use. It is considered that the approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “AGR” zone.
- 12.2 The proposed temporary development is considered not entirely incompatible with the surrounding land uses which comprises of vacant land, fallow agricultural land, tree clusters, some open storage yards and village houses (**Plan A-2**). CTP/UD&L, PlanD, in this regard, has no objection to the application from the landscape planning perspective and considers that significant adverse landscape impact arising from the proposed development is not anticipated. Also, the proposed development is not incompatible with the surrounding context and adverse visual impact is not anticipated.
- 12.3 The Site falls within Category 2 areas under the TPB PG-No. 13F promulgated by the Board on 27.3.2020. 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 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. 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.
- 12.4 The application generally complies with the TPB PG-No. 13F in that no major adverse departmental comments have been received on the application; and the concerns of the relevant government departments can be addressed through the implementation of approval conditions.
- 12.5 C for T, upon review of the further information submitted by the applicant, has no further comment on the application from the traffic engineering point of view. Although 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**), 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. Other concerned Government departments, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on or no objection to the application.
- 12.6 The Site is the subject of two previously approved applications (No. A/NE-TKL/539 and 621) for similar temporary open storage use. These applications were approved by the Committee mainly on the grounds that the application generally complies with the relevant Guidelines; and the concerns of relevant Government departments could be addressed through implementation of approval conditions. Approval of the current

application is in line with the Committee's previous decision.

- 12.7 There are 5 similar applications mainly involving 3 sites for temporary open storage uses (**Plan A-1**). Applications No. A/NE-TKL/418 and 624 for temporary open storage were rejected mainly on the grounds that the applications were not in line with the planning intention of "AGR" zone; the developments did not comply with the then TPB PG-No.13E in that there were adverse impacts or adverse departmental comments on the applications; and the proposed uses would generate adverse impacts on the surrounding areas. Applications No. A/NE-TKL/377, 490 and 585 involving the same site to the immediate north of the Site falling mostly within Category 2 areas for temporary open storage of construction materials were approved mainly on considerations that the applications complied with the then TPB PG-No.13E in that there were no major adverse impacts or adverse departmental comments on the applications. The planning circumstances of the current application are similar to the approved applications to the immediate north of the Site.
- 12.8 Regarding the adverse public comments as detailed in paragraph 11 and the local objections conveyed by DO(N) of HAD in paragraph 10.1.10 above, the Government department's comments and the planning assessment above are relevant. With respect to the land dispute matter as mentioned in a public comment, it should be noted that land dispute should not be a material consideration of the TPB in considering the planning application.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and taking into account the local objections conveyed by DO(N) of HAD and public comments in paragraphs 10.1.10 and 11 above respectively, the Planning Department considers that the temporary use under application could be tolerated for a period of 3 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 3 years until 28.5.2024. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 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) no container tractor/trailer as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) 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 28.11.2021;

- (e) in relation to (d) above, the provision of 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 28.2.2022;
- (f) 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 9.7.2021;
- (g) 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 28.11.2021;
- (h) in relation to (g) above, the provision of 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 28.2.2022;
- (i) the implementation of traffic improvement 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 28.2.2022;
- (j) if any of the above planning conditions (a), (b) or (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;
- (k) if any of the above planning conditions (d), (e), (f), (g), (h) or (i) 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
- (l) upon the 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**.

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 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 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 4.1.2021
Appendix Ia	Further Information received on 31.3.2021
Appendix Ib	Further Information received on 20.5.2021
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13F for Application for Open Storage and Port Back-up Uses
Appendix III	Previous s.16 Applications
Appendix IV	Similar s.16 Applications within/partly within “AGR” Zone in the vicinity of the Application Site on the Ping Che & Ta Kwu Ling Outline Zoning Plan
Appendix V	Public Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2021**