

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-TKL/676**

<b><u>Applicant</u></b>	:	Man Tak Metal Company Limited represented by Metro Planning and Development Company Limited
<b><u>Site</u></b>	:	Lots 2102 and 2103 (Part) in D.D. 76, Ping Che, New Territories
<b><u>Site Area</u></b>	:	About 3,750 m <sup>2</sup>
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)  <u>Lot 2103 in D.D. 76</u> (i) Modification of Tenancy (MOT) No. 33036 for erection of temporary structures for the purpose of dwelling and kitchen; and (ii) Letter of Approval (L of A) No. 1163 for erection of temporary structures for the purpose of agricultural storage
<b><u>Plan</u></b>	:	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<b><u>Zonings</u></b>	:	“Open Storage” (“OS”) (84%) and “Agriculture” (“AGR”) (16%)
<b><u>Application</u></b>	:	Temporary Warehouse for Storage of Metals for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary warehouse for storage of metals for a period of three years (**Plan A-1**). Majority of the Site falls within an area zoned “OS” with a minor portion encroaching onto “AGR” zone on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, whilst ‘Warehouse (excluding Dangerous Goods Godown)’ is a Column 1 use always permitted in the “OS” zone, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use is not provided for under the Notes of the OZP. The Site is currently being used for the applied use without a valid planning permission.
- 1.2 The Site is accessible via a local track leading to Ping Che Road (**Plan A-2**). According to the applicant, there are a total of six structures with a total GFA of 3,063m<sup>2</sup> at building heights from 3m to 9m for warehouse and ancillary uses and one loading/unloading bay (11m x 3.5m) for heavy goods vehicle (**Drawing A-1**). The operation hours of the warehouse are between 9:00am and 7:00pm from Mondays to Saturdays, and there will

be no operation on Sundays and public holidays. The proposed layout plan as submitted by the applicant is shown in **Drawing A-1**.

- 1.3 The Site is the subject of two previously approved applications (No. A/NE-TKL/527 and 597) for temporary warehouse for storage use for a period of 3 years submitted by a different applicant as the current applicant. Compared with the last application No. A/NE-TKL/597, all development parameters including the site layout under the current application remain unchanged.
- 1.4 In support of the application, the applicant has submitted the following documents:
- |     |  |               |
|-----|--|---------------|
| (a) | Application form with attachments received on 8.7.2021 | (Appendix I)  |
| (b) | Supplementary Information received on 13.7.2021        | (Appendix Ia) |
| (c) | Further Information (FI) received on 4.8.2021^         | (Appendix Ib) |
| (d) | FI received on 26.10.2021^                             | (Appendix Ic) |
| (e) | FI received on 17.11.2021^                             | (Appendix Id) |
| (f) | FI received on 24.11.2021^                             | (Appendix Ie) |
| (g) | FI received on 14.12.2021^                             | (Appendix If) |

*^ accepted and exempted from publication*

- 1.5 At the request of the applicant, the Rural and New Town Planning Committee (the Committee) agreed on 27.8.2021 to defer making a decision on the application for two months pending the preparation of FI to address the departmental comments. The applicant submitted FI as detailed in paragraph 1.4 above and the application is re-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 to If**. They can be summarized as follows:

- (a) the Site is the subject of two previously approved applications No. A/NE-TKL/527 and 597 for similar use submitted by a different applicant;
- (b) significant portion of land falls within area zoned “OS” of which ‘Warehouse’ is always permitted while only a small portion falls within the “AGR” zone;
- (c) there will be a total of about 4 vehicular trips per day generated by the development. The applicant will also implement the traffic management measures including placing of traffic signage to show that no container tractor/trailer is allowed to enter the Site and to ensure pedestrian safety. Considering the infrequent traffic generated by the development, minimal traffic impact is anticipated;
- (d) no container/trailer and workshop activity are allowed within the Site. The storage of metals, mainly metal pipes and metal parts for construction use will be housed within the two warehouses. Therefore insignificant noise and environmental impacts are anticipated and the proposed development is considered compatible with the surrounding environment; and

- (e) the applicant of the current application has submitted fire service installations (FSIs) proposal, proposal for traffic management measures and drainage proposal in support of the current application.

### **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 Fanling District Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Background**

The Site is currently not the subject of any enforcement case. However, the Site will be closely monitored according to the established procedures.

### **5. Previous Applications**

- 5.1 The Site is the subject of two previously approved applications (No. A/NE-TKL/527 and 597) for temporary warehouse for storage of metal parts with ancillary parking of vehicles / spare parts for a period of 3 years submitted by a different applicant. These applications were approved with conditions by the Committee on 22.1.2016 and 22.2.2019 respectively, mainly on the considerations that the development was generally considered not incompatible with the surrounding and would not cause adverse traffic, drainage and landscape impacts on the surrounding area. The last application No. A/NE-TKL/597 was revoked on 22.3.2021 due to non-compliance with time-limited approval conditions requiring the submission and implementation of drainage proposal, provision of water supplies for FSIs and the implementation of the traffic management measures.
- 5.2 When compared with the last application No. A/NE-TKL/597, the applied use and the development parameters including the site layout under the current application are the same. Nonetheless, the current application is submitted by a different applicant.
- 5.3 Details of the previous applications are summarized at **Appendix II** and its locations are shown on **Plan A-1**.

### **6. Similar Applications**

- 6.1 There are two similar applications (No. A/NE-TKL/566 and 655) within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). The two applications are for proposed temporary workshop and warehouse / open storage for construction materials for a period of 3 years. Application No. A/NE-TKL/566, located within the same “AGR” zone in the vicinity of the Site, was rejected by the Committee on 23.6.2017 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone and the applicant had failed to demonstrate that the development would not generate adverse traffic and environmental impacts on the surrounding areas.

- 6.2 Application No. A/NE-TKL/655, which falls within Category 2 areas 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), was approved by the Committee on 28.5.2021 mainly on considerations that the application generally comply with the relevant TPB Guidelines 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.
- 6.3 Details of these similar applications are at **Appendix III** and their locations are shown on **Plan A-1**.

**7. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on **Plan A-3** and site photos on **Plans A-4a to 4c**)**

7.1 The Site is:

- (a) fenced off, paved and mainly occupied by some large metal frames forming part of two warehouse structures for the applied use; and
- (b) accessible by a local track leading to Ping Che Road.

7.2 The surrounding areas have the following characteristics:

- (a) to the north and east are open storage yards, warehouses, a plant nursery, car repair workshops and storage use;
- (b) to the south is a channelized section of Tan Shan River, some vacant structures and domestic structures; and
- (c) to the west is mainly vacant land.

**8. Planning Intentions**

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.

**9. Comments from Relevant Government Departments**

- 9.1 The following government departments have been consulted and their views on the application are summarized as follows:

**Land Administration**

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

- (a) the Site comprises Lots No. 2102 and 2103 in D.D. 76. The lots are Old Schedule lots held under the Block Government Lease (demised for

agriculture use) without any guaranteed right of access. Lot No. 2103 in D.D. 76 is covered by Modification of Tenancy (MOT) No. 33036, and Letter of Approval (L of A) No. 1163. The MOT was issued for erection of temporary structures for the purpose of dwelling and kitchen; and the L of A was issued for erection of temporary structures for the purpose of agricultural storage. The concerned MOT and L of A fall within the application site;

- (b) it is noted that:
  - (i) the occupation boundary and application boundary of the application site do not tally;
  - (ii) portion of the Government land adjoining Lot No. 2102 in D.D. 76 is being illegally occupied (**Plan A-2**);
  - (iii) unauthorized structures, which fall within the occupation boundary, was erected on Lot No. 2103 in D.D.76; and
  - (iv) the existing structures erected on the Site are not acceptable under the said MOT and L of A;
- (c) the unauthorized structures concerned and illegal occupation of Government land are not acceptable. Her office reserves the right to take necessary land control and lease enforcement actions against the above irregularities; and
- (d) 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 and STT applications 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**

#### 9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) based on the information submitted by the applicant, there would be about a total of 4 vehicular trips generated per day. Having reviewed the FI (**Appendix Ib**), she considers that the traffic impact induced by the temporary development is tolerable from the traffic engineering point of view;
- (b) the applicant is reminded to provide adequate maneuvering space for heavy goods vehicles within the Site;
- (c) the applicant should seek comment and agreement from the responsible party to implement the proposed pedestrian safety measure and the related

traffic matters; and

- (d) should the application be approved, the applicant is required to implement the traffic management measures as proposed by the applicant to ensure that it will not cause adverse traffic impact to the surrounding area.

### **Environment**

#### **9.1.3 Comments of the Director of Environmental Protection (DEP):**

- (a) he does not support the application as the proposed development includes a loading/unloading bay for heavy good vehicles, and will attract heavy vehicle traffic while there are domestic uses within 100m of the site boundary (**Plan A-2**);
- (b) there was no substantiated environmental complaint against the Site during the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” (COP), and comply with all environmental protection/pollution control ordinances.

### **Landscape**

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

- she has no objection to the application from the landscape planning perspective as significant adverse landscape impact arising from the continued use of the development is not anticipated.

### **Agriculture**

#### **9.1.5 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):**

- (a) he does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. The agricultural activities are active in the vicinity, and 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.;
- (b) considering the applied use was approved in 2019, he has no comment on the application from nature conservation point of view; and
- (c) should the application be approved, precautionary measures to avoid disturbance and pollution to the watercourse nearby during construction and operation phases are required.

### **Drainage**

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

- (a) having reviewed the drainage proposal and the FI submissions (**Appendices I, Ic to Ie**), he has no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, the applicant is required to implement the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Building Matters**

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

- he has no in-principle objection under the Buildings Ordinance to the use on the Site. His advisory comments to the application are at **Appendix V**.

### **Fire Safety**

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

- (a) after reviewing the FSI's proposal submitted by the applicant (**Appendices Ic and Id**), he has no in-principle objection to the application subject to the submission and implementation of FSIs to the satisfaction of his department; and
- (b) detailed fire service requirements will be formulated upon receipt of formal submission of general building plans. His detailed comments are appended at **Appendix V**.

### **Water Supply**

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

- he has no objection to the application. For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the connection, operation and maintenance of the inside services within the private lots to WSD's standards.

### **District Officer's Comments**

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

- he has consulted the locals regarding the application. The 1<sup>st</sup> Vice-Chairman and 2<sup>nd</sup> Vice-Chairman of Fanling District Rural Committee (FDRC), who also represent the Chairman of FDRC, object to the application on the grounds that the development will cause potential traffic congestion and accidents on Sha Tau Kok Road, affect pedestrian safety due to the narrow roads and potential environmental impacts due to air and water pollution. The incumbent North District Council member of subject constituency does not respond. The managers of Fanling Hung Shing Temple and the Chairman of Lung Shan Area Committee have no comment.

9.2 Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD) has no objection to the application.

## **10. Public Comments Received During Statutory Publication Periods (Appendix IV)**

On 16.7.2021, the application was published for public inspection. During the statutory public inspection period, four public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The 1<sup>st</sup> Vice-Chairman and the Vice-Chairman of FDRC object to the application on the grounds that the development will cause potential traffic congestion and accidents on Sha Tau Kok Road, affect pedestrian safety due to the narrow roads and potential environmental impacts due to air and water pollution. An individual objects to the application on the grounds that previous applications on the Site were revoked due to non-compliance of approval conditions and the potential pollution to the nearby watercourse.

## **11. Planning Considerations and Assessments**

- 11.1 The Site falls largely within the “OS” zone (84%) in which ‘warehouse (excluding Dangerous Goods Godown)’ use is always permitted. With respect to the portion of the Site falling within the “AGR” zone (16%), the applied use 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/fishponds 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 agriculture point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, it is noted that the Site is paved and it is considered that the approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “AGR” zone.
- 11.2 The Site is located in an area comprising mainly open storage yards, a plant nursery, warehouses and car repair workshops intermixed with vacant land and some temporary structures for domestic purpose (**Plan A-2**). The development is generally not incompatible with the surrounding environment. CTP/UD&L, PlanD considers that significant adverse impacts to the landscape resources arising from the current application are not anticipated.



- 11.3 DEP does not support the application as the development includes a loading/unloading bay for medium and heavy good vehicles, and will attract heavy vehicular traffic while there are domestic uses in the vicinity of the Site (**Plan A-2**). To address the concern of DEP on possible environmental nuisance to be generated by the temporary use under application, approval conditions restricting the operation hours and prohibiting operation on Sundays and public holidays are recommended. The applicant would also be advised to follow the environmental mitigation measures as set out in the revised 'COP'. Having reviewed the FI submission (**Appendix Ib**), C for T considers that the traffic impact induced by the development is tolerable from traffic engineering point of view.
- 11.4 The Site is the subject of two previously approved applications (No. A/NE-TKL/527 and 597) for temporary warehouse for storage of metal parts with ancillary parking of vehicles / spare parts for a period of 3 years submitted by a different applicant. These applications were approved with conditions by the Committee on 22.1.2016 and 22.2.2019 respectively, mainly on the considerations that the development was generally considered not incompatible with the surrounding and would not cause adverse traffic, drainage and landscape impacts on the surrounding area. The last application No. A/NE-TKL/597 was revoked on 22.3.2021 due to non-compliance with time-limited approval conditions requiring the submission and implementation of drainage proposal, provision of water supplies for FSIs and the implementation of the traffic management measures. In support of the current application, the applicant has submitted drainage proposal, FSIs proposal, and proposal of traffic management measures (**Appendices Ib to Ie**). In this regard, CE/MN, DSD, D of FS and C for T have no in-principle objection to the application.
- 11.5 There are two similar applications (No. A/NE-TKL/566 and 655) for proposed temporary workshop and warehouse / open storage for construction materials within the "AGR" zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). Application No. A/NE-TKL/566, located within the same "AGR" zone in the vicinity of the Site, was rejected by the Committee in June 2017 mainly on the grounds that the development was not in line with the planning intention of the "AGR" zone; and the applicant had failed to demonstrate that the development would not generate adverse traffic and environmental impacts on the surrounding areas. Application No. A/NE-TKL/655, which falls within Category 2 areas under the TPB PG-No. 13F, was approved by the Committee in May 2021 mainly on considerations that the application generally comply with the relevant Town Planning Board Guidelines in that there is no major adverse departmental comment on the application; and the concerns of relevant government departments could be addressed through implementation of approval conditions. The planning circumstances of the similar applications are different from the current application.
- 11.6 Regarding the local comments conveyed by DO (N) of HAD and public comments on the application as detailed in paragraphs 9.1.10 and 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 local comments conveyed by DO(N) of HAD and public comments in paragraphs 9.1.10 and 10 above, the Planning Department considers that the temporary use under application

could be tolerated for a period of 3 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 3 years until 24.12.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., 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 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 24.9.2022;
- (d) the submission of proposals for fire service installations and water supplies for firefighting 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 24.6.2022;
- (e) in relation to (d) above, the implementation of 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 24.9.2022;
- (f) the implementation of the 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 24.9.2022;
- (g) if any of the above planning conditions (a) or (b) is not complied during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (h) if any of the above planning conditions (c), (d), (e) or (f) 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.

Advisory Clauses

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

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

- the development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. 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.

### **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**

<b>Appendix I</b>	Application Form received on 8.7.2021
<b>Appendix Ia</b>	Supplementary Planning Statement received on 13.7.2021
<b>Appendix Ib</b>	Further information (FI) received on 4.8.2021
<b>Appendix Ic</b>	FI received on 26.10.2021
<b>Appendix Id</b>	FI received on 17.11.2021
<b>Appendix Ie</b>	FI received on 24.11.2021
<b>Appendix If</b>	FI received on 14.12.2021
<b>Appendix II</b>	Previous s.16 Applications
<b>Appendix III</b>	Similar s.16 Applications
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Proposed Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to 4c</b>	Site Photos