

# **TOWN PLANNING BOARD**

**TPB Paper No. 10943**

**For Consideration by  
the Town Planning Board on 1.12.2023**

**REVIEW OF APPLICATION NO. A/NE-MKT/26  
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Warehouse for Storage of Electronic Products  
and Open Storage of Packaging Tools for a Period of Three Years  
and Associated Filling of Land in "Agriculture" Zone**

**Lot 474 in D.D. 90, Lin Ma Hang Road, Man Kam To, New Territories**

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**1. Background**

- 1.1 On 24.4.2023, the applicant, Ying Shing (Hopewell) Engineering Company Limited, sought planning permission for a proposed temporary warehouse for storage of electronic products and open storage of packaging tools for a period of three years and associated filling of land at the application site (the Site) under s.16 of the pre-amended Town Planning Ordinance (the pre-amended Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Man Kam To Outline Zoning Plan (OZP) No. S/NE-MKT/4 (**Plan R-1**).
- 1.2 On 23.6.2023, the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the proposed use was not in line with the planning intention of the “AGR” zone, which was primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis; and
  - (b) the applicant failed to demonstrate that the proposed use would not generate adverse traffic impact on the surrounding areas.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/NE-MKT/26 (Annex A)
  - (b) Extract of minutes of the RNTPC meeting held on 23.6.2023 (Annex B)
  - (c) Secretary of the Board’s letter dated 14.7.2023 (Annex C)

**2. Application for Review**

On 25.7.2023, the applicant applied under s.17(1) of the pre-amended Ordinance for a review of the Committee’s decision to reject the application (**Annex D**). On 1.9.2023, the applicant

submitted written representation in support of the review application (**Annex E**).

### **3. Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in his submission at **Annex E**, as summarized below:

- (a) there is a similar application No. A/NE-MKT/17 for a proposed temporary rural workshop (timber yard and sawmill) approved by the Committee in the vicinity of the Site;
- (b) there is no residential dwelling near the Site, and hence the proposed use would not create nuisance to sensitive receiver;
- (c) the traffic network in the area is capable of accommodating the trip flow generated by the proposed development; and
- (d) the proposed development is essential to address the storage demand.

### **4. The Section 16 Application**

#### **The Site and its Surrounding Areas (Plans R-1 to R-4)**

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the Committee were set out in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change in the planning circumstances except that the Site is currently used for vehicle repair workshop without valid planning permission.
- 4.2 The Site is:
  - (a) formed, fenced off and currently occupied by a structure used for vehicle repair workshop without valid planning permission;
  - (b) accessible via a local track leading to Lin Ma Hang Road.
- 4.3 The surrounding areas are dominated by storage/open storage yards, scattered temporary domestic structures, car parks, vacant land, fallow agricultural land and tree clusters.

#### **Planning Intention**

- 4.4 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.
- 4.5 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 nature environment.

#### Background

- 4.6 During the s.16 application stage, the Site was subject to planning enforcement action against unauthorized developments (UDs) involving intensification of storage use (including deposit of containers) (No. E/NE-MKT/29 and E/NE-MKT/35). Enforcement Notices (ENs) were issued on 28.11.2022 requiring discontinuation of the UD by 28.1.2023. As the UD has been discontinued, relevant Compliance Notices (CNs) were then issued on 18.7.2023 and 23.6.2023 respectively. The Site is currently not subject to any active planning enforcement action.

#### Previous Application

- 4.7 The Site is not the subject of any previous application.

#### Similar Applications

- 4.8 There is no similar application for the same use within the same “AGR” zone in the Man Kam To area at the s.16 application stage.
- 4.9 Since the s.16 application was rejected on 23.6.2023, three similar applications (No. A/NE-MKT/25, 29 and 31) for temporary warehouse/open storage/logistic warehouse uses were rejected by the Committee between September and November 2023 mainly for being not in line with the planning intention of the “AGR” zone; not complying with the Town Planning Board Guidelines No. 13G (TPB-PG No. 13G) in that no previous approval has been granted to the Site and there were adverse departmental comments and local objections (for application Nos. A/NE-MKT/25 and 31 only); and failure to demonstrate that the proposed development would not generate adverse traffic, drainage, landscape, slope safety and/or environmental impacts on the surrounding areas.
- 4.10 Details of the similar applications are summarized at **Annex F** and their locations are shown in **Plan R-1**.

### **5. Comments from Relevant Government Departments**

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix II of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted and they maintained their previous comments on the application, which are summarized as follows. Besides, Director of Environmental Protection (DEP) has provided updated comments on the application.

## Environment

### 5.2.1 Comments of the DEP:

- does not support the application from environmental perspective as there are sensitive receivers in the vicinity of the Site (the closest one is about 19m away) and the proposed use involves the use of heavy vehicles. As such, environmental nuisance is expected.

## Traffic

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

- (a) the applicant should provide the following information/assessment for his consideration:
  - (i) to advise and substantiate the traffic generation and attraction from and to the Site and the traffic impact to the nearby road links and junctions;
  - (ii) to advise the width of the vehicular access leading to the Site. It is noted that the existing fencing maybe in conflict with the vehicular access. The applicant should review the layout and provide clarification in this regard; and
  - (iii) to advise the provision and management of pedestrian facilities to ensure pedestrian safety.
- (b) the vehicular access between the Site and Lin Ma Hang Road is not management by this department.

## Agriculture

### 5.2.3 Comments of the Director of Agriculture (DAFC):

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

### 5.3 The following government departments maintain their previous views of having no comment/no objection on the application.

- (a) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (b) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
- (c) Director of Fire Services (D of FS);
- (d) Commissioner for Police (C for P);

- (e) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (f) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD);
- (g) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD); and
- (h) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD)

## **6. Public Comments Received During Statutory Publication Periods**

- 6.1 On 11.8.2023 and 15.9.2023, the review application and the written representation were published for public inspection. During the statutory public inspection periods, four public comments were received (**Annex F**), including two from a member of the North District Council who indicates no comment on the application, and another two from Kadoorie Farm & Botanic Garden Corporation and an individual objecting to the application mainly on the grounds that the Site is the subject of enforcement action and approval of the application would encourage ‘destroy first, develop later’ case.
- 6.2 Three objecting comments were received at the s.16 application stage as set out in paragraph 10 of **Annex A**.

## **7. Planning Considerations and Assessments**

- 7.1 The application was rejected by the Committee on 23.6.2023 mainly for reasons as stated in paragraph 1.2 above. To support the review application, the applicant has submitted written representation as summarized in paragraph 3 above. There has been no material change in the planning circumstances since the consideration of the subject application by the Committee except that the Site is currently used for vehicle repair workshop without valid planning permission. The planning considerations and assessments below are in response to the applicant’s justification provided in the review application.
- 7.2 The applicant claims that there is a similar application No. A/NE-MKT/17 approved in the vicinity. It should be noted that the application was approved mainly on considerations that it would facilitate the relocation of timber yards and sawmill operations affected by the Kwu Tung North New Development Area (NDA) development; there were no adverse departmental comments on the application; or the concerns of relevant departments could be addressed by imposing suitable approval conditions. Besides, Development Bureau has rendered policy support for the application to ensure a smooth clearance and timely development of the NDA and provision of housing land supply, as well as to facilitate continued operation of displaced brownfield operations. The planning circumstances of the approved application are not applicable to the review application.
- 7.3 The Site falls within the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. While the applicant claimed that the proposed development is essential to meet storage demand, such use is not in line with the planning attention of the “AGR” zone and DAFC maintains his view of not supporting the application from agricultural

perspective as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification provided in the review application to merit a departure from the said planning intention, even on a temporary basis.

- 7.4 The applicant claims that the proposed development would not induce adverse traffic impact on or cause nuisance to the surrounding areas. However, the applicant did not submit any information/assessment in relation to traffic generation/attraction, vehicular access and management of pedestrian facilities, etc. as requested by C for T in the s.16 application stage for her consideration.
- 7.5 In environmental terms, DEP does not support the application as there are sensitive receivers in the vicinity (the nearest one being located in about 19m away) and the proposed use involves the use of heavy vehicles. As such, environmental nuisance is expected. The applicant fails to provide any information in the review application to demonstrate that the proposed development would not cause nuisance to the surrounding areas. Other relevant government departments including CE/MN of DSD, CHE/NTE of HyD, D of FS, etc. maintain their previous views of having no comment/no objection on the application.
- 7.6 Three similar applications (No. A/NE-MKT/25, 29 and 31) for temporary warehouse/open storage/logistic warehouse uses were rejected by the Committee between September and November 2023, since the rejection of the subject s.16 application, mainly on the grounds of not in line with the planning intention of the “AGR” zone; not complying with TPB-PG No. 13G; and failure to demonstrate that the proposed development would not generate adverse impacts on the surrounding areas. The planning circumstances of the rejected applications are similar to that of the current review application.
- 7.7 Regarding the public comments objecting to the review application, the planning considerations and assessments in paragraphs 7.1 to 7.6 above are relevant.

## **8. Planning Department's Views**

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there has been no major change in the planning circumstances since the consideration of the subject application by the Committee on 23.6.2023, Planning Department maintains its previous views of not supporting the review application for the following reasons:
  - (a) 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; and
  - (b) the applicant fails to demonstrate that the proposed development would not generate adverse traffic and environmental impacts on the surrounding areas.

- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until **1.12.2026**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 9:00 a.m., from Mondays to Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the submission of a drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **1.6.2024**;
- (d) in relation to (c) 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 **1.9.2024**;
- (e) in relation to (d) above, the implemented drainage facilities should be maintained at all times during the planning approval period;
- (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 **12.1.2024**;
- (g) the submission of a fire service installations (FSIs) 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 **1.6.2024**;
- (h) in relation to (g) above, the implementation of the FSIs 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 **1.9.2024**;
- (i) the submission of a proposal for traffic management measures within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by **1.6.2024**;
- (j) in relation to (i) above, the implementation of the 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 **1.9.2024**;
- (k) if any of the above planning condition (a), (b) or (e) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (l) if any of the above planning condition (c), (d), (f), (g), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.



### Advisory Clauses

8.3 The recommended advisory clauses are attached at **Annex G**.

## **9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of the Committee's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

## **10. Attachments**

<b>Plan R-1</b>	Location plan
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Aerial Photo
<b>Plans R-4a and R-4b</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/NE-MKT/26
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 23.6.2023
<b>Annex C</b>	Secretary of the Town Planning Board's letter dated 14.7.2023
<b>Annex D</b>	Email dated 25.7.2023 from the applicant applying for review
<b>Annex E</b>	Written representation submitted by the applicant in support of the review application
<b>Annex F</b>	Similar s.16 applications
<b>Annex G</b>	Public comments
<b>Annex H</b>	Recommended advisory clauses

**PLANNING DEPARTMENT  
DECEMBER 2023**