

REVIEW OF APPLICATION NO. A/NE-TK/745
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Warehouse (Storage of Grain, Cooking Oil and Grocery)
for a Period of 3 Years in “Agriculture” Zone
Lots 626 (Part), 627 (Part), 629 (Part), 630 (Part), 631 (Part), 632, 634 (Part) in
D.D. 23 and Adjoining Government Land, Ting Kok, Tai Po, New Territories**

1. Background

- 1.1 On 24.1.2022, the applicant, Mr. CHIM Kwan Wo, represented by PlanArch Consultants Ltd., sought planning permission for a temporary warehouse (storage of grain, cooking oil and grocery) at the application site (the Site) for a period of 3 years under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Agriculture” (“AGR”) on the approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19 (**Plan R-1**).
- 1.2 On 18.3.2022, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
 - (a) the development 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 current submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applicant failed to demonstrate in the submission that the development would not result in adverse landscape impact on the area.
- 1.3 The site area is about 1,695m² including about 310m² of government land. The applied use comprises seven single-storey temporary structures with a total floor area of about 897m² and height of not more than 4.8m for storage, ancillary office/store and rest area uses (**Drawing R-1**). A loading/unloading bay and a parking space for private car are provided within the Site to support the operation.
- 1.4 For Members’ reference, the following documents are attached:
 - (a) RNTPC Paper No. A/NE-TK/745 (**Annex A**)
 - (b) Extract of minutes of the RNTPC Meeting held on 18.3.2022 (**Annex B**)
 - (c) Secretary of the Board’s letter dated 1.4.2022 (**Annex C**)

2. **Application for Review**

- 2.1 On 19.4.2022, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D1**). On 15.6.2022, the applicant's representative submitted a written representation in support of the review application (**Annex D2**).
- 2.2 To address the comments from the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD), the applicant proposes to enhance the landscape amenity of the Site and the surrounding environment by planting additional trees at the periphery of the Site along its northeastern boundary. To support the applied use, the applicant also clarifies that goods vehicles with weight not heavier than 9 tonnes will be used for delivery of goods. Loading/unloading (L/UL) space for medium goods vehicles (MGVs) is proposed accordingly. The revised layout plan with landscaping proposal submitted by the applicant is shown on **Drawing R-1**.

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annex D2**, as summarized below:

- (a) the applied use will not result in a departure from the planning intention of the "AGR" zone as:
- (i) the Site was formed and occupied by a few structures for open storage and warehouse uses when the Ting Kok Interim Development Permission Area (IDPA) Plan No. IDPA/NE-TK/1 was gazetted on 7.9.1990. The 'existing use' of the Site does not involve any good quality agricultural land intended to be retained or safeguarded in the "AGR" zone;
 - (ii) the planning intention of the "AGR" zone does not reflect the nature of the 'existing use' at the Site which has remained unchanged since the gazettal of the IDPA Plan. It is legitimate for the applicant to continue the applied use at the Site;
 - (iii) the current application seeks to regularize the expansion of temporary structures for the 'existing use' and to allow proper monitoring. Approval of the application on a temporary basis will not jeopardize the long-term planning intention of the "AGR" zone; and
 - (iv) the Site possesses low potential for agricultural rehabilitation. With an area of only about 1,695m², the Site is not sufficient for profitable agricultural operation. Located adjacent to the village developments at Lai Pek Shan San Tsuen and with limited agricultural lands found in the vicinity, the Site has low potential to form part of an agglomeration of agricultural land. Moreover, the Site has been paved for warehouse operation for years. Soil quality of the Site remains questionable. There are no agricultural infrastructure available on the Site. It is impracticable and uneconomic to rehabilitate the Site for agricultural purposes including green houses and plant nurseries;

- (b) further clearance of vegetation or tree felling have not been carried out at the Site since the gazettal of the IDPA Plan. Landscape value of the Site has not been degraded. The applicant will preserve and maintain the existing landscape features including the trees at the periphery of the Site to minimize any possible visual impacts on the surrounding areas. The applicant has also proposed to plant additional trees at the periphery along the northeastern boundary of the Site to enhance landscape amenity of the Site and the surrounding areas;
- (c) the additional warehouse area required under the applied use is to cater for the growing demand of grain, cooking oil and grocery in the community. The applied use is well managed and has not caused any adverse traffic, drainage, environmental impacts or fire risks. The applicant has made efforts to ensure clean and tidy operation. Taking into account the land use history of the Site and the applicant's good practices in operation, approving the application will not set an undesirable precedent for similar applications in the area; and
- (d) there is no adverse comment on or no objection to the application from relevant government departments except Planning Department (PlanD) and Agriculture, Fisheries and Conservation Department (AFCD).

4. The Section 16 Application

Background

- 4.1 The Site had been cleared of vegetation with some temporary structures for warehouse use erected along the northern boundary when the Ting Kok IDPA Plan No. IDPA/NE-TK/1 was gazetted on 7.9.1990 (**Plan R-3**). The remaining part of the Site was not covered by any structure. Over the years, the number and scale of temporary structures erected on the Site have been significantly increased. The Site is not subject to active enforcement action.

The Site and Its Surrounding Areas (Plans R-1 to R-4)

- 4.2 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC is set out in paragraph 7 of **Annex A**. The latest situation is as follows.
- 4.3 The Site is:
- (a) currently used for the applied use without valid planning permission;
 - (b) situated near the southwestern fringe of Lai Pek Shan San Tsuen; and
 - (c) accessible via a local vehicular track leading to Ting Kok Road.
- 4.4 The surrounding areas are predominantly rural in character with fallow agricultural land, village houses, tree groups and vacant land. To its immediate north and northeast are a dense woodland and the village proper of Lai Pek Shan San Tsuen respectively. Areas cleared of vegetation are found to its immediate south and further southeast within the same "AGR" zone, which are the subject of two previous planning enforcement actions (No.

E/NE-TK/100 and E/NE-TK/160) against unauthorized development (UD) involving storage use and filling of land respectively (**Plan R-2**). The UD were discontinued with Compliance Notice issued on 25.1.2017 and 26.10.2021 respectively.

Planning Intention

- 4.5 There has been no change in planning intention of the “AGR” zone as mentioned in paragraph 8 of **Annex A**, 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.

Previous Application

- 4.6 There is no previous application at the Site.

Similar Application

- 4.7 There is no similar application within the same “AGR” zone in the vicinity of the Site.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted and their comments are as follows:

Land Administration

- 5.2.1 Comments of the District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) his previous comments on the s.16 application are still valid except that a shelter previously erected on Lot 629 in D.D. 23 was found removed in a recent site inspection. The same inspection also revealed that two unauthorized structures with a total floor area of about 1,210.95m² were erected on the Site without prior approval from LandsD. The existing GFA is different from that under the current planning application. One of the unauthorized structures is found straddled onto Lot 628 outside the Site. Warning letters were issued against these temporary structures. The lot owner is required to clear any unauthorized structures on the Site immediately. Otherwise, appropriate enforcement action would be taken in due course;
- (c) his other comments on the s.16 application are recapitulated below:

- (i) the Site consists of seven private lots in D.D. 23 and 2 pieces of adjoining government land in Ting Kok. The private lots are held under the Block Government Lease demised for agricultural purpose. No structure shall be erected without prior approval from LandsD;
- (ii) Short Term Waiver (STW) applications for temporary warehouse purpose with a total GFA of 819.68m² on Lots 626, 627, 629, 630, 631 and 634 in D.D. 23 were received by his office on 25.10.2018. The GFA under the said STW applications was different from that under the current planning application. For the government land within the Site, no Short Term Tenancy (STT) application is received, and neither occupation nor works of any kind thereon is allowed. Should the application be approved, the lot owners are required to submit new applications for STW and STT to LandsD if they wish to erect the structures on the lots or occupy the government land for the applied use. However, there is no guarantee that the STW and STT applications would be approved. If the STW and STT applications are approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD where appropriate, including payment of waiver fee/rental and administrative fee;
- (iii) the applicant will likely make use of the unallocated government land adjoining Lots 629 and 630 for access to the Site. As such, no trees thereon shall be interfered with unless prior approval is obtained from LandsD. The maintenance and management responsibility of the said government land and any other government land leading to the Site should be sorted out with the relevant government departments, prior to making use of them for ingress/egress purpose. Neither occupation nor works of any kind thereon is allowed without the prior approval from LandsD; and
- (iv) there is no guarantee to the grant of right of way to the Site or approval of the emergency vehicular access (EVA) thereto.

Agriculture

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

- (a) no further comment on the application;
- (b) his previous comment on the s.16 application is still valid and is recapitulated below:
 - the Site is zoned “AGR” and is currently occupied by some structures. Agricultural infrastructure such as road access

and water source is available in the vicinity. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Landscape

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

- (a) it is noted that 6 nos. of *Schefflera heptaphylla* (鴨腳木) in shrub size are proposed along the northeastern boundary in the review application. However, considering that no similar development has been previously approved by the Board within the same “AGR” zone, and that approval of the application may further alter the landscape character and degrade the landscape quality of the surrounding environment, she maintains her view of having some reservations on the application from the landscape planning perspective;
- (b) her previous comments on the s.16 application are still valid and are recapitulated below:
 - (i) according to the applicant’s submission, the Site is fenced off, hard-paved with warehouse in operation. No significant landscape resource is observed within the Site;
 - (ii) the Site is situated in an area of rural landscape character comprising vacant land, vegetated areas, village houses, woodland and tree groups (**Plan R-3**). The applied use is incompatible with the surrounding landscape character. There is no similar application for temporary warehouse which falls within the same “AGR” zone in the vicinity of the Site. There is concern that approval of the application may encourage similar developments which would alter the landscape character and degrade the landscape quality of the “AGR” zone; and
 - (iii) should the application be approved, it is considered not necessary to impose a landscape condition as the effect on enhancing the quality of public realm is not apparent.

Environment

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

- (a) it is noted from the applicant’s written representation (**Annex D2**) that loading/unloading space for MGVs has been proposed. The applicant also indicated that goods vehicles with weight not heavier than 9 tonnes will be used for delivery of goods at the Site; and

- (b) according to the “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” (COP), if the proposal will generate traffic of heavy vehicles¹, and the site boundary is within 100m from the nearest residential building, or part/whole of the subject heavy vehicle traffic is expected to travel along any access road within 50m from the nearest sensitive uses, it would be environmentally undesirable to allow such nuisance to begin or continue to affect residents and such proposal is recommended not to be supported. Given that the Site is located at about 6m from the nearest domestic premises, he does not support the review application.

5.3 For other relevant government departments further consulted, all maintain their previous views on the s.16 application and have no further comments on the review application.

6. Public Comments Received During Statutory Publication Period (Annex E)

- 6.1 The review application was published for public inspection. During the statutory public inspection periods, two public comments were received from individuals objecting to the application mainly for concerns on fire risks, adverse traffic and environmental impacts, and on the ground that approval of the application will encourage expansion of brownfield operation and infringement onto government land.
- 6.2 Two public comments raising objection to the application were received at the section 16 application stage, which are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for review of RNTPC’s decision on 18.3.2022 to reject the application for temporary warehouse for storage of grain, cooking oil and grocery for a period of 3 years at the Site zoned “AGR” on the OZP (**Plan R-1**). The application was rejected for reasons that the development was not in line with the planning intention of the “AGR” zone and would result in adverse landscape impact.

Justifications for the Review Application

- 7.2 In support the review application, the applicant has submitted a written representation claiming that (i) the development will not result in a departure from the planning intention of the “AGR” zone in that the warehouse use at the Site which was in existence before IDPA plan is an ‘existing use’, there was no good quality agricultural land and the Site possesses low potential for agricultural rehabilitation; (ii) landscape value of the Site has not been degraded as no clearance of vegetation has been carried out and additional trees planting along the northeastern boundary of the Site is proposed; and (iii) the application will not set an undesirable precedent because it is to

¹ Under the context of COP, “heavy vehicles” include good vehicles with permitted gross vehicle weight exceeding 5.5 tonnes and bus.

regularize the expansion of temporary structures at the Site and the applied use has not caused adverse traffic, drainage and environmental impacts or fire risks. Since the rejection of the section 16 application, there has been no material change in the planning circumstances. Having considered the review submission, the planning considerations and assessments on the review application are appended below.

Planning Intention of the “AGR” Zone

- 7.3 The Site falls within an area zoned “AGR” 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 purpose. Although the applicant claims that there was no good quality agricultural land and the Site possesses low potential for agricultural rehabilitation, DAFC maintains his view of not supporting the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation in that agricultural infrastructure such as road access and water sources is available. The applied use is not in line with the planning intention of the “AGR” zone, and there is no strong planning justification for a departure from the planning intention of “AGR” zone, even on a temporary basis.
- 7.4 Regarding the applicant’s claim that the warehouse use is an ‘existing use’, it is noted that there was some temporary structures for warehouse use erected along the northern boundary at the Site while the remaining part was not covered by any structure when the IDPA plan was gazetted in 1990 (**Plan R-3**). Nevertheless, the number and scale of temporary structures erected on the Site have been significantly increased over the years, and such intensification constitutes a material change of ‘existing use’, which is not allowed unless permitted in terms of the OZP or in accordance with a permission granted by the Board. Hence, the current application should be assessed having regard to the prevailing planning circumstances.

Land Use Compatibility and Adverse Landscape Impact

- 7.5 The Site is located in an area predominantly rural in character comprising mainly fallow agricultural land, village houses, tree groups and vacant land. A densely vegetated woodland is found to its immediate north and northeast. There are areas cleared of vegetation and formed to the immediate south and further south of the Site, which were subject to previous planning enforcement actions (No. E/NE-TK/100 and E/NE-TK/160) against UD involving storage use and filling of land. While the Site had been cleared of vegetation and occupied for warehouse use when the IDPA plan was gazetted, the development is considered not compatible with the surrounding land uses.
- 7.6 The applicant claims that the landscape value of the Site has not been further degraded and additional tree planting along the northeastern boundary is proposed to enhance landscape amenity. While the applicant proposes to plant 6 nos. of *Schefflera heptaphylla* (鴨腳木) in shrub size near the northeastern periphery of the Site, CTP/UD&L, PlanD maintains her view of having some reservations on the application as the applied use is incompatible with the surrounding landscape character and there is no similar approved application within the same “AGR” zone in the vicinity of the Site. Approval of the

application may encourage other similar developments which would further alter the landscape character and degrade the landscape quality of the “AGR” zone.

Adverse Environmental Impact

- 7.7 In the review application, the applicant clarifies that a loading/unloading space for MGVs and use of goods vehicles with weight not heavier than 9 tonnes are proposed to support the warehouse operation, instead of light goods vehicles proposed in s.16 application stage. In this regard, DEP does not support the review application in that the applied use will generate traffic of heavy vehicles and the Site is only about 6m from the nearest domestic premises. It would be environmentally undesirable and environmental nuisance is expected.

Setting Undesirable Precedent

- 7.8 The applicant’s claims of not setting undesirable precedent as the current application is for regularizing the expansion of temporary structures. As stated in paragraph 7.4 above, the number and scale of the temporary structures erected on the Site have been substantially increased over the years (**Plan R-3**). The Site is not subject of any previous planning applications, and there is no similar application approved within the same “AGR” zone. Approval of the current application would set an undesirable precedent and encourage proliferation of warehouses within the same “AGR” zone.

Other Departmental Comments

- 7.9 Other concerned departments including C for T, CE/MN of DSD and D of FS have no objection to or no adverse comments on the review application.

Public Comments

- 7.10 Regarding the public comments objecting to the review application as detailed in paragraph 6.1 above, government departments’ comments and planning assessments above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7 and having taken into account the public comments in paragraph 6.1 above, and given that there is no material change in the planning circumstances since the consideration of the subject application by the RNTPC on 18.3.2022, Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) 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 current submission for a departure from the planning intention, even on a temporary basis; and

- (b) the applicant fails to demonstrate in the submission that the development would not result in adverse landscape and environmental impacts to the area.

8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid on a temporary basis for 3 years until 2.9.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no vehicle exceeding 9 tonnes, including heavy goods vehicle and container trailer/tractor, as defined in the Road Traffic Ordinance, is allowed to enter/exit or to be parked/stored on the Site at any time during the planning approval period;
- (b) 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 2.3.2023;
- (c) in relation to (b) above, the implementation of 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 2.6.2023;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a proposal for fire service installations (FSIs) and water supplies for fire-fighting 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 2.3.2023;
- (f) in relation to (e) above, the implementation of FSIs and water supplies for fire-fighting 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 2.6.2023;
- (g) if the above planning conditions (a) or (d) 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
- (h) if any of the above planning conditions (b), (c), (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 attached at **Annex F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC'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

Drawing R-1	Revised Layout Plan with Landscaping Proposal
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photos in 1990 and 2021
Plans R-4a and R-4b	Site Photos
Annex A	RNTPC Paper No. A/NE-TK/745
Annex B	Extract of Minutes of the RNTPC Meeting held on 18.3.2022
Annex C	Secretary of the Board's Letter dated 1.4.2022
Annex D1	Letter from the Applicant's Representative dated 19.4.2022
Annex D2	Written Representation from the Applicant's Representative dated 15.6.2022
Annex E	Public Comments on the Review Application
Annex F	Recommended Advisory Clauses

**PLANNING DEPARTMENT
SEPTEMBER 2022**