

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/615

- Applicant** : Chepo Limited represented by Shun Da (Ka Bo) Company Limited
- Site** : Lots 359, 360 and 361 in D.D. 77, Ta Kwu Ling, New Territories
- Site Area** : 2,450 m² (about)
- Land Status**: Block Government Lease (demised for agricultural use)
- Plans** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14 and Approved Wo Keng Shan OZP No. S/NE-WKS/10
- Zonings** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Building Materials 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 building materials for a period of 3 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 and Approved Wo Keng Shan OZP No. S/NE-WKS/10. According to the Notes of the OZPs, 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 OZPs. The Site is currently vacant.
- 1.2 According to the applicant (**Appendices I and Ia**), the proposed development will not have any building structures to be erected. The Site will be used for open storage of building materials and manoeuvring of vehicles within the Site. No parking of vehicles and loading/unloading spaces are proposed by the applicant. The Site is accessible via a local access road. The ingress / egress is located at the northwestern portion of the Site (**Plan A-2**). The operation hours are from 9:00 a.m. to 5:00 p.m. from Mondays to Fridays, from 9:00 a.m. to 1:00 p.m. on Saturdays and no operation on Sundays and public holidays. The site layout plan submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with Attachment received on 29.4.2019 (**Appendix I**)
 - (b) Supplementary Information received on 3.5.2019 (**Appendix Ia**)
 - (c) Further Information received on 3.6.2019 (**Appendix Ib**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the application form at **Appendices I and Ib**. They can be summarised as follows:

- (a) the Site has been idled for years and the proposed temporary development could better utilise land resources;
- (b) there are similar planning approvals under the OZP;
- (c) the proposed temporary development locates near to the new infrastructure related to Liantang / Heung Yuen Wai Boundary Control Point (LT/HYW BCP) and it could also meet the increasing needs of port back-up uses;
- (d) the proposed temporary development is compatible with the adjoining “Open Storage” (“OS”) and “Industrial (Group D)” zonings and surrounding land use;
- (e) the Site locates far away from the residential neighbourhood and hence the proposed temporary development would not affect the nearby villagers; and
- (f) there will be no land filling proposed at the Site.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is part of the subject of an active enforcement case (**Plan A-2**) for storage use (including deposit of containers). Enforcement Notice was issued on 7.1.2019 requiring the notice recipients to discontinue the unauthorised development by 7.3.2019. According to the site inspection on 2.5.2019, the unauthorized development was discontinued at the Site. Her office will continue monitoring the Site according to the established procedures.

5. Town Planning Board Guidelines

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. 13E) are relevant to the application. The Site falls within Category 3 area under the TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is at **Appendix II**.

6. Previous Application

6.1 There is no previous application for the Site.

7. Similar Applications

- 7.1 There are seven similar applications for temporary open storage which fall within/partly within “AGR” zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**) and no similar applications for temporary open storage in the vicinity of the Site in the Wo Keng Shan area.
- 7.2 Two applications No. A/NE-TKL/345 and 376 for temporary vehicle repair workshop / furniture repair workshop and open storage use with ancillary office etc. involving a same site fall largely within “OS” zone with a minor portion within “AGR” zone. They were approved with conditions by the Committee in April 2011 and November 2011 respectively mainly on the considerations that the applications were generally in line with the planning intention of “OS” zone and complied with the TPB PG-No. 13E; the proposed developments were compatible with the surrounding areas; and the applicant had complied with all approval conditions.
- 7.3 Applications No. A/NE-TKL/322, 388, 515 and 595 for temporary open storage of metals and tools and containers involving a same site were all approved with conditions by the Committee between 2009 and 2018 mainly on the considerations that the applications complied with the TPB PG-No. 13E in that previous approvals for similar temporary open storage use had been granted on the site and the approval conditions had been complied with; the use under application would unlikely have adverse traffic, drainage and landscape impacts on the surrounding areas and no local objection was received; the technical concerns of relevant Government departments could be addressed by way of implementation of relevant approval conditions; and the applicant has complied with all approval conditions.
- 7.4 One application No. A/NE-TKL/478 for proposed temporary open storage of construction materials and equipment was rejected by the Committee on 26.9.2014 on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; not complying with the TPB PG-No. 13E; insufficient information to demonstrate no adverse environmental, landscape and traffic impacts on the surrounding areas; and setting of undesirable precedents.
- 7.5 Details of these applications are summarised at **Appendix III** 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 photos on Plan A-4)

- 8.1 The Site is:
- (a) flat and mostly hard paved;
 - (b) the Site is currently vacant with some existing trees of common species; and
 - (c) accessible via a local access road (**Plan A-2**).

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate east is Ping Yuen River (**Plan A-2**);
- (b) to the northeast are mostly vacant land and a site of open storage for construction materials;
- (c) to the immediate west is an open storage site for bamboo and further west are some vacant land and fallow farmland; and
- (d) to the immediate south are mostly vacant land intermixed with some temporary domestic structures and active farmland.

9. **Planning Intention**

The planning intention of the “AGR” zones in the Ping Che and Ta Kwu Ling and Wo Keng Shan area are 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.

10. **Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application are summarised 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 which are Old Schedule lot held under the Block Government lease (demised for agricultural use) without any guarantee of right of access. The applicant should make its own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicle access of the proposed use;
- (b) there are some structures erected on Site without approval from his office. Part of the existing structures on Lot 359 extends to Lot 357 which is not included in this application (**Plan A-2**). The applicant should demolish this unauthorised extension at its own cost. His office reserves the right to take enforcement actions against all these structures; and
- (c) should the application is approved, the owner(s) of the lots concerned shall apply to his office for a Short Term Waiver (STW) to cover all the actual occupation area. The applications will be considered by Government in its landlord’s capacity and there is no guarantee that they will be approved. If the applications are approved, their commencement date will 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 his office.

Traffic

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

- (a) unless the applicant could satisfactorily address her following comments, she cannot render support to the application from the traffic engineering perspective:
- (b) the applicant should advise the type and the estimated amount of building material to be stored in the subject site;
- (c) the applicant should advise the traffic generation and attraction from and to the site and the traffic impact to the nearby road links and junctions;
- (d) the applicant shall advise the number of parking spaces and loading/unloading spaces to be provided and justify the adequacy of the parking spaces so provided by relating to the number of vehicles visiting the subject site;
- (e) the vehicular access should be no less than 7.3m wide;
- (f) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the subject site and manoeuvring within the subject site, preferably using the swept path analysis;
- (g) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the subject site; and
- (h) it is noted that the Site is not directly connected to Ping Che Road. The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (i) the vehicular access between the Site and Ping Che Road are not managed by TD. The applicant should seek comment from the responsible party. The applicant should also demonstrate the satisfactory manoeuvring along this vehicular access, preferably using the swept path analysis.

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 immediate southeast (**Plan A-2**);
- (b) there is no 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” and observe the Water Pollution Control Ordinance to avoid any pollution to the existing watercourse to the immediate east of the Site.

Landscape

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

- (a) she has no objection to the application from the landscape planning perspective;
- (b) according to the latest aerial photo of 2011 to 2018, the Site has been gradually converted from farmland to hard paved area, and it is situated in an area of rural landscape character surrounded by temporary structures and open storage sites. The proposed development is considered not entirely incompatible with the surrounding environment;
- (c) according to her site visit, the Site is mostly hard paved and some existing trees of common species are observed within the Site along the southern boundary. No significant landscape resources of high sensitivity are observed within the Site. Hence, no significant adverse impact on existing landscape resources arising from the proposed development is anticipated; and
- (d) should the application be approved by the Board, it is considered not necessary to impose a landscape condition, as there is no major public frontage along the site boundary and that the effect of additional landscaping on enhancing the quality of public realm is not apparent.

Drainage

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

- (a) he has no in-principle objection to the application;
- (b) should the application be approved, an approval condition on the submission and implementation of drainage proposal is recommended to ensure that the development 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

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) before any new building works are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorized Buildings Works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Building Ordinance (BO);
- (c) any temporary shelters or converted containers for storage / washroom / first-aid room / site office are considered as temporary buildings which are subject to control under the Building (Planning) Regulations Pt. VII;
- (d) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulations 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D;
- (e) if the Site does not abut a specified street having a width not less than 4.5m wide, the development intensity shall be determined under the Building (Planning) Regulations 19(3) at the building plan submission stage; and
- (f) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be provided at building plan submission stage.

Fire Safety

10.1.7 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.

Water Supply

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

- (a) he has no objection to the application; and
- (b) 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 construction, operation

and maintenance of the inside services within the private lots to WSD's standards.

Agriculture

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

she 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.

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 Indigenous Inhabitant Representative and Resident Representative of Ping Che supported the proposal on the grounds that the proposed development could fully utilise land resources. The incumbent North District Council (NDC) member of the subject constituency had no comment on the proposal while the 1st Vice-Chairman of Ta Kwu Ling District Rural Committee could not render his view only if the applicant could provide detailed information including technical assessments on traffic, drainage and environmental aspects in support of the proposed development.

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

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

11. Public Comments Received During Statutory Publication Period

On 7.5.2019, the application was published for public inspection. During the statutory public inspection period, 4 public comments were received (**Appendix IV**). The World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited, The Hong Kong Bird Watching Society and Kadoorie Farm and Botanic Garden object the application mainly on the grounds that the proposed development is not in line with the planning intention of "AGR" zone; 'development first, application later' should not be tolerated as it would further legitimize the unauthorized development; there are active agricultural land nearby and the proposed development would set an undesirable precedent for similar uses in the surrounding.

12. Planning Considerations and Assessments

12.1 The Site falls within Category 3 area under the TPB PG-No. 13E promulgated on 17.10.2008. The following considerations in the Guidelines are relevant:

- Category 3 areas: Applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. In that connection, sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. 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, planning permission could be granted on a temporary basis up to a maximum period of 3 years;

- 12.2 The Site falls entirely within the “AGR” zone (**Plan A-1**). The temporary open storage use under application 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural development point of view as the Site has potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 12.3 The temporary open storage use is considered not entirely incompatible with the surrounding land uses which are mainly vacant land, temporary structures and some open storages uses. CTP/UD&L, PlanD has no objection to the application as no significant adverse impact on existing landscape resources arising from the proposed development is anticipated. Nevertheless, DEP does not support the application as there are sensitive receivers (i.e. domestic structures) in the vicinity of the Site and the closest one is located to the immediate southeast (**Plan A-2**). From traffic engineering viewpoint, C for T does not support the application as there is insufficient information to demonstrate that the temporary development would not induce significant traffic impact to the surrounding. The Site is part of the subject of an active enforcement case for unauthorized storage use. The unauthorized development has been discontinued and the Planning Authority will continue monitoring the Site according to the established procedures. Other relevant Government departments consulted, including CE/MN of DSD, D of FS and CE/C of WSD, have no adverse comment on / no objection to the application.
- 12.4 According to TPB PG-No.13E, the Site falls entirely within Category 3 areas where applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. The application does not comply with the TPB PG-No.13E in that the Site is not the subject of any previous planning permission; there are adverse departmental comments and local objection received in relation to the application; and the applicant fails to demonstrate that the development would have no adverse traffic and environmental impacts on the surrounding areas.
- 12.5 There are seven similar applications on three sites for temporary open storage which fall within/partly within “AGR” zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**) and no similar applications in the vicinity of the Site in the Wo Keng Shan area. Two applications (No. A/NE-TKL/345 and 376) involving a same site fall largely within “OS” zone with a minor portion within “AGR” zone. They were approved in 2011 mainly on the considerations that the applications were generally in line with the planning intention of “OS” zone and complied with the TPB PG-No. 13E;

the proposed developments were compatible with the surrounding areas. Four applications (No. A/NE-TKL/322, 388, 515 and 595) on another site were approved between 2009 and 2018 mainly on the considerations that the applications complied with the TPB PG-No. 13E in that previous approvals for similar temporary open storage use had been granted on the site and the approval conditions had been complied with; the use under application would unlikely have adverse traffic, drainage and landscape impacts on the surrounding areas and no local objection was received. The remaining similar application (No. A/NE-TKL/478) was rejected in 2014 mainly on the grounds that the proposed development was not in line with the planning intention of “AGR” zone; not complying with the TPB PG-No. 13E; insufficient information to demonstrate no adverse environmental, landscape and traffic impacts on the surrounding areas; and setting of undesirable precedents. The circumstances of the current application are similar to that rejected similar application.

12.6 Regarding the adverse public comments as detailed in paragraph 11 and the local objections conveyed by DO(N) in paragraph 10.1.10 above, the Government department’s comments and the planning assessment above are relevant.

13. Planning Department’s Views

13.1 Based on the assessments made in paragraph 12 and having taken into the public comments summarized in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) The proposed development is not in line with the planning intention of “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 application does not comply with 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.13E) in that there is no previous planning approval for open storage use granted at the site; there are adverse comments from the relevant government departments and local objections against the application; and the applicant has failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.

13.2 Alternatively, 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 21.6.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. to 9:00 a.m. from Mondays to Fridays and between 1:00 p.m. to 9:00 a.m. on 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 workshop activities shall be carried out on the Site at any time during the planning approval period;
- (d) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 21.12.2019;
- (e) the submission of 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 21.12.2019;
- (f) in relation to (e) above, the implementation of drainage proposal within 9 months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.3.2020;
- (g) 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 2.8.2019;
- (h) 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 21.12.2019;
- (i) in relation to (h) 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 21.3.2020;
- (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; and
- (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.

Advisory Clauses

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

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 with Attachments received on 29.4.2019
Appendix Ia	Supplementary Information received on 3.5.2019
Appendix Ib	Further Information received on 3.6.2019
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13E for Application for Open Storage and Port Back-up Uses
Appendix III	Similar s.16 Applications for Temporary Open Storage in the vicinity of the application site within/partly within “Agriculture” Zone in the vicinity of the Application Site in the Ping Che and Ta Kwu Ling Area
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Drawing A-3	Tree Location Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos