

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/642

<u>Applicant</u>	Mr. LAI Kwok Leung represented by Aikon Development Consultancy Ltd.
<u>Site</u>	Lots 1098 (Part), 1099 S.A (Part), 1099 S.B (Part), 1100, 1101 and 1105 S.A RP in D.D. 82 and Adjoining Government Land, Ping Che, Ta Kwu Ling, New Territories
<u>Site Area</u>	About 5,304 m ² (including about 36m ² of Government land)
<u>Land Status</u>	(i) Block Government Lease (demised for agricultural use) (ii) Government Land
<u>Plan</u>	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Renewal of Planning Approval for Temporary Open Storage of Construction Materials, Equipment and Machineries with Ancillary Storage of Construction Equipment, Machineries, Tools and Site Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary open storage of construction materials, equipment and machineries with ancillary storage of construction equipment, machineries, tools and site office for a period of three years (**Plan A-1a**). The Site falls within an area zoned “AGR” on the OZP. According to the Notes of the OZP, 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 used for the applied use (with previous planning permission lapsed on 26.8.2020).
- 1.2 According to the applicant, there are eight temporary structures and eight converted-containers, with a total floor area of about 679 m², for storage of small construction tools/ equipment and site office at the central portion and southern portion of the Site. They are one to two storeys (ranging from 2.5m to 6m) in height. Three private car parking spaces, one loading/unloading bay for heavy goods vehicle and two loading/unloading bays for light goods vehicle will be provided within the Site. The Site

is accessible from Ping Che Road (**Plan A-2**). The number of vehicular trips to/from the Site will be not more than 20 daily. The operation hours of the Site are between 7:00 a.m. and 11:00 p.m. from Mondays to Saturdays only. There will be no operation on Sundays and public holidays. A location plan, lot index plan and layout plan of the applied use submitted by the applicant are shown on **Drawings A-1 to A-3** respectively.

- 1.3 The Site, in part or in whole, was involved in six previous applications (No. A/NE-TKL/26, 63, 158, 390, 454 and 555) (**Plan A-1b**). The current renewal application is submitted by the same applicant for same applied use. Compared with the last approved application No. A/NE-TKL/555, the layout is generally the same except for a slight increase in total floor area by 23m². The applicant has complied with all the approval conditions under the previously approved application No. A/NE-TKL/555. That planning permission is valid until 25.8.2020.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on 11.6.2020 (**Appendix I**)
 - (b) Supplementary Planning Statement (**Appendix Ia**)
- 1.5 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 7.8.2020 for consideration of the application has been rescheduled, and the Town Planning Board has agreed to defer consideration of the application and the application is now 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 supplementary planning statement at **Appendix Ia**. They can be summarized as follows:

- (a) the Site is subject to a previously approved application No. A/NE-TKL/555 for same applied use;
- (b) the Site falls within Category 2 area under the Town Planning Board Guidelines No. 13F. As no major adverse departmental comments and local objections were received in the previous planning approvals, the current application is considered in line with the said Town Planning Board Guidelines;
- (c) the application complies with the Town Planning Board Guidelines No. 34C as there is no change in the planning circumstances of the area since the approval of the previous applications, such as land-use zoning and physical settings of the surrounding areas; no adverse planning implications would be anticipated; and the applicant has complied all the approval conditions under the previously approved application No. A/NE-TKL/555;
- (d) the temporary nature of the proposed use would not jeopardize the long-term planning intention of the "AGR" zone;
- (e) the temporary development could optimise the valuable land resources by fully utilizing its locational advantages and concentrating the brownfield uses;

- (f) no adverse impacts on drainage, noise, traffic and visual aspects are anticipated; and
- (g) same as the previously approved scheme, the existing daily trip generation by the development under current renewal application is less than 20 vehicles per day and all traffic are at non-peak hours (i.e. between 10:00 a.m. and 4:00 p.m.). Therefore, the development would not generate adverse traffic impact on the surrounding area.

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

The applicant is one of the “current land owners” of the Site and 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 obtaining consent of or notifying the other current land owners. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion within the Site, TPB PG-No.31A is not applicable.

4. **Town Planning Board Guidelines**

- 4.1 Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13F) promulgated on 27.3.2020 is relevant to the application. The Site falls within Category 2 area under the Guidelines, relevant extract of which is at **Appendix II**.
- 4.2 The Town Planning Board Guidelines No. 34C on “Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development” (TPB PG-No. 34C) is relevant to this application. The relevant extract of the Guidelines is attached at **Appendix III**.

5. **Previous Applications**

- 5.1 The Site, in part or in whole, is involved in six previous applications (**Plan A-1b**). Two applications (No. A/NE-TKL/26 and 63) for open storage of vehicles and open working area for disassembling and crating of new vehicles /construction materials were rejected by the Committee or by the Board on review in 1996 and 1998 respectively mainly on the grounds that the developments were not in line with the planning intention for the area; the developments were incompatible with the surrounding land uses; no detailed landscape or drainage proposals or flood mitigation measures submitted; and the setting of undesirable precedents for similar applications.
- 5.2 The other four applications No. A/NE-TKL/158, 390, 454 and 555 for similar temporary open storage use were approved with conditions by the Committee / by the Board on review between 2001 and 2017 mainly on considerations that the Sites were not incompatible with the surrounding land uses; and the proposed developments were generally in line with the then TPB PG-No. 13E in that there were previous planning approvals granted for open storage uses and no major adverse departmental comment had been received.
- 5.3 Details of the previous applications are summarized at **Appendix IV** and their locations

are shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are 13 similar applications within the “AGR” zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1a**).
- 6.2 Six applications (No. A/NE-TKL/342, 443, 460, 553, 564 and 622) involving two sites within Category 2 areas under the then TPB PG-No. 13E for temporary open storage of construction equipment/materials/machinery/waste materials for recycling were approved with conditions by the Committee between 2010 and 2019 mainly on the considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections.
- 6.3 The other 7 similar applications (No. A/NE-TKL/338, 346, 354, 480, 514, 560 and 625) involving six sites for similar temporary open storage uses were rejected by the Committee or by the Board on review between 2010 and 2019 mainly on considerations that the proposed developments were not in line with the planning intention of “AGR” zone; the developments did not comply with the relevant Town Planning Board Guidelines; there were adverse departmental comments / local objections; the applicants failed to demonstrate that developments would not generate adverse impacts on the surrounding areas; and the setting of undesirable precedents for similar applications.
- 6.4 Details of these similar applications are at **Appendix V** and their locations are shown on **Plan A-1a**.

7. The Site and Its Surrounding Areas (Plans A-1a, A-1b, A-2a, A-3 and photos on Plans A-4a and A-4b)

7.1 The Site is:

- (a) mainly flat and formed, and largely fenced off;
- (b) the Site is currently used as open storage of the applied use; and
- (c) accessible from Ping Che Road.

7.2 The surrounding areas have the following characteristics:

- (a) situated in a rural landscape character area dominated by open storage uses, fallow farmland and vacant land;
- (b) to the north a mix of fallow farmland, vacant land and an open storage site;
- (c) to the southeast is an open storage site whereas to the east is Ping Che Road and across the road is a mix of open storage site, vacant land, plant nursery and fallow farmland; and

- (d) to the south and west is Ping Yuen River, and to the further south and west on the other side of the river is an open storage yard of construction materials and equipment under an approved planning application No. A/NE-TKL/622 (Plan A-2).

8. Planning Intention

The planning intention of the "AGR" zone is to primarily 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.

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

- (a) the lots under application are Old Schedule Lots held under Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access. The applicant should make his own arrangement for acquiring access, and there is no guarantee that any adjoining Government Land (GL) will be allowed for the vehicular access of the proposed use;
- (b) the existing structures on the Site were erected without approval from her office. The aforesaid structures are not acceptable under the Leases concerned. Her office reserves the right to take necessary lease enforcement action against the unauthorised structures;
- (c) one of the existing structures on the Site was erected for latrine uses. The applicant should note that the existing toilet facilities should meet current health requirements;
- (d) the ingress and egress of the Site would run through Lot 1105 S.A RP in D.D. 82, which is one of the subject lots, and of which the applicant is the sole registered owner;
- (e) the GL adjacent to the Site is occupied without approval from her office. The applicant is required to cease the illegal occupation of the GL; and
- (f) if the planning approval is granted, the owners of the lots concerned have to apply to her office for a Short Term Waiver (STW) and a Short Term Tenancy (STT). The applications for STW/STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT are approved, their commencement date 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 her office.

Traffic

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

- (a) she has no in-principle objection to the application from the traffic engineering point of view; and
- (b) approval condition as imposed under the previous application No. A/NE-TKL/555 relating to that all vehicles entering and exiting the Site during the planning approval period shall be restricted to non-peak hours (i.e. from 10:00 a.m. to 4:00 p.m. on Mondays to Saturdays (excluding Sundays and Public Holidays)) shall be maintained.

9.1.3 Comments of the Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

- (a) he has no comment on the application from highways viewpoint; and
- (b) upon termination of the proposed storage use, the applicant is required to reinstate the run-in/out to its original state and to his satisfaction at the applicant's own cost.

Agriculture

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

- (a) he has no objection to the application from agricultural point of view considering that the previous application for the same applied use as the current application was approved by the Committee; and
- (b) nevertheless, it is noted that the Site is located in the vicinity of a watercourse (**Plan A-2**). Should the application be approved, the applicant should be advised to implement necessary measures to prevent polluting and disturbing the watercourse as far as possible.

Drainage

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

- (a) he has no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit a conditional record of the existing drainage facilities on Site as previously implemented on the same site under planning application No.A/NE-TKL/555 to his satisfaction; and

- (c) the applicant should be requested to maintain those existing drainage facilities properly and rectify those facilities if they are found inadequate / ineffective during operation.

Environment

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

- (a) he has no comment on the application from environmental point of view; and
- (b) should the application be approved, the applicants are 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".

Building Matters

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

- (a) he has no objection in-principle under the Buildings Ordinance (BO) to the use on the application site;
- (b) there is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application;
- (c) if the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they are unauthorised building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;
- (d) before any new building works (including containers as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (e) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (f) the temporary converted containers for site office / storage are considered as temporary buildings are subject to control under the Building (Planning) Regulations (B(P)Rs) Pt. VII;
- (g) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the B(P)Rs respectively;

- (h) if the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)Rs at the building plan submission stage; and
- (i) detailed comments under the BO will be provided at the building plan submission stage.

Fire Safety

9.1.8 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 (FSIs) and water supplies for firefighting being provided to the satisfaction of his department;
- (b) in consideration of the design/ nature of the proposed use, the applicants are advised to submit relevant layout plans incorporated with the proposed FSIs to his satisfaction;
- (c) the applicant should be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (d) having considered the nature of the open storage, the approval condition on the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS should be added. To address this additional approval condition, the applicants should submit a valid fire certificate (FS 251) for his approval.

Landscape Aspect

9.1.9 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 point of view as the development scheme and layout under the current application is largely the same as the previously approved scheme and no landscape impact from the current application is anticipated;
- (b) should the application be approved by the Board, it is considered not necessary to impose a landscape condition as no further adverse landscape impact within the Site arising from the continuous use is anticipated; and
- (c) the applicant should be reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation clauses/ conditions under the Lease. The applicant should seek comments and approval from the relevant authorities for any proposed tree removal.

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 1st Vice-Chairman of Ta Kwu Ling District Rural Committee supported the proposal on the grounds that the temporary development has been operated in the area for years and there is no adverse impact brought to the surrounding. The Indigenous Inhabitant Representative of Tai Po Tin objected the application mainly on traffic grounds. On the other hand, the village representatives of Chow Tin Tsuen, Fung Wong Wu, Lei Uk and Tong Hang and the incumbent North district Council member of the subject Constituency had no comment on the application.

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

- (a) Project Manager (New Territories East), Civil Engineering and Development Department (PM(NTE), CEDD); and
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. Public Comments Received During Statutory Publication Period (Appendix VI)

On 23.6.2020, the application was published for public inspection. During the statutory public inspection period, seven public comment were received. The Chairman of Sheung Shui District Rural Committee has no comment on the application. Five individuals support the application on the grounds that the temporary development would not generate adverse impact to the surroundings; and maximising land resources. An individual comments that if agriculture activities are unlikely to be retained in this area and the "AGR" zone of the area should be reviewed.

11. Planning Considerations and Assessments

11.1 The application is for renewal of planning permission for temporary open storage of construction materials, equipment and machineries with ancillary storage of construction equipment, machineries, tools and site office for a further period of three years. While the temporary development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, DAFC has no strong view against the renewal application as there is a previously approved application for the same use. Approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the "AGR" zone.

11.2 The Site falls within Category 2 area under the TPB PG-No. 13F promulgated by the Board on 27.3.2020. The following considerations in the Guidelines are relevant:

- Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed

through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas;

- 11.3 Compared with the last approved scheme under application No. A/NE-TKL/555, the layout is generally the same except for a slight increase in total floor area. There is no material change in the planning circumstances of the area since the approval of the last application. The temporary use under application is considered not incompatible with the surrounding land uses which are of mixed uses comprising open storage use, vacant land and fallow agricultural land (**Plan A-2**). CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view as there is no change in the landscape aspect of this renewal application and no significant landscape impact arising from the renewal application is identified. Other relevant government departments, including C for T, D of FS, CE/MN of DSD, CE/C, WSD, PM(NTE), CEDD and CBS/NTW, BD have no objection to or no comment on the application.
- 11.4 The application generally complies with the Town Planning Board Guidelines No. 13F for 'Application for Open Storage and Port Back-up Uses' in that there are previous approvals for similar use on the Site and no major adverse departmental comments have been received on the application. Moreover, the application generally complies with the TPB PG-No. 34C on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' as there has not been any material change in planning circumstances since the approval of the last application; there are no major adverse departmental comments against the renewal application; all the approval conditions for the last application have been complied with; and the approval period sought which is for the same as the last approval granted by the Board is not unreasonable.
- 11.5 Of the 13 similar applications in the vicinity of the Site (**Plan A-1a**), six of them (No. A/NE-TKL/342, 443, 460, 553, 564 and 622) involving two sites in Category 2 area were approved with conditions by the Committee between 2010 and 2019 mainly on the considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections. The circumstances of the current application are similar to those approved similar applications.
- 11.6 Regarding the adverse public comments as detailed in paragraph 10 and the local objections conveyed by DO(N), HAD in paragraph 9.1.10 above, the Government department's comments and the planning assessment above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and taking into account the local objections conveyed by DO(N), HAD and public comments in paragraphs 9.1.10 and 10 above respectively, 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 15.9.2023. The

following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 11:00 p.m. and 7:00 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) all vehicles entering and exiting the Site during the planning approval period shall be restricted to non-peak hours (i.e. from 10:00 a.m. to 4:00 p.m. on Mondays to Saturdays (excluding Sundays and Public Holidays)), as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (d) the existing drainage facilities implemented under Application No. A/NE-TKL/555 on the Site should be maintained properly at all times during the planning approval period;
- (e) the submission of a record of existing drainage facilities on the Site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.12.2020;
- (f) the provision of fire extinguisher(s) within 6 weeks from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 27.10.2020;
- (g) the submission of proposals for water supplies for firefighting and fire service installations within 6 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.3.2021;
- (h) in relation to (g) above, the provision of water supplies for firefighting and fire service installations within 9 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.6.2021;
- (i) if any of the above planning conditions (a), (b), (c) 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;
- (j) if any of the above planning conditions (e), (f), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of Director of Planning or of the Town Planning Board.

Advisory Clauses

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

- 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 "Agriculture" zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes, and 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 the 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 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

Appendix I	Application Form with Attachments received on 11.6.2020
Appendix Ia	Supplementary Planning Statement
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13F for Application for Open Storage and Port Back-up Uses
Appendix III	Relevant Extract of TPB Guidelines No. 34C on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix IV	Previous s.16 Applications
Appendix V	Similar s.16 Applications within the "AGR" zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Lot Index Plan
Drawing A-3	Layout Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos