

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

**APPLICATION NO. A/NE-HLH/38**

<b><u>Applicant</u></b>	:	Chun Fai Construction Engineering Company Limited
<b><u>Site</u></b>	:	Lot 327 in D.D. 87, Ta Kwu Ling, New Territories
<b><u>Site Area</u></b>	:	About 1,845 m <sup>2</sup>
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
<b><u>Zoning</u></b>	:	“Agriculture” (“AGR”)
<b><u>Application</u></b>	:	Temporary Open Storage of Construction Materials and Machinery, Office, Staff Rest Room and Store Room for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a temporary open storage of construction materials and machinery, office, staff rest room and store room for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Hung Lung Hang OZP No. S/NE-HLH/11. 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 without planning permission.
- 1.2 According to the applicant, the development involves ten temporary structures (2.4m height) with a total floor area of about 140 m<sup>2</sup> for office and storage uses at the northern and southern boundary of the Site respectively. A total of eight parking spaces and five loading/unloading spaces are also provided for private light, medium and heavy goods vehicles at the southern boundary and the centre of the Site (**Drawing A-1**). The Site is accessible via a local track from Kong Nga Po Road (**Plan A-1**). The operation hours are from 8:00 a.m. to 6:00 p.m. from Mondays to Saturdays and there is no operation on Sundays and public holidays.
- 1.3 In support of the application, the applicant has submitted the Application Form with attachments which was received on 6.11.2019 (**Appendix I**).

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the application form at **Appendix I**. They can be summarized as follows:

- (a) there are a number of large scale infrastructure projects upcoming in Hong Kong. In view of limited supply of open storage area, there is an imminent need to search for more areas to support the construction industry. The company has contributed to different large scale infrastructure projects in Hong Kong in the past 30 years. The company can further thrive and contribute to construction industry should the application be approved;
- (b) similar application has been applied in Kam Tin for open storage use. Whilst there were no objections from relevant departments, the application was rejected by the Board. Therefore, the company is looking for alternative site at which the potential environmental impact on the neighbourhood can be minimized; and
- (c) the Site has been used for the applied use since 2018 mainly storing steel or timber for a short period of time when the construction project is completed. There is no complaint received relating to environment, drainage or traffic from neighbourhood. The temporary use would not create any adverse environmental, drainage impacts on the surrounding areas.

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

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

## 4. **Background**

The Chief Town Planner / Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advised that the Site is subject to planning enforcement action against an unauthorized development involving storage (including deposit of containers) and workshop uses. An Enforcement Notice (EN) was issued on 16.10.2019 to the notice recipient requiring the discontinuance of the unauthorized development by 16.1.2020. If the requirement of the EN is not complied with, appropriate prosecution action may be considered.

## 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) is 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**

There is no previous application for the Site.

## 7. Similar Applications

7.1 There are five similar applications (No. A/NE-HLH/17, 20, 21, 32 and 33) for temporary open storage uses within the “AGR” zone in the vicinity of the Site in the Hung Lung Hang area (**Plan A-1**). All applications were rejected by the Rural and New Town Planning Committee or the Board on review or dismissed by the Town Planning Appeal Board Panel (TPAB) between April 2011 and January 2019 mainly on the grounds of not in line with the planning intention of the “AGR” zone, not complying with the TPB PG-No. 13E in that no previous planning approval has been granted to the sites; adverse departmental comments received on the applications; no/insufficient information to demonstrate that the developments would not generate adverse environmental, traffic and landscape impacts on the surrounding areas; setting undesirable precedents for other similar applications within the “AGR” zone.

7.2 Details of the applications are summarized 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 Plans A-4a and A-4b)

8.1 The Site is:

- (a) flat, paved and fenced off;
- (b) currently used for the applied use without planning permission; and
- (c) accessible from Kong Nga Po Road via a local track (**Plan A-1**).

8.2 The surrounding areas have the following characteristics:

- (a) rural character mixed with open storage yards, temporary structures for storage uses, tree clusters, fallow agricultural land, and vacant/unused land;
- (b) to its immediate north is vacant land and to its further north is an open storage yard;
- (c) to the immediate east and west are tree groups and stream; and
- (d) to the south and southwest are open storage yards which are subject to enforcement action against an unauthorized development involving storage use (**Plan A-2**).

## 9. Planning Intention

The planning intention of the “AGR” zone in the Hung Lung Hang area is intended 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 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the lot under application is an Old Schedule Lot held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement. The Government shall accept no responsibility in such agreement and there is no guarantee that any adjoining Government land will be allowed for the applied use;
- (b) the existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
- (c) one of existing structures is for toilet use without approval from his office. The applicant should note that any proposed septic tank and soakage pit system should meet current health requirements, and has to apply for Certificate of Exemption (Drainage Works) from his office before any works start;
- (d) the occupation and application boundary do not tally. The occupation boundary of the Site enriches onto Lots 325 and 328 in D.D. 87 (**Plan A-2**); and
- (e) if the application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

### **Traffic**

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

- (a) the application does not contain the traffic-related information for his review such as the estimated vehicular trip to/from the Site, the layout plan in scale for the swept path analysis and the dimension of the access and run-in/out etc. The applicant is advised to provide such transport-related information for his consideration;

- (b) unless the applicant could satisfactorily address his concerns, he cannot render support to the application from the traffic engineering point of view; and
- (c) the local track leading to the Site is not managed by Transport Department. The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

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

he has no comment on the application from highways viewpoint. The access road to the Site is not maintained by Highways Department.

**Agriculture**

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

- (a) the Site is currently a paved land used for open storage. Agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view; and
- (b) a natural stream is located to the west of the Site (**Plan A-2**). Due to its close proximity to the stream at the west, any adverse impact on the stream such as surface runoff with contaminants, should be avoided. Should the application be approved due to other consideration, the applicant should be reminded to implement good site practice so as not to pollute the stream nearby.

**Environment**

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

- (a) he has no comment on the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” issued by DEP. For the proposed septic tank and soakaway system, its design and construction should follow the requirements of the Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environmental Protection Department”; and
- (b) there was no record of environmental complaint against the Site for the past three years.

### **Drainage**

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

- (a) he has no in-principle objection 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 and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Landscape**

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

- (a) she has reservation on the application from landscape planning perspective;
- (b) the Site is located in an area of rural landscape character comprises cluster of trees and temporary structures. Based on the aerial photos 2017 and 2019 (**Plans A-3a and A-3b**), all existing vegetation within and surrounding the Site was cleared, and the Site had been extensively hard paved connected by access road in close proximity since 2018. Significant adverse landscape impact has taken place prior to planning approval; and
- (c) the applied use is considered not compatible with the landscape character of the area. According to the record, no similar application had previously been approved by the Board within the same “AGR” zone. The proposed development if approved, would set an undesirable precedent of landscape character alteration by vegetation clearance and site formation prior to planning approval, and would encourage more similar development within the area. The cumulative impact such approval would further degrade the landscape quality of the surrounding environment.

### **Fire Safety**

10.1.8 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 being provided to the satisfaction of his department;
- (b) in consideration of the design/nature of the proposal, Fire Service Installations (FSIs) are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also

be advised on the following points:

- (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
  - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans;
- (c) having considered the nature of the open storage, an approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be incorporated if the application is approved. To address this approval condition, the applicant is required to submit a valid fire certificate (FS 251) to his department for approval; and
- (d) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

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

- (a) 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 Building Authority (BA) should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the Buildings Ordinance (BO);
- (b) for UBW erected on leased land, enforcement action may be taken by the BA 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;
- (c) in connect with (b) above, the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation (B(P)R 5 and emergency vehicular access shall be provided under B(P)R 41D;
- (d) if the Site is not abutting on a specified street having a width not less than 4.5m wide, the development intensity shall be determined by the BA under B(P)R 19(3) at the building plan submission stage;
- (e) the temporary structures are subject to the control of Part VII of the B(P)Rs and require prior approval and consent under BO; and
- (f) detailed comments will be given at building plan submission stage.

### **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 First Vice-Chairman of Ta Kwu Ling District Rural Committee, Resident Representative (RR) of Chow Tin Tsuen, Indigenous Inhabitant Representative (IIR) of Lei Uk and IIR of Tai Po Tin and the Chairman of 打鼓嶺沙嶺村居民福利會 object to the application mainly on the grounds of adverse traffic impact and degradation of rural environment. The North District Council members of subject constituency of 2016-2019 and 2020-2023, the IIR of Chow Tin Tsuen, the RRs of Lei Uk, Tai Po Tin, Sheung Shan Kai Wat, the IIR and RR of San Uk Ling have no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); 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 15.11.2019, the application was published for public inspection. During the statutory public inspection period, seven public comments were received (**Appendix IV**). The Chairman of Sheung Shui District Rural Committee and the North District Council member indicate no comment on the application. The remaining five comments from Kadoorie Farm and Botanic Garden, WWF-HK, the Hong Kong Bird Watching Society, Designing Hong Kong Limited and an individual object to the application mainly for the reasons that the application is not in line with the planning intention of the "AGR" zone; approval of the application will further legitimize authorized development; approval of the application would set an undesirable precedent for similar applications within the "AGR" zone and enforcement action against the unauthorized use has been carried out, "destroy first, apply later" approach should be deterred.

## **12. Planning Considerations and Assessments**

12.1 The Site falls within the "AGR" zone on the OZP (**Plan A-1**). The temporary open storage under the 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 point of view as the Site possesses potential for agricultural rehabilitation and can be used as greenhouse or plant nurseries. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.



- 12.2 The Site is hard-paved and situated in an area of rural character mixed with tree groups and temporary structures. The applied use is considered not entirely compatible with the landscape character of the area. CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. It is noted that all existing vegetation within and surrounding the Site was cleared and the Site has been hard paved extensively since 2018 (**Plans A-3a and A-3b**). Approval of the application would set an undesirable precedent of landscape character alteration by vegetation clearance and site formation, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment.
- 12.3 C for T does not support the application from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary development will not cause adverse traffic impact on the surrounding areas in that the applicant has not provided traffic-related information for his review including the estimated vehicular trip to/from the Site and the dimension of the access and run-in/out etc. DEP has no objection to the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimize any potential environmental impacts. Other relevant Government departments consulted, including CE/MN, DSD and D of FS, have no adverse comment on or no objection to the application.
- 12.4 The Site falls within Category 3 area under the TPB PG-No. 13E promulgated by the Board 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. 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.
- 12.5 According to the TPB PG-No.13E, the Site falls within Category 3 areas (**Appendix II**) 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 approval; there are adverse departmental and public comments on the application; and the applicant has failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.
- 12.6 There are five similar applications (Nos. A/NE-HLH/17, 20, 21, 32 and 33) for open storage use within the same “AGR” zone which were all rejected by Committee or by the Board on review or dismissed by the TPAB between April 2011 and January 2019 mainly on the grounds of not in line with the planning intention of the “AGR” zone; not complying with the TPB PG-No.13E in that no previous planning approval had been granted to the application sites; adverse departmental comments received on the applications; no/insufficient information to demonstrate that the developments would not generate adverse environmental, traffic and/or landscape impacts on the surrounding areas; and

setting undesirable precedents for other similar applications. The circumstances of the current application are similar to the rejected applications.

- 12.7 Regarding the local objections conveyed by DO(N), HAD and five adverse public comments against the application as detailed in paragraphs 10 and 11 above respectively, the Government departments' comments and the planning assessments above are relevant.

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

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

- (a) the development is not in line with the planning intention of the "AGR" zone for the Hung Lung Hang area, 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. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
- (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 approval for open storage granted for the Site; and there are adverse comments from the relevant Government departments and local objections on the application; and
- (c) the applicant fails to demonstrate that the development would not cause 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 3.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

#### Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the provision of 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 3.7.2020;
- (d) 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 3.7.2020;

- (e) in relation to (d) 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 3.10.2020;
- (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 14.2.2020;
- (g) the submission of proposals for fire service installations 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 3.7.2020;
- (h) in relation to (g) above, the implementation of proposals for fire service installations 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 3.10.2020;
- (i) the submission of a traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 3.7.2020;
- (j) in relation to (i) above, the implementation of traffic mitigation measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 3.10.2020;
- (k) if any of the above planning conditions (a) or (b) 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;
- (l) if any of the above planning conditions (c), (d), (e), (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; and
- (m) 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 V**.

## **14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

**15. Attachments**

<b>Appendix I</b>	Application Form with Attachments received on 16.11.2019
<b>Appendix II</b>	Relevant Extract of TPB Guidelines No. TPB PG-No. 13E for Application for Open Storage and Port Back-up Use
<b>Appendix III</b>	Similar s.16 Applications for Temporary Open Storage within “Agriculture” Zone in the vicinity of the Application Site in the Hung Lung Hang Area
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plans A-3a to A-3b</b>	Aerial Photos
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
JANUARY 2020**