

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/590

- Applicant** : Mr. CHAN Kwok Che represented by Honest Land Surveys Company
- Site** : Lots 2264 (Part) and 2265 (Part) in D.D. 76, Sha Tau Kok Road – Ma Mei Ha, Fanling, New Territories
- Site Area** : 540m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Private Vehicle Park for Light Goods Vehicle and Heavy Goods Vehicle and Loading/Unloading Area 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 private vehicle park for light goods vehicle and heavy goods vehicle and loading/unloading area for a period of three 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. 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 or development is not provided for under the Notes of the OZP. The Site is currently vacant and paved.
- 1.2 The Site is accessible from Sha Tau Kok Road – Ma Mei Ha Section through the adjoining site (i.e. Lot 2263 S.B RP in D.D.76) (**Plan A-2**). According to the applicant, the proposed development includes one parking space and one loading/unloading space for light goods vehicle (measuring 7m x 3.5m), and one parking space and one loading/unloading space for heavy goods vehicle (measuring 11m x 3.5m) to serve as parking and loading/unloading spaces for the operation of the adjoining marble workshop operated and owned by the applicant. The operation hours of the Site are between 8:00 a.m. and 7:30 p.m. on Mondays to Fridays, between 8:00 a.m. and 1:30 p.m. on Saturdays and no operation on Sundays and public holidays. The site layout

plan, landscape proposal and plan of swept path analysis submitted by the applicant are at **Drawings A-1 to A-3** respectively.

- 1.3 The Site, in part or in whole, is involved in four previous planning applications (No. A/NE-TKL/70, 98, 141 and 566) submitted by the same applicant for uses different from the applied use. All applications were rejected by the Rural and New Town Planning Committee (the Committee) or the Board on review between July 1998 and June 2017.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on 9.4.2018 **(Appendix I)**
 - (b) Supplementary information received on 11.4.2018 **(Appendix Ia)**
 - (c) Letter dated 28.5.2018 requesting for deferment of consideration **(Appendix Ib)** of the application
 - (d) Further information received on 20.6.2018 **(Appendix Ic)**
 - (e) Further information received on 3.8.2018 **(Appendix Id)**
- 1.5 At the request of the applicant (**Appendix Ib**), the Committee of the Board agreed on 1.6.2018 to defer making a decision on the application for two months pending the preparation of further information to address the comments of Transport Department. The applicant submitted the further information (**Appendix Ic and Id**) on 20.6.2018 and 3.8.2018 respectively and the application is re-scheduled for consideration by the Committee on 17.8.2018.

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 **Appendix I** and further information at **Appendices Ic and Id**. They can be summarized as follows:

- (a) the Site has been formed and paved for maneuvering of vehicles and buffer area. The adjoining marble workshop is owned by the applicant and has been operated by the applicant since 1990s. The proposed development will facilitate the operation of the workshop and increase working space of the staff so as to reduce accidents;
- (b) the applied use is compatible with the surrounding open storage and/or warehouse uses and is not expected to have adverse visual and environmental impacts on the surrounding;
- (c) the applied use is temporary in nature which would not frustrate the long-term planning intention of the “AGR” zone;
- (d) the applicant would plant the trees for amenity purpose to mitigate the landscape impact;
- (e) the applied use is not dusty in nature and is not expected to have adverse impacts on the water quality and ecology of the adjacent Tan Shan River nor health risk to surrounding residents;

- (f) the Site has been formed for years and no potential for agricultural rehabilitation, approval of the application would not set an undesirable precedent for similar applications; and
- (g) the applicant has proposed traffic management/control measures to address traffic concerns.

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

The applicant is one of the “current land owners” 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 taking reasonable steps to give notification to the concerned land owner including posting site notice and sending notice to Fanling District Rural Committee. 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, the Site is currently not subject to any active enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

5. Previous Applications

5.1 The Site, in part or in whole, is involved in four previous applications (No. A/NE-TKL/70, 98, 141 and 566) for temporary open storage of construction materials and/or marbles and temporary workshop and warehouse for construction materials submitted by the same applicant. All applications were rejected by the Committee or by the Board on review between July 1998 and June 2017 mainly on the considerations that the proposed development was not in line with the planning intention of the “AGR” zone; the proposed development was not compatible with the surrounding land uses; the applicant failed to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications in the area.

5.2 Details of these similar applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6. Similar Application

There is no similar application for temporary private vehicle park and loading/unloading area in the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area.

7. **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)

7.1 The Site is:

- (a) mainly flat, formed and paved;
- (b) the Site is currently vacant with some construction materials deposited on it; and
- (c) accessible from Sha Tau Kok Road – Ma Mei Ha via the adjoining lot which is used as a marble workshop (Plans A-2).

7.2 The surrounding areas have the following characteristics:

- (a) rural in landscape character predominated by vacant land, warehouse/open storage uses, fallow agricultural land and temporary structures;
- (b) to the north is Tan Shan River running from the east to west, and to the further north are a site being used for parking of vehicles and open storage, a warehouse, vacant land and fallow farmland intermixed with a few domestic structures;
- (c) to the immediate west is a plant nursery and to the immediate east is a marble workshop which is operated by the applicant; and
- (d) to the south is a work in progress site and to further south across Sha Tau Kok Road – Ma Mei Ha are an open storage yard, a vacant temporary structure and a temporary domestic structure.

8. **Planning Intention**

The planning intention of the “AGR” zone in the Ping Che and Ta Kwu Ling 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.

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 Site comprises private lots which are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any

- guaranteed right of vehicular access;
- (b) site inspection revealed that the actual occupation area includes not only the application lots, but also Lot No. 2263 S.B RP in D.D. 76, and the Government land adjoining to these lots (**Plan A-2**). His office reserves the rights to take necessary land control actions against the unauthorized occupation of Government land;
 - (c) it is noted that the proposed vehicular access would be routed through Lot 2263 S.B RP in D.D. 76. The applicant has to obtain consent from the respective lot owner(s); and
 - (d) if the application is approved, the applicant shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW and STT are approved, their commencement date would 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

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

- (a) in view of the further information submitted by the applicant (**Appendix Ic**), he has no further comment from the traffic engineering point of view; and
- (b) should the application be approved, an approval condition on the submission and implementation of traffic management measures is recommended.

Environment

9.1.3 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 one is located to the northeast at a distance of less than 70m (**Plan A-2**);
- (b) there was no substantiated environmental complaints 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" issued by DEP and all pollution control ordinances, in particular the Water Pollution Control Ordinance, since the Tan Shan River is located at the north of the Site.

Landscaping

- 9.1.4 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) she has some reservation on the application from the landscape planning perspective;
 - (b) the Site is situated in an area of rural landscape character comprising open storages, scattered tree groups and a few small active farmlands. The proposed development is not entirely incompatible with the surrounding area. According to her site record, the Site is hard paved and vacant. No tree or significant landscape resource is found within the Site;
 - (c) however, approval of the application will set an undesirable precedent to encourage more applications of similar use into the “AGR” zone, thus adversely affect the landscape resource and degrade the landscape character in the area; and
 - (d) should the application be approved by the Board, an approval condition on the submission and implementation of landscape proposal is recommended.

Drainage

- 9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
- (a) it is noted that the Site is more than 3m away from the nearest extremity of Tan Shan River. He has no objection to the application from the public drainage point of view;
 - (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 impact to the adjacent area; and
 - (c) the Site is in an area where no public sewerage system is available. EPD should be consulted regarding the sewage treatment/disposal facilities for the proposed development.

Building Matters

- 9.1.6 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
- (a) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority 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 Buildings Ordinance (BO);

- (b) temporary shelters or converted containers for storage/ washroom/ first-aid room/ site office are considered as temporary buildings, they are subject to control under the Building (Planning) Regulations (B(P)R) Pt. VII;
- (c) 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)R respectively;
- (d) 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)R at the building plan submission stage; and
- (e) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under the BO will be provided at the building plan submission stage.

Water Supply

9.1.7 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 the inside services to nearest suitable Government water mains for connection. The applicant should resolve any land matter (such as private lots) associated with the provision of water supply and should be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Agriculture

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

- (a) the Site is largely abandoned and situated next to a plant nursery. In this connection, the application is not supported from the agriculture point of view as the Site possesses potential for agricultural rehabilitation; and
- (b) Tan Shan River is located to the north of the Site (**Plans A-2 and A-3**). Should the application be approved, the applicant should be reminded to preform good site practice so as not to pollute the river nearby.

District Officer's Views

9.1.9 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The incumbent North District Council (NDC) member of the subject constituency cum member of

Fanling Hung Shing Temple Management Committee indicates no comment on the application whereas the Chairman of Fanling District Rural Committee (FDRC) cum the Resident Representative of Ko Po objects to the application as there are already many vehicle parks and loading/unloading areas in the area which have caused adverse impacts on rural environment and air pollution affecting the health of the villagers.

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

- (a) Director of Fire Services (D of FS);
- (b) Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period

On 17.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, five public comments were received (**Appendix III**). A NDC member and the Chairmen of FDRC and Sheung Shui District Rural Committee indicate no comment on the application. The remaining two public comments submitted by Kadoorie Farm and Botanic Garden Corporation and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; potential cumulative impacts of approving the application in the “AGR” zone; there is no material change in the planning circumstances of the area since the rejection of the previous applications; and car park use would also create same adverse impacts as open storage use under previous applications.

11. Planning Considerations and Assessments

- 11.1 The Site falls within an area zoned “AGR” on the OZP (**Plan A-1**). The temporary use under application is not in line with the planning intention of the “AGR” zone, which 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. DAFC does not support the application from the agriculture point of view as the Site has potential for agricultural rehabilitation. Nevertheless, given its temporary nature and only two parking spaces and two loading/unloading spaces are involved, it is considered that the approval of the application on a temporary basis for a period of three years would not frustrate the long term planning intention of the “AGR” zone.
- 11.2 The proposed temporary private vehicle park and loading/unloading area is considered not entirely incompatible with the surrounding land uses which are of rural landscape character predominated by vacant land, warehouse/open storage uses, fallow agricultural land and temporary structures (**Plan A-2**). CTP/UD&L, PlanD has some reservation on the application from the landscape planning point of view as the approval of the application will set an undesirable precedent to encourage more similar applications in the “AGR” zone, thus adversely affect the landscape resource and

degrade the landscape character in the area. Nevertheless, no tree or significant landscape resources is found within the Site and she recommends the imposition of an approval condition on the submission and implementation of landscape proposal to address the landscape concerns.

- 11.3 Upon review of the further information submitted by the applicant (**Appendix Ic**), C for T has no further comment on the application from the traffic engineering point of view. DEP does not support the application as there are sensitive receivers, i.e. domestic structures, in the vicinity of the Site (**Plan A-2**). However, there was no substantial environmental complaint against the Site in the past three years. To address DEP's concerns, relevant approval conditions including restricting the operation hours and prohibiting operation on Sundays and public holidays are recommended. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on-site will be subject to enforcement action taken by the Planning Authority. Moreover, the applicant will be advised to follow the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' issued by DEP to minimize the potential environmental impacts on the surrounding areas. 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.
- 11.4 The Site is the subject of four previous applications (No. A/NE-TKL/70, 98, 141 and 566) for various temporary open storage of construction materials and/or marble uses and temporary workshop and warehouse for construction materials. These applications are different from the applied use for temporary private vehicle park and loading/unloading area under the current application. There is no similar application in the "AGR" zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling Area.
- 11.5 Regarding the adverse public comments and local objection mainly on the grounds of not in line with the planning intention of "AGR" zone, adverse impacts on the surrounding area, and no material change in the planning circumstances of the area since the rejection of the previous applications, the Government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department considers that the temporary use under the 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 17.8.2021. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:30 p.m. and 8:00 a.m. on Mondays to Fridays and between 1:30 p.m. and 8:00 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 construction materials should be stored within the Site during the planning approval period;
- (d) no car washing, vehicle repair, dismantling, plant spraying or other workshop activities is allowed in the Site at any time during the planning approval period;
- (e) 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 17.2.2019;
- (f) 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 17.2.2019;
- (g) in relation to (f) 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 17.5.2019;
- (h) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 17.2.2019;
- (i) in relation to (h) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 17.5.2019;
- (j) the submission of traffic management measures within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.2.2019;
- (k) in relation to (j) above, the implementation of traffic management measures within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.5.2019;
- (l) 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;
- (m) if any of the above planning conditions (e), (f), (g), (h), (i), (j) or (k) 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
- (n) 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 IV**.

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (a) the proposed temporary use under application is not in line with the planning intention of the "AGR" zone in the Ping Che and Ta Kwu Ling area, which is intended 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 applicant fails to demonstrate that the proposed development would not cause adverse environmental impacts on the surrounding areas; and
- (c) the approval of the application will set an undesirable precedent for similar applications within the same "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

13. Decision Sought

13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 9.4.2018
Appendix Ia	Supplementary information received on 11.4.2018
Appendix Ib	Letter dated 28.5.2018 requesting for deferment of consideration of the application
Appendix Ic	Further information received on 20.6.2018
Appendix Id	Further information received on 3.8.2018
Appendix II	Previous Applications
Appendix III	Public Comments
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Landscape Proposal
Drawing A-3	Plan of Swept Path Analysis

Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2018**