

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/647

<u>Applicant</u>	Mr. NGAI Hok Ming
<u>Site</u>	Lot 637 S.A in D.D. 23, Po Sam Pai Village, Shuen Wan, Tai Po, New Territories
<u>Site Area</u>	About 400m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Temporary Open Storage (Construction Equipment) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary open storage of construction equipment for a period of three years at the application site (the Site). The Site falls within an area zoned “AGR” on the approved Ting Kok OZP No. S/NE-TK/19. According to the Notes of OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for open storage use without a valid planning permission.
- 1.2 According to the information submitted by the applicant, two single-storey containers (3m(W) x 6m(L) x 2.4m(H)) for storage use with a total floor area of 31m² and one loading/unloading space are proposed within the Site (**Drawing A-1**). The Site is for the storage of construction equipment (i.e. water pump, electricity service box and water pipes) for fire services installations in building constructions. The Site is accessible from Ting Kok Road via an existing informal track. The operation hours of the applied use are from 9:00 a.m. to 5:00 p.m. from Mondays to Saturdays and no operation on Sundays and public holidays.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) application form with attachments received on 5.6.2018 **(Appendix I)**
- (b) further information dated 11.7.2018 and 18.7.2018 providing clarification on the applied use and operation hours **(Appendices Ia and 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 **Appendix I**. They can be summarized as follows:

- (a) the Site has been abandoned for years without any development and uses;
- (b) the open storage use is small in scale and would not cause adverse environmental impact;
- (c) to maximize the utilisation of land resources in Hong Kong and land available for storage uses is limited; and
- (d) the Site is for private storage uses and will not open to public.

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) advises that the Site is the subject of an active enforcement case against unauthorized storage use (**Plan A-2**). Enforcement Notice has been issued to the concerned landowner on 10.5.2018 requiring the unauthorized development to be discontinued on or before 10.8.2018.

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 this application. The Site falls within Category 3 area under 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 covering the Site.

7. Similar Application

There is no similar application for temporary open storage use within the same “AGR” zone in the vicinity of the Site.

8. The Site and Its Surrounding Areas (Plans A-1 to A-3a and site photos on Plans A-4a and A-4b)

8.1 The Site is:

- (a) flat, fenced and formed, paved with bricks;
- (b) used for storage of construction materials without valid planning permission; and
- (c) connected to Ting Kok Road via an informal track road.

8.2 The surrounding areas are predominantly rural in character with scattered temporary structures, and fallow/active agricultural land. Village houses are concentrated within “Village Type Development” (“V”) zone to the further south and northeast of the Site (**Plans A-2 and A-3a**).

9. Planning Intention

The planning intention of the “AGR” zone 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.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

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

- (a) no objection to the application;
- (b) the subject lot is governed by Block Government Lease demised for agricultural use;

- (c) if the planning application is approved, the applicant may be required to apply to LandsD for a short term waiver. Such application will be considered by LandsD acting in the capacity of landlord at their sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to terms and conditions, including payment of any fees, as may be imposed by LandsD; and
- (d) there is no Small House application for the Site.

Traffic

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

- (a) has reservations on the application as there is insufficient information for traffic assessment on the following aspects:
 - (i) the applicant should advise the type of vehicles and the predicted trips of vehicles generated by the applied use, and provide the proposed number and dimension of the loading and unloading area in the proposal;
 - (ii) the applicant should assess whether enough queuing space has been provided for loading and unloading during the operation and advise whether enough space has been provided for turning of vehicle;
 - (iii) the applicant should assess whether there will be impact at the ingress/egress point between the track road and Ting Kok Road and whether any improvement works are required for the ingress/egress point; and
- (b) the track road is not under Transport Department's management. It is suggested that the land status, management and maintenance responsibilities of the village access should be clarified with the relevant lands and maintenance authorities accordingly in order to avoid potential land disputes.

Agriculture

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

- does not support the application from the agricultural development point of view as there are active agricultural activities in the vicinity of the Site; agricultural infrastructure such as road access and water source is available; and the Site possesses potential for agricultural rehabilitation.

Environment

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

- (a) no comment on the application;
- (b) the applicant is advised to follow the latest ‘Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses’ issued by the DEP; and
- (c) there are one substantiated and one non-substantiated complaint cases on waste pollution related to the Site in the past three years.

Landscape

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

- (a) has some reservations to the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural landscape character comprising of woodland patches, abandoned farmlands and village houses. The applied use is not in line with the planning intention of “AGR” zone and the application is the first case of similar use in the area, adverse impact to the intactness of the landscape character is anticipated;
- (c) the Site is vacant, fenced and paved with bricks. No trees are recorded within the Site. Adverse impact to landscape resources within the Site is not anticipated. Noting that the Site is not connected with any existing proper footpath nor vehicular access, and no information on the construction access and future access is provided in the submission, potential impact on surrounding landscape resources by the construction access and future access cannot be ascertained. In comparing the aerial photos taken on 5.4.2017 and 3.1.2018 (**Plans A-3a and A-3b**), it is apparent that vegetation within the Site has been cleared prior to submission of the application since 2017. Approval of this application would set an undesirable precedent to encourage such unauthorized removal of vegetation. The cumulative effect would result in degradation of landscape character and cause adverse impact on landscape resources; and
- (d) should the application be approved, an approval condition on the submission and implementation of landscape proposal is recommended.

Drainage

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

- (a) based on the base map from LandsD, the Site is within a natural stream course/ditches. According to their site inspection, it is suspected that the natural stream course/ditches was filled by unknown party; and
- (b) unless the applicant can submit satisfactory stormwater drainage and site formation proposals to demonstrate that there would be adequate measures provided at the resources of the applicant to avoid the site from being eroded and flooded and to ensure capacity of streamcourse and flooding susceptibility of the adjoining areas would not be adversely affected by the proposed development, she does not support the application since the Site encroaches upon an existing streamcourse/ditch.

Fire Safety

10.1.7 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for firefighting being provided to the satisfaction of the Fire Services Department (FSD);
- (b) in consideration of the nature of the open storage, an 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 or of the Board should be added;
- (c) to address the above additional approval condition, the applicant is advised to submit certificate(s) under Regulation 9(1) of the Fire Service (Installations and Equipment) Regulations (Chapter 95B) to FSD for compliance of condition;
- (d) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed;
- (e) in such circumstances, except where building plan is circulated under the Centralized Processing System of Buildings Department, the applicant is required to send the relevant layout plans to FSD incorporated with proposed FSIs for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and the locations of the proposed FSIs and the access for emergency vehicles should be clearly marked on the layout plans; and

- (f) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans. The applicant will need to subsequently provide such FSIs according to the approved proposal.

Water Supply

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

- (a) 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 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.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department;
- (b) Director of Electrical and Mechanical Services;
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (d) Project Manager/North, Civil Engineering and Development Department;
- (e) District Officer/Tai Po, Home Affairs Department; and
- (f) Commissioner of Police.

11. Public Comments Received During Statutory Publication Period

On 15.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received from Designing Hong Kong Limited, World Wide Fund for Nature Hong Kong, the Hong Kong Bird Watching Society and individuals (**Appendix III**) raising concerns and objection to the application mainly on the grounds of being not in line with the planning intention of "AGR" zone; not complying with the TPB PG-No. 13E; extensive clearance of vegetation on the Site which would encourage "destroy first, build later"; and setting of an undesirable precedent for other similar applications with the same "AGR" zone.

12. Planning Considerations and Assessments

12.1 The Site falls within Category 3 area under the TPB PG-No. 13E promulgated by the Board on 17.10.2008 (**Appendix II**). 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 is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application as the Site possesses potential for agricultural rehabilitation and agricultural infrastructure such as road access and water source are available. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.
- 12.3 The Site is flat, fenced and formed without any existing tree and already used as open storage. The surrounding area is predominantly rural in character comprising woodland patches, abandoned farmlands and village houses. The application is the first case of similar use in the area and the applied use is not compatible with the surrounding area, adverse impact to the intactness of the landscape character is anticipated. CTP/UD&L of PlanD advises that the Site is not connected with any existing proper footpath nor vehicular access and no information on the construction access and future access is provided in the submission, hence potential impact on surrounding landscape resources by the construction access and future access cannot be ascertained. In comparing the aerial photos taken in 2017 and 2018 (**Plans A-3a and A-3b**), it is apparent that vegetation within the Site has been cleared prior to submission of the application. Approval of the application would set an undesirable precedent to encourage unauthorized removal of vegetation, and the cumulative effect would result in degradation of landscape character and cause adverse impact on landscape resources. As such, CTP/UD&L of PlanD has some reservations on the application.
- 12.4 C for T has reservations on the application as there is insufficient information in the submission for traffic assessment including the type of vehicles and the predicted trips of vehicles generated by the applied use, the proposed number and dimension of the loading/unloading area, the provision of queuing space for loading/unloading during operation and space for turning of vehicle, assessment of impact at the ingress/egress point between the track road and Ting Kok Road and any improvement works are required for the ingress/egress point. CE/MN, DSD advised that the natural stream course/ditches within the Site was suspected to be filled by unknown party.

Unless the applicant can provide satisfactory stormwater drainage and site formation proposals to demonstrate that there would be adequate measures provided at the resources of the applicant to avoid the site from being eroded and flooded and to ensure capacity of streamcourse and flooding susceptibility of the adjoining areas would not be adversely affected by the proposed development, the application is not supported since the Site encroaches upon an existing streamcourse/ditch. While DEP has no comment on the application, she advised that there was one substantiated complaint case on waste pollution related to the Site in 2017. Other Government departments consulted, including D of FS and CE/C of WSD, have no objection to or adverse comment on the application.

- 12.5 The application does not comply with the TPB PG-No. 13E in that the Site falling within Category 3 areas is not the subject of any previous planning approval for similar open storage use and there is no special circumstances in the application that justify sympathetic consideration; there are adverse departmental comments and local objections to the application; and the applicant has failed to demonstrate that the development would not cause adverse landscape, traffic and drainage impacts on the surrounding areas. There is no similar application for temporary open storage use in the vicinity of the Site in the same “AGR” zone. Approval of the application would set an undesirable precedent for similar applications in the “AGR” zone. The cumulative effect of approving such applications would result in general degradation of the environment in the area.
- 12.6 Regarding the public comments raising concerns and objections to the application mainly on the grounds of being not in line with the planning intention of “AGR” zone; not complying with the TPB PG-No. 13E; setting of an undesirable precedent; and that the application is a “destroy first, build later” case, Government departments’ comments and 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 applications for the following reasons:
- (a) 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. 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;
 - (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’ in that no previous planning approval has been granted to the Site and there are adverse departmental comments to the application;

- (c) there is no information in the submission to demonstrate that the development would not cause adverse landscape, traffic and drainage impacts on the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment in the area.

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 3.8.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the application site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the application site during the planning approval period;
- (c) the peripheral fencing of the Site shall be maintained at all times during the planning approval period;
- (d) 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 3.2.2019;
- (e) in relation to (d) 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 3.5.2019;
- (f) the submission of stormwater drainage and site formation proposals 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 3.2.2019;
- (g) in relation to (f) above, the implementation of stormwater drainage and site formation proposals 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 3.5.2019;
- (h) 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 14.9.2018;
- (i) the submission of fire service installations and water supplies for fire-fighting proposal 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 3.2.2019;

- (j) in relation to (i) above, the implementation of fire service installations and water supplies for fire-fighting proposal 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 3.5.2019;
- (k) the submission of a traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 3.2.2019;
- (l) in relation to (k) above, the implementation of traffic improvement 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 3.5.2019;
- (m) 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;
- (n) if any of the above planning conditions (d), (e), (f), (g), (h), (i), (j), (k) and (l) 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
- (o) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix IV**.

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 approve the application, Members are invited to consider the approval conditions and advisory clauses 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 and attachments received on 5.6.2018
Appendix Ia	Further information received on 11.7.2018
Appendix Ib	Further information received on 18.7.2018
Appendix II	Relevant extract of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E)
Appendix III	Public comments
Appendix IV	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plans A-3a to A-3b	Aerial photos
Plans A-4a to A-4b	Site photos

**PLANNING DEPARTMENT
AUGUST 2018**