

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/682

<u>Applicant</u>	Mr. MAK Ho Bong represented by Mr. HUI Kwan Yee
<u>Site</u>	Lots 373 (Part), 374, 375, 376 (Part), 403 (Part), 404 (Part), 406 (Part) in D.D. 17 and Adjoining Government Land, Ting Kok, Tai Po, N.T.
<u>Site Area</u>	About 640m ² (including about 35 m ² of Government land)
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<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 of Building Materials for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary open storage of building materials for a period of three years. The Site falls within an area zoned “AGR” on the approved Ting Kok OZP No. S/NE-TK/19. According to the Notes of the OZP, temporary use not exceeding a period of three years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use is not provided for in terms of the OZP.
- 1.2 The applied use comprises four single-storey structures converted from containers with a total floor area of about 74.4m² and a height of about 2.76m for storing building equipment/miscellaneous items. The remaining area of about 565.6m² is uncovered for open storage of building materials (**Drawing A-1**). The operation hours are from 8:00 a.m. to 8:00 p.m. daily. No car parking and loading/unloading spaces are proposed. The Site is accessible via a track branching off Ting Kok Road. It is currently occupied for the applied use without valid planning permission (**Plan A-4**).
- 1.3 The Site is part of the subject of a previous application (No. A/NE-TK/628) submitted by the same applicant for temporary barbecue site for a period of three years, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 18.5.2018 until 18.5.2021. According to the applicant’s submission, the applied use encroaches onto some car parking spaces, the loading/unloading area and the pedestrian access of the temporary barbecue site (**Plan A-2b**). The applicant claims that the

temporary barbecue site will continue to operate without affecting or being affected by the applied use.

- 1.4 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**).

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 and the attachment at **Appendix I**. They can be summarized as follows:

- (a) there are many building projects for village houses in the vicinity of the Site, but the space for storage of building materials and equipment is insufficient;
- (b) the applied use would make good use of the Site and help improve the hygienic condition of the surrounding area;
- (c) although the Site encroaches onto the previous application No. A/NE-TK/628 for temporary barbecue site, the applied use and the temporary barbecue site would not affect each other. Both sites are occupied by the same applicant. The applied use will optimize the land utilisation; and
- (d) the applicant will comply with the approval conditions to be imposed by the Board.

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

The applicant is not a “current land owner” but 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 posting site notices at the Site and sending notice to Tai Po Rural Committee through registered mail. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land within the Site, the “owner’s consent/notification” requirements are set out in the TPB PG-No. 31A are not applicable to the application.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is the subject of a current planning enforcement case (No. E/NE-TK/144) against unauthorized storage use with the Enforcement Notice issued on 25.10.2019 requiring the unauthorized development (UD) to be discontinued on or before 25.1.2020 (**Plan A-2a**). Recent site inspection found that the UD has not been discontinued and the case is now under monitoring for further action.

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. 13F) promulgated on 27.3.2020 is relevant to the application. The Site falls within Category 3 area under the Guidelines, relevant extract of which is at **Appendix II**.

6. Previous Application

6.1 The Site is part of the subject of a previous application (No. A/NE-TK/628) submitted by the same applicant for temporary barbecue site, which was approved with conditions by the Committee on 18.5.2018 for a period of three years until 18.5.2021. All the approval conditions have been complied with. The applied use under the current application encroaches onto some car parking spaces, the loading/unloading area and the pedestrian access of the temporary barbecue site (**Plan A-2b**).

6.2 Details of the previous application are shown on **Appendix III** and its location is shown on **Plans A-1 and A-2a**.

7. Similar Application

There is no similar application within the same “AGR” zone.

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

8.1 The Site is:

- (a) partly hard paved and partly occupied by trees and vegetation;
- (b) occupied by four single-storey temporary structures converted from containers and the uncovered area portion is used for open storage of construction materials;
- (c) part of an area designated as car park for a temporary barbecue site approved under the previous application No. A/NE-TK/628; and
- (d) accessible via a track off Ting Kok Road.

8.2 The surrounding areas are predominantly rural in character with active/fallow agricultural land intermixing with temporary barbecue sites, temporary structures and tree groups. About 90m to the northeast of the Site is a domestic structure. To the south of the Site are the “Coastal Protection Area” zone along the coastline of Plover Cove and the Ting Kok Site of Special Scientific Interest which comprises a large patch of mangroves. To the further north across Ting Kok Road is Ting Kok Village.

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 Site consists of seven private lots in D.D. 17, Ting Kok and two pieces of adjoining Government land. The private lots are held under the Block Government Lease demised for agriculture purpose, no structure shall be erected on the lots without prior approval from LandsD. As regards the Government land, neither occupation nor works of any kind thereon is allowed without the prior approval from LandsD;
- (c) a recent inspection reveals that some containers are found on the Site without the prior approval from LandsD;
- (d) the applicant is required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate lease enforcement action and land control action will be taken in due course;
- (e) no direct grant of Short Term Tenancy in respect of the Government land concerned will be considered and the applicant is required to exclude such Government land from this planning application;
- (f) should the Board approve the application, the lots owners are required to submit applications for Short Term Waiver (STW) to LandsD should they wish to erect any structure on the lots. However, there is no guarantee at this stage that the STW applications would be approved. If the STW applications are approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including the payment of waiver fee and administrative fee as considered

appropriate; and

- (g) there is no guarantee to the grant of a right of way to the Site or approval of Emergency Vehicular Access thereto.

Agriculture

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

- the Site is currently used as open storage. Nevertheless, there are active agricultural activities in the vicinity and agricultural infrastructure such as road access and water source is available. The Site possesses potential for agricultural rehabilitation. As such, the application is not supported from agricultural development point of view.

Traffic

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

- (a) reservation on the application as the applicant has not provided traffic-related information, including estimated trip generation and layout plan showing loading and unloading spaces inside the Site to demonstrate that the applied use would not cause adverse traffic impact on the surrounding areas. Also, the applied use would affect the car parking spaces and loading/unloading area which are essential for the operation of the previous planning application (No. A/NE-TK/628) for a temporary barbecue site; and
- (b) the applicant is advised that loading/unloading spaces should be provided within the Site and the vehicular access between Ting Kok Road and the Site is not managed by Transport Department. The applicant shall seek agreement/comment from the responsible party for the management and maintenance measures to be implemented for the vehicular access.

Environment

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

- (a) does not support the application as there is a domestic structure in the vicinity of the Site (about 90m to the northeast); and
- (b) should the application be approved by the Board, the applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling

Environmental Aspects of Temporary Uses and Open Storage Sites’.

Landscape

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

- (a) some reservations on the application from the landscape planning perspective;
- (b) the Site is situated in an area of rural coastal plains landscape character which comprises existing barbecue sites, agricultural land and clusters of trees. The Site is partially paved and partially occupied by existing trees and vegetation. The applied use is considered incompatible with the landscape character of the area. The applied use if approved, would set an undesirable precedent and encourage more similar open storage development within the subject “AGR” zone. The cumulative impact of such approval would further alter the landscape character and degrade the landscape quality of the environment;
- (c) according to the layout plan in this application, there is direct conflict between the applied use and existing trees. Some of these trees fall within the boundary of the previous application (No. A/NE-TK/628), which are subject to maintenance under approval condition (c) of the said application;
- (d) there is no major public frontage along the site boundary and existing vegetation buffer is observed in close proximity to the Site. Should the Board approve the application, it is considered not necessary to impose a condition for additional landscaping as the effect of enhancing the quality of public realm is not apparent. However, a condition requiring maintenance of all existing trees within the Site at all times during the approval period should be imposed; and
- (e) the approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to DLO/TP for approval.

Drainage

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

- (a) no in-principle objection to the application from public drainage viewpoint;

- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas;
- (c) there is no existing DSD maintained public drain available for connection in the area. The applicant should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The applicant should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) public sewerage are not available near the Site; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought.

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 the fire service installations (FSIs) being provided to his satisfaction;
- (b) in consideration of the design/nature of the application, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs for his approval. The applicant should also be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of the proposed FSIs to be installed should be clearly marked on the layout plans. Good practice guidelines for open storage sites set out in **Appendix V** should be adhered to;
- (c) 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 applicant should submit a valid fire certificate (FS 251) for his approval; and

- (d) if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) no objection to the application;
- (b) there is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the applied use;
- (c) there is also no record of submission of the proposed building/structure to the Building Authority for approval; and
- (d) advisory comments for any proposed building under the Buildings Ordinance are at **Appendix V**.

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

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

11. Public Comments Received During Statutory Publication Period (Appendix IV)

On 5.2.2020, the application was published for public inspection. During the statutory public inspection period, six public comments (from Designing Hong Kong Limited and five individuals) were received. Five of them object to the application mainly on the grounds of adverse environmental and traffic impacts, being a destroy first and develop later case, setting undesirable precedent and being incompatible with the surrounding uses. One public comment expresses concern on possible application for house development upon the expiry of the current application.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary open storage of building materials for a period of three years at the Site which falls entirely within the “AGR” zone on the OZP. The applied 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 from agricultural development point of view as there are active agricultural activities in the vicinity, agricultural infrastructure such as road access and water source is available, and the Site possesses potential for agricultural rehabilitation. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.
- 12.2 The Site falls within Category 3 area under the TPB PG-No. 13F promulgated by the Board on 27.3.2020. The following considerations in the Guidelines are relevant:
- Category 3 area: 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 genuine efforts have been demonstrated in compliance with approval conditions of the previous planning applications and 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.
- 12.3 The Site is partly hard paved and partly occupied by trees and vegetation, with four single-storey temporary structures converted from containers and uncovered area for open storage of building materials. The surrounding areas are predominantly rural in character with active/fallow agricultural land intermixing with temporary barbecue sites, temporary structures and tree groups (**Plans A-2a and A-3**). CTP/UD&L of PlanD has some reservations on the application from the landscape planning perspective as the applied use is considered incompatible with the landscape character of the area. Approving the application would set an undesirable precedent for other similar applications in the “AGR” zone. The cumulative impact of such approval would further alter the landscape character and degrade the landscape quality of the environment.
- 12.4 C for T has reservation on the application as the applicant has not provided traffic-related information, including estimated trip generation and layout plan showing loading and unloading spaces inside the Site to demonstrate that the applied use would not cause adverse traffic impact on the surrounding areas.

DEP does not support the application as there is a temporary domestic structure in the vicinity of the Site (about 90m to the northeast) (**Plan A-2a**). DLO/TP advises that the Site consists of several private lots and two pieces of Government land. While he has no objection to the application, he advises that no direct grant of Short Term Tenancy in respect of Government land will be considered and the applicant should exclude such Government land from the Site. Other relevant Government departments consulted including CE/C of WSD, CE/MN of DSD, DO/TP of HAD, CBS/NTW of BD, DEMS and D of FS have no objection to or no adverse comment on the application.

- 12.5 According to TPB PG-No. 13F, the Site falls within Category 3 area where applications would normally not be favourably considered unless they are on sites with previous planning approvals and subject to no adverse departmental comments and local objections. The application does not comply with the TPB PG-No.13F in that the Site is not a subject of previous planning approval of open storage use; there are adverse departmental comments and local objections received in relation to the application; and the applicant fails to demonstrate that the applied use would have no adverse traffic and environmental impacts on the surrounding areas.
- 12.6 The Site is part of the subject of a previous application (No. A/NE-TK/628) submitted by the same applicant for temporary barbecue site approved with conditions by the Committee on 18.5.2018 for a period of three years until 18.5.2021. All the approval conditions have been complied with. According to the applicant's submission, the applied use encroaches onto some car parking spaces, the loading/unloading area and pedestrian access of the temporary barbecue site (**Plan A-2b**). C for T advises that the affected car parking spaces and loading/unloading area are essential for the operation of the temporary barbecue site. The applicant claims that the temporary barbecue site will continue to operate alongside the applied use, but he does not provide details on how the two uses will not affect each other.
- 12.7 Regarding the six public comments as detailed in paragraph 11 above, comments of relevant Government departments 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 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. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis;

- (b) the development does not comply with the Town Planning Board Guidelines No. 13F for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ in that there is no previous planning approval of open storage use granted for the Site; and there are adverse departmental comments and local objections against the application;
- (c) the applicant fails to demonstrate that the development will not have adverse traffic and environmental impacts on the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for other similar applications in the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the landscape character of the area.

13.2 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 three years until 12.6.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing trees on the Site shall be maintained at all times during the planning approval period;
- (c) the provision of peripheral 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 12.12.2020;
- (d) the submission of a 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 12.12.2020;
- (e) in relation to condition (d) above, the implementation of drainage proposal 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 12.3.2021;
- (f) the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by 24.7.2020;
- (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 12.12.2020;
- (h) in relation to condition (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 12.3.2021;

- (i) 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;
- (j) if any of the above planning conditions (c), (d), (e), (f), (g) or (h) is not complied with by the above 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 the expiry of the planning permission, the reinstatement of the 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 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 conditions and advisory clauses to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application form and attachments received on 22.4.2020
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13F for Application for Open Storage and Port Back-up Uses
Appendix III	Previous application
Appendix IV	Public comments
Appendix V	Recommended advisory clauses
Drawing A-1	Layout plan submitted by the applicant
Plan A-1	Location plan
Plans A-2a and A-2b	Site plans

Plan A-3
Plan A-4

Aerial photo
Site photos

**PLANNING DEPARTMENT
JUNE 2020**