

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-KTS/494

- Applicant** : Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lots 1192 (Part), 1193, 1196 (Part), 1197 (Part) and 1198 (Part) in D.D. 92, Kwu Tung South, Sheung Shui, New Territories
- Site Area** : 8,003.5m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plans** : Draft Kwu Tung South Outline Zoning Plan (OZP) No. S/NE-KTS/17 (currently in force)
Approved Kwu Tung South OZP No. S/NE-KTS/16 (at the time of submission)
- Zoning** : “Green Belt” (“GB”)
[the zoning of the Site remains unchanged on the extant OZP]
- Application** : Proposed Temporary Public Vehicle Park (Excluding Container Vehicle) with Ancillary Office 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 public vehicle park (excluding container vehicle) with ancillary office for a period of 3 years. The Site falls within an area zoned “GB” on the draft Kwu Tung South OZP No. S/NE-KTS/17 (**Plan A-1**). According to the Notes of the OZP, the proposed use is a Column 2 use within the “GB” zone that requires permission from the Town Planning Board (the Board). The Site is paved, partly vacant and partly occupied by open storage of construction materials and structures.
- 1.2 Part of the Site is the subject of 2 previous applications rejected by the Rural and New Town Planning Committee (the Committee) of the Board in 1997 and 2020 respectively. The first was for private club and recreational facilities. The subsequent application No. A/NE-KTS/487 was for temporary open storage of construction

materials (timber and bamboo) and machinery with ancillary offices for a period of 3 years and filling of ponds, which were submitted by the same applicant as the current one.

- 1.3 According to the applicant's submission, the proposed temporary development is a fee-paying public vehicle park comprising 45 private car parking spaces, 15 light goods vehicle (not exceeding 5.5 tonnes) parking spaces and 10 motorcycle parking spaces together with 2 single-storey structures for office use (3.5m high) and shroff (2.5m high) with a total floor area of 110m². The layout plan is at **Drawing A-1**.
- 1.4 The Site is accessible from Kam Chui Road. The ingress/egress is proposed at the eastern boundary of the Site. The proposed operation hours are from 8a.m. to 8p.m. from Mondays to Fridays and from 6a.m. to 12 mid-night on Saturdays, Sundays and public holidays.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with plans received on 9.2.2021 **(Appendix I)**
 - (b) Replacement Pages of Application Form received on 17.2.2021 **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ia** and are summarised as follows:

Roadside along Kam Chui Road and Kam Hang Road is occupied by vehicles. It causes inconvenience to the villagers nearby. The proposed fee-paying public vehicle park intends to provide daytime car parking services with a view to attracting more people to visit Kam Tsin Village. Due to large number of residents nearby, the proposed public vehicle park would ease the pressure on parking on vacant land.

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

The applicant is not the “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 notice and sending notice to the Sheung Shui District Rural Committee (SSDRC) by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Site falls within the “GB” zone. The Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10) are relevant to this application. The relevant assessment criteria are summarised as follows:

- (a) there is a general presumption against development (other than redevelopment) in a “GB” zone;
- (b) an application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas;
- (c) the design and layout of any proposed development should be compatible with the surrounding areas. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (f) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

5. Background

The southern part of the Site is subject to planning enforcement action under the Town Planning Ordinance against unauthorised development (UD) involving storage use (including deposit of containers) (**Plan A-2b**). On 9.10.2019, Enforcement Notice (EN) was issued to the concerned notice recipients requiring discontinuation of the UD. Since the EN was not complied with, the defendants were prosecuted, and upon conviction, fined on 25.11.2020. As revealed by site inspection on 8.3.2021, the southern part of the Site was largely vacant.

6. Previous Applications

- 6.1 Part of the Site is the subject of 2 previous applications which were all rejected by the Committee in 1997 and 2020 respectively. Details of the applications are summarised at **Appendix II** and their locations are shown on **Plans A-1 and A-2a**.
- 6.2 Application No. A/NE-KTS/65, covering the western part of the Site, for private club and recreational facilities was rejected in 1997 for reasons that the proposed development is not in line with the planning intention of the “GB” zone; no information was submitted to demonstrate no adverse drainage, traffic and environmental impacts on the surrounding areas; land in “Recreation” (“REC”) zone in the OZP was considered more suitable for the proposed development; and approval of the application would set an undesirable precedent.
- 6.3 Application No. A/NE-KTS/487, submitted by the same applicant as the current one, for temporary open storage of construction materials (timber and bamboo) and machinery with ancillary offices for a period of 3 years and filling of ponds was rejected in 2020 for reasons that the proposed development is not in line with the planning intention of the “GB” zone; it is not in line with TPB PG-No. 10 and the Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses’ (TPB PG-No. 13F); and approval of the application would set an undesirable precedent.

7. Similar Application

There is no similar application in the same “GB” zone.

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

- 8.1 The Site is:
- (a) generally flat and paved;
 - (b) partly vacant and partly occupied by open storage of construction materials, structures and trees; and
 - (c) accessible via Kam Chui Road.
- 8.2 The surrounding area is predominantly rural in nature with the following characteristics:
- (a) to the north are a farm and a koi farm;
 - (b) to the east across Kam Chui Road are permitted burial grounds, densely

vegetated knolls, a domestic structure as well as a storage and open storage yards; and

- (c) to the south and west are Beas River Country Club. Residential development is at further southeast.

9. Planning Intention

The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views are summarised as follows:

Land Administration

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

- (a) the subject lots are Old Schedule agricultural lots held under the Block Government lease (demised for agriculture use) without any guaranteed right of access. The applicant should make its own arrangement for acquiring access, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;
- (b) a strip of Government land at the southwest side of the Site is being occupied and fenced off by hoardings without approval from his office. His office reserve the right to take enforcement action against the unauthorised occupation of Government land;
- (c) a Letter of Approval No. L2612 (L of A) was issued to allow erection of temporary structures on Lots 1192, 1197 and 1198 in D.D. 92 for chicken shed / storage purposes. The existing use and dimensions of the L of A structures do not tally with the permitted conditions under the L of A. His office will take necessary enforcement action against the irregularities on the said L of A;
- (d) the boundary of an existing Government Land Licence (GLL) T7375 (for unimproved grazing and grass cutting) on Government land slightly encroaches on two of the subject lots (i.e. Lots 1192 and 1198).

His office will take necessary action on the said GLL;

- (e) apart from the L of A structures, other existing structures on the Site were erected without approval from his office. The aforesaid structures are not acceptable under the leases concerned. His office reserves the right to take enforcement actions against the aforesaid structures; and
- (f) if the application is approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering the approved site area and structures. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that they 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 fees as considered appropriate by his office.

Traffic

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

- (a) without the following information, he cannot confirm if the proposal is acceptable from traffic engineering point of view;
 - (i) the applicant should advise the width of the vehicular access. The vehicular access should be no less than 7.3m wide;
 - (ii) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and existing from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis;
 - (iii) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site;
 - (iv) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (b) the vehicular access between the Site and Kam Tsin Road is not managed by Transport Department. The applicant should seek comment from the responsible party.

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

the existing Kam Chui Road fronting the Site is not under his department's maintenance purview.

Environment

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

- (a) 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 the Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimise the potential environmental impacts on the adjacent area; and
- (b) there is no environmental complaint against the Site received by DEP in the past three years.

Sewerage

10.1.5 Comments of the DEP:

it is noted that no onsite toilet or any facilities that would generate sewage.

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

there is public sewerage near the Site.

Landscape Aspect

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

- (a) she has some reservations on the application from landscape planning perspective;
- (b) based on aerial photo taken in 2020, the Site is located in an area of rural inland plains landscape character comprising of village houses, temporary structures, country clubs and densely vegetated woodland. The proposed development is considered not entirely incompatible with the landscape setting of the area in “GB” zone. According to the record, there is no previously approved application for similar use within the same “GB” zone;
- (c) according to her site record dated 22.2.2021, the Site is mostly hard paved, fenced off with temporary structures and open storage of construction materials. Approximate 28 nos. of existing trees of common species generally in fair to good condition are found within the Site. With reference to the layout plan (**Drawing A-1**) submitted by the applicant, the location of the proposed office, motorcycles parking

and light goods vehicle parking maybe in conflict with the existing trees in the middle part and northern portion of the Site. Potential impact on the existing landscape resources within the Site is anticipated. However, no information of the existing landscape resources within the Site and proposed landscape treatment is provided in the application;

- (d) comparing the aerial photos between 2012 and 2017, the ponds along the southern boundary of the Site had already been filled, hard paved and vegetation clearance near the ponds was noted since 2017. Gradual degradation of the landscape environment of the Site due to vegetation clearance and filling of ponds are observed. There is concern that approval of the application may encourage similar site modification in the neighbourhood prior to planning permission. The cumulative impact of such approval would further degrade the landscape quality of the “GB” zone; and
- (e) her advisory comments are at **Appendix IV**.

Drainage

10.1.8 Comments of the CE/MN, DSD:

- (a) he does not support the application based on the information so far submitted; and
- (b) it appears that pond filling was involved in the Site. The applicant shall demonstrate if there has been any drainage impact due to pond filling activities as well as the drainage impact anticipated due to the proposed use. The applicant shall also submit drainage proposal for consideration.

Building Matters

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

his advisory comments on new proposed buildings are at **Appendix IV**.

Nature Conservation

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

the Site was largely paved and disturbed. Some containers and temporary structures are found within the Site. It is noted from the aerial photos that the Site has been paved and remains for similar condition for some years. While he has no adverse comment on the application from nature conservation point

of view, it should be considered if it is a case of “destroy first, build later” which should not be encouraged.

Fire Safety

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

- (a) he has no objection in principle to the proposal subject to fire service installations (FSI) being provided to the satisfaction of Director of Fire Services;
- (b) in consideration of the design/nature of the proposal, FSI 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; and
- (c) his advisory comments are at **Appendix IV**.

District Officer's Comments

10.1.12 Comments of the District Officer/North (DO/N), HAD:

he has consulted the locals from 2.3.2021 to 16.3.2021. The North District Council (NDC) member of the subject Constituency raised objection mainly on the grounds that approval of the application would cause traffic congestion and danger to residents nearby and pedestrians as many villagers, particularly elderly and children, will pass through the road to use the playground and sitting-out area nearby that will be completed. The Chairman of SSDRC, the Resident Representatives (RR) and the Indigenous Inhabitant Representatives (IIR) of Hang Tau, the RR and IIR of Kam Tsin, and the RR of Kwu Tung have indicated no comment.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Commissioner of Police (C of P); and
- (c) Project Manager (North), Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 19.2.2021, the application was published for public inspection. During the three-week statutory publication period, 12 public comments (**Appendices III-1 to III-12**) from Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong Limited, World Wide Fund for Nature Hong Kong, representative of Sino Estates Management Limited and individuals were received. All object to the application mainly on the following grounds:

- (a) The proposed development is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10. Approval of the application would set undesirable precedent and lead to a general degradation of the natural environment of the area.
- (b) Kam Chui Road is a two-way single track narrow road without adequate lighting at night which cannot accommodate additional traffic. On-street parking is always found along Kam Chui Road. Many horses and riders from the Beas River Jockey Club are using this road. Increase in traffic flow on Kam Chui Road will endanger pedestrians and cause adverse traffic impact.
- (c) The proposed development would cause adverse impacts on environment (including noise and air), drainage, and villagers/residents’ safety and living quality.
- (d) Construction materials are stored in the Site and heavy vehicles are always to/from the Site.
- (e) The Site involves an enforcement case. Approval of the application would legitimise unauthorised use of land and promote “destroy first, develop later” attitudes. Moreover, the Board should investigate whether the enforcement case has been settled.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary public vehicle park (excluding container vehicle) with ancillary office for a period of 3 years. The Site falls within an area zoned “GB” on the draft Kwu Tung South OZP No. S/NE-KTS/17 (**Plan A-1**). According to the applicant’s submission, the proposed fee-paying public vehicle park provides parking spaces for private cars, light goods vehicles and motorcycles, together with two single storey structures for office use and shroff with a total floor area of 110m². The proposed use is not in line with the planning intention of “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no justification in the applicant’s submission for such large floor area for office use and shroff. As stated in the TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 12.2 According to TPB PG-No. 10, proposed development in the “GB” zone should be compatible with the surrounding areas, and should not affect the existing trees / overstrain the capacity of existing and planned roads or adversely affect drainage or aggravate flooding in the area. Although CTP/UD&L, PlanD considers that the proposed development is not entirely incompatible with the landscape setting of the

area primarily in rural character comprising country club, agricultural use, densely vegetated knolls and residential use, she has reservation on the application as the office and parking spaces maybe in conflict with the existing trees on the Site. Besides, it is noted that there has been gradual degradation of landscape environment of the Site as exemplified by pond filling, site paving and vegetation clearance. Approval of the application may encourage similar site modification in the neighbourhood prior to planning permission. The cumulative impact of such approval would further degrade the landscape quality of the “GB” zone. In this regard, DAFC also raises that the Site has already been paved and disturbed and such activity should not be encouraged.

- 12.3 C for T cannot confirm if the proposal is acceptable as no traffic-related information, e.g. to demonstrate the satisfactory manoeuvring of vehicles and the provision and management of pedestrian facilities to ensure pedestrian safety etc, is provided by the applicant. CE/MN, DSD does not support the application as the applicant does not demonstrate that the drainage impact anticipated due to the proposed use would be acceptable. No similar application has been approved in the same “GB” zone. Together with the assessment in paragraph 12.2 above, the proposed development is not in line with the TPB PG-No. 10.
- 12.4 Part of the Site is the subject of 2 previously rejected applications for private club and recreational facilities and temporary open storage. Both were rejected in 1997 and 2020 respectively as stated in paragraph 6. As there has been no material change in planning circumstances since the last rejected application, rejection of the current application is in line with the previous decisions of the Committee.
- 12.5 There are local views conveyed by DO(N) and 12 public comments as stated in paragraphs 10.1.12 and 11, with objecting comments. The departmental comments and planning considerations 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 local views and public comments mentioned in paragraphs 10.1.12 and 11, the Planning Department does not support the application for the following reasons:
 - (a) the proposed development is not in line with the planning intention of the “Green Belt” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the proposed development is not in line with the Town Planning Board Guidelines for Application for Development within Green Belt Zone in that the

applicant fails to demonstrate that there is no adverse traffic, drainage and landscape impacts 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 26.3.2024. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no medium/heavy goods vehicles exceeding 5.5 tonnes including container tractors/trailers as defined in the Road Traffic Ordinance are allowed to/from the Site at any time during the planning approval period;
- (b) 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 26.9.2021;
- (c) in relation to (b) 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 26.12.2021;
- (d) the submission of fire service installations proposals 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 26.9.2021;
- (e) in relation to (d) above, the provision of fire service installations 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 26.12.2021;
- (f) if the above planning condition (a) 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;
- (g) if any of the above planning condition (b), (c), (d) or (e) 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
- (h) 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 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

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| Appendix I | Application Form with plans received on 9.2.2021 |
| Appendix Ia | Replacement Pages of Application Form received on 17.2.2021 |
| Appendix II | Previous Applications |
| Appendices III-1 to III-12 | Public Comments |
| Appendix IV | Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Plan A-1 | Location Plan |
| Plans A-2a and 2b | Site Plans |
| Plan A-3 | Aerial Photo |
| Plans A-4a to 4b | Site Photos |

**PLANNING DEPARTMENT
MARCH 2021**