

RNTPC Paper No. A/NE-TKL/724A
For Consideration by the
Rural and New Town Planning
Committee on 8.9.2023

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/724

- Applicant** : Ying Shing (Hopewell) Engineering Company Ltd.
- Site** : Lots 175 and 176 in D.D. 84, Ta Kwu Ling, New Territories
- Site Area** : About 1,704m²
- 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 Open Storage of Construction Machinery and Construction Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary open storage of construction machinery and construction materials for a period of three years at the application site (the Site) which is zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is currently fenced off and mostly vacant with vegetation.
- 1.2 The Site is accessible from its south via a local track leading to Ping Che Road (**Plans A-1 and A-2**). According to the applicant, the Site will be used for open storage with two private car parking spaces and two loading/unloading bays/lay-bys for medium goods vehicles in the western part of the Site. The operation hours of the development is from 9:00 a.m. to 5:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. The layout plan and vehicular access plan submitted by the applicant are shown in **Drawings A-1 and A-2**.
- 1.3 In support of the application, the applicant has submitted the following documents:
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|-----|---|----------------------|
| (a) | Application Form with attachments received on 11.4.2023 | (Appendix I) |
| (b) | Further Information (FI) received on 12.7.2023 | (Appendix Ia) |
| (c) | FI received on 31.8.2023 | (Appendix Ib) |

- 1.4 On 9.6.2023, the Rural and New Town Planning Committee (the Committee) agreed to the applicant's request to defer making a decision on the application for 2 months to allow more time for the applicant to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed at **Appendix I**, as summarized below:

- (a) the proposed development would address the acute demand for open storage of construction machinery and construction materials in the vicinity; and
- (b) the proposed development will not induce adverse traffic and environmental impacts on or cause significant nuisance to the surrounding areas.

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 obtaining consents of two “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The TPB PG-No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13G) promulgated by the Board on 14.4.2023 is relevant to the application. The Site falls within Category 2 area under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is the subject of a suspected unauthorized development regarding unauthorized storage use. Recent site inspection revealed that the storage use has been discontinued. The Site is currently under monitoring according to the established procedures.

6. Previous Application

- 6.1 The Site is the subject of a previous application (No. A/NE-TKL/625) submitted by a different applicant for proposed temporary open storage of construction machinery and container. The application was rejected by the Committee in 2019 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the application did not comply with the previous version TPB PG-No. 13E in that there was no previous planning approval for open storage use granted at the site and there were adverse comments from the relevant government departments and local objections against the application; and the applicant failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.

- 6.2 Details of the previous application are summarized at **Appendix III** and the location is shown on **Plan A-1**.

7. Similar Applications

- 7.1 There are 17 similar applications (No. A/NE-TKL/443, 454, 460, 480, 514, 553, 555, 560, 564, 622, 642, 671, 690, 695, 707, 714 and 734) involving eight sites for temporary open storage uses within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). 13 applications involving five sites within the Category 2 areas under the previous versions TPB PG-No. 13E/13F were approved by the Committee between September 2013 and August 2023 mainly on the grounds that the proposed developments generally complied with the relevant TPB Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections.
- 7.2 The remaining four applications (No. A/NE-TKL/480, 514, 560 and 690) involving three sites for similar temporary open storage uses were rejected by the Committee between September 2014 and January 2022 mainly on the grounds that the proposed developments were not in line with the planning intention of “AGR” zone; did not comply with the previous versions TPB PG-No. 13E/13F as the sites fall within Category 3 areas where there was no previous approval for open storage use granted at the sites and there were adverse comments from the relevant government departments and local objections against the applications; and the applicants failed to demonstrate that the developments would not cause adverse traffic, environmental and landscape impacts on the surrounding areas.
- 7.3 Details of the similar applications are summarized at **Appendix IV** and the locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4)

- 8.1 The Site is:
- (a) fenced off;
 - (b) mostly vacant with vegetation; and
 - (c) accessible from Ping Che Road via a local track.
- 8.2 The surrounding areas are predominated by vehicle-repairing workshops, warehouses, storages, open storages, temporary structures and vacant land, and to the north are woodland within the nearby “Green Belt” (“GB”) zone. Some domestic structures are found to the immediate south, further southwest and northeast of the Site.

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 Apart from the government departments as set out in paragraphs 10.2 and 10.3 below, other government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided at **Appendices V** and **VI** respectively.

10.2 The following government departments have comments on/do not support the application:

Land Administration

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

- (a) the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via. Government land (GL) is granted to the Site; and
- (b) the GL adjoining to the Site is fenced off without any permission (**Plan A-2**). Any occupation of GL without Government's prior approval is an offence. The lot owner/applicant should immediately cease any occupation of GL and his office reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice.

Agriculture and Nature Conservation

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

- the Site falls within the "AGR" zone and is vacant. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the applied use is not supported from agricultural perspective.

Environment

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

- (a) according to the "Code of Practice on Handling the Handling Aspects of Temporary Uses and Open Storage Sites" (the COP), the application should not be supported as there are residential buildings within 100m from the boundary of the Site (**Plan A-2**) and the use of medium goods vehicles for delivering the recycled materials is involved. Under the COP, medium goods vehicles are also considered as "heavy vehicles" and thus environmental nuisance is anticipated;
- (b) there has been no environmental complaint against the Site during the past three years;
- (c) should the application be approved, it should be considered to include the

following measures in the recommended advisory clauses for the applicant to adopt. In case the connection to public sewer is not feasible, septic tank and soakaway system is also considered to be acceptable provided that its design and construction follow the requirements of the ProPECC PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department", in particular the distance between stream and soakaway systems, and are duly certified by an Authorized Person;

- (d) the applicant should comply with all environmental protection/pollution control ordinances; and
- (e) the applicant is also advised to follow the environmental mitigation measures as set out in the latest COP issued by DEP in order to minimize any possible environmental nuisances.

10.3 The following government department has relayed the following local views on the application:

District Officer's Comments

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

- (a) he has consulted the locals regarding the application. The Indigenous Inhabitant Representative (IIR) of Lei Uk objects to the application;
- (b) the Chairman of Fung Shui Area, the Resident Representative (RR) of Lei Uk and the RR of Tai Po Tin have no comment, while the incumbent North District Councilor of N16 Constituency has no comments but indicates that the applied use should be in line with current planning intention of the "AGR" zone and the applicant should obtain the consent of relevant private lot owners; and
- (c) Ta Kwu Ling District Rural Committee and the IIR of Tai Po Tin have not replied to HAD.

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

On 18.4.2023, the application was published for public inspection. During the statutory public inspection period, three public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining two comments from an individual and Kadoorie Farm and Botanic Garden Corporation object to the application mainly on grounds that the applied use is not in line with the planning intention of "AGR" zone and there is a previously rejected application for similar use covering the Site.

12. Planning Considerations and Assessments

12.1 The application is for a proposed temporary open storage of construction machinery and construction materials for a period of three years at the Site zoned "AGR". The proposed development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for

cultivation and other agricultural purposes. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessment below, the proposed development on a temporary basis of three years could be tolerated.

- 12.2 The Site falls within Category 2 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of three years, 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. Technical assessments, where appropriate or if required, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

- 12.3 The Site is located in an area of rural fringe landscape character comprising car repairing workshops, warehouses, storages, open storages, temporary structures and vacant land. The proposed development is considered not incompatible with the surrounding environments. In this regard, Chief Town Planner/Urban Design & Landscape, has no objection to the application from landscape planning perspective since significant adverse impacts on the existing landscape character and landscape resources arising from the proposed development are not anticipated.
- 12.4 DEP considers that the application should not be supported as the proposed development involves the use of heavy vehicles (i.e. medium goods vehicles) and environmental nuisance to the sensitive receivers (i.e. domestic structures) in the vicinity of the Site is expected (**Plan A-2**). However, there has been no environmental complaint against the Site in the past three years. To address the concern of DEP on possible environmental nuisance to be generated by the temporary use under application, relevant approval conditions including restriction on the operation hours at the Site have been recommended in paragraph 13.2 below. Should the application be approved, the applicant will also be advised to follow the COP to minimize the possible environmental impacts on the surrounding areas.
- 12.5 The Commissioner for Transport (C for T) has no comment on the application from the traffic engineering point of view. Regarding DLO/N of LandsD's comments that the GL adjoining to the Site is fenced off without any permission which is subject to land control action, the applicant indicates that he will liaise with LandsD to rectify/regularize the illegal occupation of GL (**Appendix Ib**). Other concerned government departments, including Chief Engineer/Mainland North of Drainage Services Department, Chief Engineer/Construction of Water Supplies Department and Director of Fire Services have no objection to or no adverse comment on the application.
- 12.6 The application generally complies with the TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments can be addressed through implementation of approval conditions.
- 12.7 The Site is the subject of one previous application No. A/NE-TKL/625 for a proposed temporary open storage of construction machinery and container, which was rejected by the Committee in October 2019 mainly on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone; the application did not

comply with the previous version TPB PG-No. 13E as the Site was within the Category 3 areas at that time where there was no previous planning approval for open storage use granted at the site and there were adverse comments from the relevant government departments and local objections against the application; and the applicant failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas. For the current application, it generally complies with the latest TPB PG-No. 13G in that the Site falls within Category 2 areas and no major adverse departmental comments have been received on the application and the concerns of the relevant government departments can be addressed through implementation of approval conditions.

- 12.8 There are 17 similar applications involving eight sites for temporary open storage uses within the same “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). 13 applications involving five sites within the Category 2 areas under the previous version of TPB PG-No. 13G for temporary open storage uses were approved by the Committee between September 2013 and August 2023 mainly on the grounds that the proposed developments generally complied with the relevant TPB Guidelines; there were similar applications approved in the vicinity; and no adverse departmental comments and local objections. The planning considerations of the current application are similar to the approved applications.
- 12.9 Regarding the local comments conveyed by DO (N) of HAD and public comments on the application as detailed in paragraphs 10.3 and 11 respectively, government departments’ comments and 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 local comments conveyed by DO (N) of HAD and public comments as detailed in paragraphs 10.3 and 11 respectively, the Planning Department considers that the temporary development could be tolerated for a period of 3 years.
- 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 8.9.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 5:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the 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 8.3.2024;
- (d) in relation to (c) 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 8.6.2024;

- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the provision of fire extinguisher(s) within **6** weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.10.2023;
- (g) the submission of proposals for water supplies for fire-fighting and fire service installations 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 8.3.2024;
- (h) in relation to (g) above, the provision of water supplies for fire-fighting and 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 8.6.2024;
- (i) if any of the above planning conditions (a), (b) or (e) 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), (f), (g) or (h) 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
- (k) 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 VI**.

13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

- the development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good 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.

14. Decision Sought

14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.

14.2 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.

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 applicants.

15. Attachments

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| Appendix I | Application Form with Attachments received on 11.4.2023 |
| Appendix Ia | FI received on 12.7.2023 |
| Appendix Ib | FI received on 31.8.2023 |
| Appendix II | Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G |
| Appendix III | Previous Application |
| Appendix IV | Similar s.16 Applications for Temporary Open Storage within the “Agriculture” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling Area |
| Appendix V | Government Departments’ General Comments |
| Appendix VI | Recommended Advisory Clauses |
| Appendix VII | Public Comments |
| Drawings A-1 and A-2 | Proposed Layout Plan and Vehicular Access Plan |
| Plan A-1 | Location Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

**PLANNING DEPARTMENT
SEPTEMBER 2023**