

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/734

<u>Applicant</u>	Mr. LAI Kwok Leung represented by Aikon Development Consultancy Ltd.
<u>Site</u>	Lots 1098 (Part), 1099 S.A (Part), 1099 S.B (Part), 1100 (Part), 1101 (Part) and 1105 S.A RP in D.D. 82 and Adjoining Government Land (GL), Ping Che, Ta Kwu Ling, New Territories
<u>Site Area</u>	About 5,032.5m ² (including about 41.6m ² of GL (about 0.8%))
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Temporary Open Storage of Construction Materials, Equipment and Machineries with Ancillary Storage of Construction Equipment, Machineries, Tools and Site Office for a Period of Three Years

1. The Proposal

- 1.1. The applicant seeks planning permission to use the application site (the Site) for proposed temporary open storage of construction materials, equipment and machineries with ancillary storage of construction equipment, machineries, tools and site office for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the OZP. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use.
- 1.2. The Site is accessible via Ping Che Road with an ingress/egress point in the east (**Plan A-2**). According to the applicant, the majority of the Site will be used for open storage. There are eight temporary structures, and 18 converted-containers (1 to 2 storeys at 2.6m to 7.8m in height), with a total floor area of about 929m², for ancillary storage of small construction tools/ equipment and site office. Three private car parking spaces, one loading/unloading bay for heavy goods vehicle and two loading/unloading bays for light goods vehicle will be provided within the Site. All vehicles entering and exiting the Site would be restricted from 10:00 a.m. to 4:00 p.m. during operation. The number of

vehicular trips to/from the Site will be not more than 20 daily. The operation hours of the Site are between 7:00 a.m. and 11:00 p.m. from Mondays to Saturdays only. There will be no operation on Sundays and public holidays. A layout plan of the applied use and a landscape and tree preservation plan submitted by the applicant are shown in **Drawings A-1 and A-2**.

- 1.3. The Site, in part or in whole, is the subject of seven previous applications (No. A/NE-TKL/26, 63, 158, 390, 454, 555 and 642) (**Plan A-1**). The last approved application No. A/NE-TKL/642, which is a renewal of planning approval of No. A/NE-TKL/555, will lapse on 15.9.2023. Compared with the last approved application, the site area and the total floor area of the current application have been reduced by about 271.5m² (about 5%) and increased by about 250m² (about 37%) respectively. The number of converted-containers have been increased by 10. The applicant has complied with all the approval conditions under the last approved application.
- 1.4. In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on 15.6.2023 (**Appendix I**)
 - (b) Supplementary Planning Statement received on 15.6.2023 (**Appendix Ia**)
 - (c) Further Information (FI) received on 31.7.2023 (**Appendix Ib**)
 - (d) FI received on 1.8.2023 (**Appendix Ic**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary planning statement at **Appendices Ia to Ic**. They can be summarized as follows:

- (a) there were previously approved applications for open storage uses within the application site;
- (b) there has been no major change in planning circumstances since the approval of the last application. The applicant has complied with all the approval conditions of the last application;
- (c) the application is generally in line with Town Planning Board Guidelines No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13G);
- (d) no adverse impacts on infrastructural and environmental aspects are anticipated. The existing drainage provision, fire safety provision and landscape treatment as implemented would be properly maintained; and
- (e) the temporary nature of the use would not jeopardize the planning intention of the “AGR”.

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

The applicant is one of the “current land owners” of the Site and has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning

Ordinance (TPB PG-No. 31A) by obtaining consent of or notifying the other current land owners. Detailed information would be deposited at the meeting for Members' inspection. For the Government land portion within the Site, TPB PG-No.31A is not applicable.

4. Town Planning Board Guidelines

TPB PG-No. 13G promulgated on 14.4.2023 is relevant to the application. The Site falls within Category 2 area under TPB PG-No. 13G, relevant extract of which is at **Appendix II**.

5. Background

The Site is currently not subject to any planning enforcement action.

6. Previous Applications

- 6.1. The Site, in part or in whole, is involved in seven previous applications (**Plan A-1**). Two applications (No. A/NE-TKL/26 and 63) for temporary open storage of vehicles and open working area for disassembling and crating of new vehicles/construction materials were rejected by the Committee and by the Board on review in November 1996 and May 1998 respectively mainly on the grounds that the developments were not in line with the planning intention of "AGR" zone; being incompatible with the surrounding agricultural and rural characters and having adverse drainage impact; and setting of undesirable precedents for similar applications.
- 6.2. The other five applications (No. A/NE-TKL/158, 390, 454, 555 and 642) for similar temporary open storage uses as the current application were approved with conditions by the Committee/by the Board on review between August 2001 and September 2020 mainly on the grounds that the Sites were not incompatible with the surrounding land uses; and the proposed developments were generally in line with the previous version of TPB PG-No. 13G in that there were previous planning approvals granted for open storage uses and no major adverse departmental comment was received.
- 6.3. Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1. There are 14 similar applications 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**). Nine applications (No. A/NE-TKL/443, 460, 553, 564, 622, 671, 695, 707 and 714) involving four sites within 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 May 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 five applications (No. A/NE-TKL/480, 514, 560, 625 and 690) involving four 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; the developments did not comply with the relevant TPB Guidelines; and there were adverse departmental comments.
- 7.3. Details of these similar applications are at **Appendix IV** and their locations are shown on **Plan A-1**.

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

8.1. The Site is:

- (a) currently occupied by containers, construction materials and machineries; and
- (b) accessible via Ping Che Road.

8.2. The surrounding areas are of rural inland plains landscape character comprising open storages, temporary structures, vegetated areas, clusters of tree groups and farmlands.

9. Planning Intention

The planning intention of the “AGR” zone is to primarily 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 **VII** respectively:

10.2. The following government departments do not support the application:

Land Administration

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

- the Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains a restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via GL is granted to the Site;
- no consent is given for inclusion of GL in the Site. The GL within the Site has been fenced off without any permission. Any occupation of GL without

Government's prior approval is an offence. The lot owner(s)/the applicant should immediately cease any occupation of GL and this office reserves the rights to take necessary land control action against the illegal occupation of GL without separated notice;

- there are unauthorized structures erected on the private lots. The lot owner(s) should immediately rectify the lease breaches and this office reserves the rights to take necessary lease enforcement action against the lease breaches without separate notice; and
- the lot owner(s) will need to apply to this office for a Short Term Waiver (STW) and Short Term Tenancy (STT) to permit the structures to be erected and occupation of GL. Besides, given that the proposed use is temporary in nature, only application for erection of temporary structure(s) will be considered. The application will be considered by the LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

Agriculture and Nature Conservation

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

- the Site falls within the "AGR" zone and is being used as an open storage. 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 proposed development is not supported from an agricultural perspective; and
- the Site is currently being used as an open storage and I have no comment on the proposed use from nature conservation perspective. Nonetheless, it is noted that the Site is located in the vicinity of a watercourse (**Plan A-2**). Should the application be approved, the applicant should be advised to implement necessary measures to prevent polluting and disturbing the watercourse as far as possible.

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

District Officer's Comments

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

- he has consulted the locals regarding the application. The Indigenous Inhabitant Representative (IIR) of Fung Wong Wu and the IIR of Tai Po

Tin object to the application. The Vice-chairman of Ta Kwu Ling District Rural Committee and the incumbent North District Councilor of N16 Constituency object to the application on the grounds that the development would have negative impact on the traffic within the area, safety of the villagers and development of the Northern Metropolis;

- the Resident Representative (RR) of Fung Wong Wu, the IIR and the RR of Lei Uk, the IIR and the RR of Tong Fong have no comment; and
- the Chairman of Fung Shui Area Committee and the RR of Tai Po Tin did not reply to the consultation.

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

On 27.6.2023, the application was published for public inspection. During the statutory public inspection period, eight public comments were received. The Chairman of Sheung Shui District Rural Committee has no comment on the application. Four individuals indicate no objection to the application with one comment indicates that the Site has been used for similar use for many years and therefore can be tolerated for a short period of time. Three individuals support the application on the grounds that the Site has no agricultural or ecological values and brownfield use at the Site should be continued to maximize land resources; and the Site has been used for storage of construction materials for years.

12. Planning Considerations and Assessments

12.1. The application is for temporary open storage of construction materials, equipment and machineries with ancillary storage of construction equipment, machineries, tools and site office for a period of three years. 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 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 applied use on a temporary basis of three years could be tolerated.

12.2. The Site falls within Category 2 area under TPB PG-No. 13G promulgated by the Board on 14.4.2023. 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, 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 landscape character comprising open storage, temporary structures, tree group clusters and farmlands. The development is considered not incompatible with the surrounding environments (**Plan A-2**). Chief Town

Planner/Urban Design & Landscape Section, has no objection to the application from the landscape planning point of view as there is no significant landscape impact arising from the current application is anticipated.

- 12.4. Commissioner for Transport has no comment on the application from traffic engineering point of view (**Appendix Ic**). Although DLO/N of LandsD has concerns on occupation of GL and unauthorized structures erected within the the Site, which are subject to land control and lease enforcement actions, the applicant advises that he would rectify the matters and settle the land issues accordingly with LandsD (**Appendix Ib**). Director of Environmental Protection has no objection to the application and the applicant is advised to follow the 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize the possible environmental impacts on the surrounding areas. Other relevant government departments, including D of FS, CE/MN of DSD, CE/C, WSD, PM(NTE), CEDD and CBS/NTW, BD have no objection to or no comment on the application.
- 12.5. The application generally complies with 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.
- 12.6. The Site is the subject of seven previous applications. The last application No. A/NE-TKL/642 for the same use as the current application was approved in September 2020 and all approval conditions have been complied with. As compared with the last approval scheme, the layout of the current submission is generally in line with the last application with some changes mainly in site area and the total floor area of the temporary structures. There has been no major change in planning circumstances since the approval of the last application in September 2020.
- 12.7. There are 14 similar applications involving eight sites for temporary open storage uses within the "AGR" zones in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). Nine applications (No. A/NE-TKL/443, 460, 553, 564, 622, 671, 695, 707 and 714) involving four sites within Category 2 areas under the previous version of TPB PG-No. 13G for temporary open storage uses were approved with conditions by the Committee between September 2013 and May 2023 mainly on the considerations 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. The planning considerations of the current application are similar to the approved applications.
- 12.8. Regarding the adverse public comments as detailed in paragraph 10 and the local objections conveyed by DO(N), HAD in paragraph 10.3.1 above, the government department's comments and the planning assessment above are relevant.

13. Planning Department's Views

- 13.1. Based on the assessments made in paragraph 12 and taking into account the local objections conveyed by DO(N), HAD and public comments in paragraphs 10.3 and 11 above respectively, the Planning Department considers that the temporary use under application could be tolerated for a period of three 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 11.8.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 11:00 p.m. and 7:00 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) all vehicles entering and exiting the Site during the planning approval period shall be restricted to non-peak hours (i.e. from 10:00 a.m. to 4:00 p.m. on Mondays to Saturdays (excluding Sundays and Public Holidays)), as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (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 11.2.2024;
- (e) in relation to (d) above, the provision of a 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 11.5.2024;
- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) 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 22.9.2023;
- (h) the submission of proposals for water supplies for firefighting 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 11.2.2024;
- (i) in relation to (i) above, the provision of water supplies for firefighting and fire service installations within 9 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 11.5.2024;
- (j) if any of the above planning conditions (a), (b), (c) or (f) 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;
- (k) if any of the above planning conditions (d), (e), (g), (h) or (i) 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

- (l) 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 VII**.

- 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 "Agriculture" zone which is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes, and 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 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 applicant.

15. Attachments

Appendix I	Application Form with Attachments received on 15.6.2023
Appendix Ia	Supplementary Planning Statement received on 15.6.2023
Appendix Ib	FI received on 31.7.2023
Appendix Ic	FI received on 1.8.2023
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous Applications
Appendix IV	Similar s.16 Applications within the "AGR" zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area
Appendix V	Government Departments' General Comments
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Landscape and Tree Preservation Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2023**