

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/735

- Applicant** : Hing Shing Engineering & Trading Co. Limited represented by PlanPlus Consultancy Limited
- Site** : Lots 86 (Part), 87 and 89 in D.D. 83 and Adjoining Government Land, Kwan Tei North, Fanling, New Territories
- Site Area** : About 4,044.9m² (includes Government Land (GL) of about 152.9m² (about 4%))
- Lease** : Block Government Lease (demised for agricultural use) (about 96% of the Site)

- Lot 89 is covered by Letter of Approval (LoA) No. 5630 and Modification of Tenancy (MoT) No. 38619 for erection of temporary structures
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zonings** : (i) "Agriculture" ("AGR") (about 84.5% of the Site)
(ii) "Open Storage" ("OS") (about 15.5% of the Site)
- Application** : Proposed Temporary Warehouse and Open Storage of Recycling Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed temporary warehouse and open storage of recycling materials for a period of three years at the application site (the Site), which falls largely within an area zoned "AGR" with a small portion zoned "OS" on the OZP (**Plan A-1**). According to the Notes of the OZP, while the proposed use is always permitted within the "OS" zone, temporary use or development within the "AGR" zone requires planning permission from the Town Planning Board (the Board). The Site is largely hard paved and occupied by some temporary structures.
- 1.2 The Site is accessible from its northwest via a local track leading to Sha Tau Kok Road – Lung Yeuk Tau (**Plan A-1**). According to the applicant, the proposed development mainly comprises four 1 to 2-storey temporary structures (not more than 6m in height) with a total floor area of about 1,552.4m² for storage of recycling materials and its related office use. About 375m² of the uncovered area (i.e. about 9% of the Site) would be used for open storage use. Three private car parking spaces and one loading/unloading bay/lay-by for medium goods vehicles are proposed within the Site. The operation hours of the development are from 9:00 a.m. to 6:00 p.m. from Mondays to Fridays, with no

operation on weekends and public holidays. The layout plan submitted by the applicant is shown in **Drawing A-1**.

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 29.6.2023 | (Appendix I) |
| (b) | Supplementary Information (SI) received on 5.7.2023 | (Appendix Ia) |
| (c) | Further Information (FI) received on 15.8.2023 ^ | (Appendix Ib) |
| (d) | FI received on 16.8.2023 ^ | (Appendix Ic) |
| (e) | FI received on 28.8.2023 ^ | (Appendix Id) |
| (f) | FI received on 6.10.2023 ^ | (Appendix Ie) |

^ accepted and exempted from publication and recounting requirements

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 aligns with the government's overall policy for waste management;
- (b) the proposed development is temporary in nature and thus would not jeopardize the long-term planning intention of the "AGR" zone;
- (c) the surrounding areas are predominantly intermixed with warehouses, storage and open storage uses. The proposed use is not incompatible with the surrounding environment; and
- (d) the proposed development will not induce adverse traffic, landscape, visual, drainage and noise impacts or cause significant nuisance to the surrounding areas. Besides, adequate mitigation measures will be provided after obtaining planning permission from 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 publishing notices in local newspapers and posting notices in a prominent position or near the Site. Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, TPB PG-No.31A is not applicable.

4. Background

The Site is subject to planning enforcement action (No. E/NE-TKL/472) against unauthorized development (UD) for storage use (**Plan A-2**). Enforcement Notice was issued on 29.8.2023 requiring discontinuation of UD for storage use. The Site is under close monitoring by the Planning Department.

5. **Previous Applications**

- 5.1 Part of the Site is the subject of two previous applications submitted by different applicants for different uses (i.e. for temporary open parking of lorries (Application No. A/NE-TKL/198) and temporary open storage and storage of recycled materials (plastic waste and disused pinball machines) (Application No. A/NE-TKL/386)), which are both not relevant to the subject application.
- 5.2 Details of the previous applications are summarized at **Appendix II** and their locations are shown in **Plan A-1**.

6. **Similar Applications**

- 6.1 There are six similar applications (No. A/NE-TKL/527, 535, 566, 597, 606 and 676) involving three sites for proposed temporary warehouse and/or workshop uses within the “AGR” and/or “OS” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**). Five applications (No. A/NE-TKL/527, 535, 597, 606 and 676) involving two sites were approved by the Committee between January 2016 and December 2021 mainly on the grounds that the development was generally considered not incompatible with the surrounding environment; would not cause adverse traffic, drainage and landscape impacts on the surrounding areas; and/or the concerns on possible environmental nuisance could be addressed through implementation of relevant approval conditions.
- 6.2 Application No. A/NE-TKL/566 for proposed temporary workshop and warehouse for construction materials was rejected by the Committee in June 2017 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; failure to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.
- 6.3 Details of the similar applications are summarized at **Appendix III** and their locations are shown in **Plan A-1**.

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

- 7.1 The Site is:
- (a) largely hard paved and partly vacant;
 - (b) occupied with some temporary structures. Some trees of common and invasive species are also observed along the southeastern boundary; and
 - (c) accessible from its northwest via a local track leading to Sha Tau Kok Road – Lung Yeuk Tau.
- 7.2 The surrounding areas are predominated by warehouses, storages/open storage yards, temporary domestic/vacant structures. To the west and south across Ng Tung River are tree clusters. The nearest domestic structures are to the immediate north of the Site.

8. Planning Intentions

The planning intention of the “AGR” zone is intended 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.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided at **Appendices IV** and **V** respectively.

9.2 The following government departments have the following comments on the application:

Land Administration

9.2.1 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 GL is granted to the Site;
- (b) his office has reservation on the planning application since there are unauthorized structures erected on the private lots which are already subject to lease enforcement action according to the case priority. The lot owners should immediately rectify the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without separate notice. The unauthorized structures should be demolished before his office considers Short Term Waiver applications;
- (c) no consent is given for inclusion of GL in the Site (i.e. about 152.9m² as proposed by the applicant). 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 his office reserves the rights to take necessary land control action against the illegal occupation of GL without separate notice; and
- (d) Lot No. 89 in D.D. 83 is covered by LOA No. 5630 and MOT No. 38619 for erection of temporary structures. His office reserves the rights to take enforcement action for irregularities and cancel the LOA/MOT as appropriate.

Environment

9.2.2 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 structures 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; and
- (b) no environmental complaint against the Site has been received over the past three years.

Agriculture and Nature Conservation

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

- (a) the Site falls within the “AGR” and “OS” zones and is occupied by structures. 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 application is not supported from agricultural perspective; and
- (b) from nature conservation perspective, he has no strong view on the application. Should the application be approved, the applicant is advised to adopt good site practice in order to avoid adverse impact to the watercourse nearby.

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

District Officer's Comments

9.3.1 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD) are as follows:

- (a) the First Vice-Chairman of Fanling District Rural Committee cum the Indigenous Inhabitant Representative (IIR) of Kwan Tei and the Vice-Chairman of Fanling District Rural Committee object to the application mainly on the grounds that the application would induce adverse traffic and drainage impacts on the surrounding areas ; and
- (b) the Chairman of Lung Shan Area Committee has no comment on the application.

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

On 7.7.2023, the application was published for public inspection. During the statutory public inspection period, six comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Chairman, the First Vice-Chairman, the Vice-Chairman of Fanling District Rural Committee, and two individuals object to the application on the grounds that the proposed development would induce adverse traffic and drainage impacts; and previous applications for open storage use were rejected.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed temporary warehouse and open storage of recycling materials for a period of three years at the Site largely zoned “AGR” (about 84.5%) with a small portion zoned “OS” (about 15.5%). While the proposed use is always permitted within the “OS” zone, such 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 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.
- 11.2 The proposed use is considered not incompatible with the surrounding areas which are mainly surrounded by warehouses, storages/open storage yards, temporary domestic/vacant structures, vacant land and tree clusters. CTP/UD&L, PlanD has no objection to the application and considers that significant adverse landscape impact arising from the proposed development is not anticipated.
- 11.3 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 on the sensitive receivers (i.e. residential buildings) in the vicinity of the Site is expected (**Plan A-2**). However, there has been no environmental complaint against the Site over the past three years. To address the concern of DEP, relevant approval conditions including restriction on the operation hours of the proposed development are suggested in paragraph 12.2 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.
- 11.4 C for T has no comment on the application from traffic engineering perspective. Regarding DLO/N of LandsD’s reservation that unauthorized structures are erected within the Site and an illegal occupation of GL, the applicant indicates that he will liaise with LandsD to rectify/regularize the lease breaches and the illegal occupation of GL. Other relevant departments consulted, including C for T, CE/MN of DSD, CE/C of WSD and D of FS, etc. have no adverse comment on or no objection to the application. .
- 11.5 Five similar applications (No. A/NE-TKL/527, 535, 597, 606 and 676) were approved by the Committee between 2016 and 2021 on considerations as stated in paragraph 6.1 above. As for application No. A/NE-TKL/566, it was rejected in June 2017 mainly on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; failure to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the surrounding areas; and approval of the

application would set an undesirable precedent for similar applications within the “AGR” zone. The planning circumstances of the current application are different from the rejected application as C for T has no comment on traffic ground and DEP’s concerns on environmental nuisance could be addressed through the approval conditions as discussed in paragraph 11.3 above.

- 11.6 Regarding the public comments received on the application as detailed in paragraph 10 above and comments conveyed by DO(N) of HAD, government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 and local views conveyed by DO(N) of HAD in paragraph 10, the Planning Department considers that the temporary use under the application could be tolerated for a period of three years.
- 12.2 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 27.10.2026. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m. from Mondays to Fridays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, 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 27.4.2024;
- (d) in relation to (c) above, the implementation of the 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 27.7.2024;
- (e) in relation to (d) above, the implemented drainage facilities on the Site 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 8.12.2023;
- (g) the submission of a fire service installations (FSIs) proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 27.4.2024;
- (h) in relation to ~~(f)~~ (g) above, the implementation of the FSIs proposal within **9** months from the date of planning approval to the satisfaction of the Director of

Services or of the Town Planning Board by 27.7.2024;

- (i) if any of the above planning condition (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 condition (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 “AGR” portion 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 V**.

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

- the proposed 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.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 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.
- 13.3 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.

14. Attachments

Appendix I	Application Form with Attachment received on 29.6.2023
Appendix Ia	SI received on 5.7.2023
Appendix Ib	FI received on 15.8.2023
Appendix Ic	FI received on 16.8.2023
Appendix Id	FI received on 28.8.2023
Appendix Ie	FI received on 6.10.2023
Appendix II	Previous Applications
Appendix III	Similar S.16 Applications for Temporary Warehouse and Open Storage within/partly within “Agriculture” and/or “OS” Zone in the vicinity of

Appendix IV	the Application Site in the Ping Che and Ta Kwu Ling Area
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Public Comments
Plan A-1	Layout Plan
Plan A-2	Location Plan
Plan A-3	Site Plan
Plan A-4	Aerial Photo
	Site Photos

PLANNING DEPARTMENT
OCTOBER 2023