

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/745

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.
- 1.2 According to the applicant, about 55% of the Site will be used for open storage of construction machinery and construction materials, whereas the remaining area will be used as loading/unloading and vehicle manoeuvring spaces, with two private car parking spaces and two loading/unloading bays for medium goods vehicles at the southeastern part of the Site (**Drawing A-1**). The proposed operation hours of the development are from 9:00 a.m. to 5:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. The Site is accessible from its south via a local track leading to Ping Che Road (**Plan A-1**). The layout plan submitted by the applicant is shown at **Drawing A-1**.
- 1.3 The site is subject to a previous application No. A/NE-TKL/724 (**Plan A-1**) submitted by the same applicant for the same use, which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 11.9.2023 with validity until 11.9.2026. It was subsequently revoked on 4.12.2023 due to non-compliance with approval condition in relation to the provision of fire extinguishers.

1.4 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachments received on 17.1.2024 (Appendix I)
- (b) Supplementary Information received on 23.1.2024 (Appendix Ia)
- (c) Further Information (FI) received on 1.3.2024* (Appendix Ib)

*(*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 to Ib**, as summarized below:

- (a) in view of the non-compliance with approval condition in relation to the provision of fire extinguishers under previously approved application No. A/NE-TKL/724, the applicant is committed to provide fire services installations and security guard on site, and timely follow up with the approval conditions if the current application is approved;
- (b) the proposed development would address the acute demand for open storage of construction machinery and construction materials in the vicinity;
- (c) the Site is currently abandoned farmland, and no additional building works and land filling are proposed. Also, the proposed development will not cause significant nuisance to the surrounding areas;
- (d) the proposed development will not induce adverse traffic impacts as adequate space was reserved on site for vehicular access and circulation. The estimated number of traffic in/out is about 3 vehicles per day; and
- (e) the applicant would follow up with Lands Department (LandsD) on altering the site fencing to avoid encroaching upon adjoining Government land (GL).

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. 31B) by obtaining the consent 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 currently not subject to any active enforcement case.

6. **Previous Applications**

- 6.1 The Site is the subject of two previous applications (No. A/NE-TKL/625 and 724). The first one (No. A/NE-TKL/625) was submitted by a different applicant for proposed temporary open storage of construction machinery and containers for a period of three years. The application was rejected by the Committee in 2019 mainly on the grounds that it was not in line with the planning intention of the “AGR” zone; the site fell within Category 3 area under 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 The latter one (No. A/NE-TKL/724) was submitted by the current applicant for the same proposed use for a period of three years. The application was approved with conditions by the Committee on 11.9.2023 mainly on the grounds that the site fell within Category 2 area under the prevailing version TPB PG-No. 13G in that there was no major adverse departmental comments on the application; and the concerns of relevant government departments could be addressed through implementation of approval conditions. When compared with the last approved application, the use and development parameters of the current application remain the same.
- 6.3 Details of the previous applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

7. **Similar Applications**

- 7.1 There are seven similar applications (No. A/NE-TKL/622, 642, 671, 695, 707, 714 and 734) involving five sites for temporary open storage uses within the same “AGR” zone in the vicinity of the Site in the past five years (**Plan A-1**). All seven application sites falling within the Category 2 areas under the previous versions TPB PG-No. 13E/13F were approved by the Committee between 2019 and 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 Another application No. A/NE-TKL/746 for similar temporary open storage use (**Plan A-1**) will be considered at this meeting.
- 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-4b)

- 8.1 The Site is:
 - (a) currently fenced-off and mostly vacant; and

(b) accessible from Ping Che Road via a local track.

8.2 The surrounding areas are predominantly occupied 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 dwellings 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 GL is granted to the Site;
- (b) no structure is proposed under this application;
- (c) the GL adjoining the Site had been fenced off without permission. The GL being illegally occupied is not included in the application. Any occupation of GL without Government’s prior approval is an offence under Cap. 28. Her office reserves the rights to take necessary necessary land control action against the illegal occupation of GL without further notice;
- (d) the lot owners/applicant shall either (i) cease the illegal occupation of the GL not covered by the subject planning application immediately; or (ii) include the adjoining GL being illegally occupied in the subject planning application for further consideration by the relevant departments and, subject to the approval of the Board to the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to this office for a STT to permit the occupation of the GL. The application for STT will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STT, if approved, will be subject to such terms and conditions including the payment or rent

and administrative fee as considered appropriate to be imposed by her office. In addition, her office reserves the right to take land control action for any unlawful occupation of GL; and

- (e) unless and until the unlawful occupation of GL are duly rectified by the lot owners/applicant or entirely included in the subject application, her office object to the application; and
- (f) having reviewed the FI as submitted by the applicant (**Appendix Ib**) and the applicant did not contact her office as at 6.3.2024, her comments remain valid.

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 generally vacant. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The subject site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the subject site possesses potential for agricultural rehabilitation, the proposed development 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 domestic dwellings within 100m from the boundary of the Site (**Plan A-2**) and the use of heavy vehicles is involved. Environmental nuisance is anticipated;
- (b) no environmental complaint against the Site was received 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”, 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

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

- (a) she has consulted the locals regarding the application. One North District Council (NDC) member and the Resident Representative (RR) of Lei Uk supported the application;
- (b) 4 NDCs have no comment; and
- (c) the Ta Kwu Ling District Rural Committee, the Chairman of Fung Shui Area cum NDC, 18 NDCs, Indigenous Inhabitant Representative (IIR) of Lei Uk, the IIR and the RR of Tai Po Tin have not replied to HAD.

11. Public Comments Received During Statutory Publication Period

On 26.1.2024, the application was published for public inspection. During the statutory public inspection period, two public comments were received (**Appendix VII**). One individual indicates no comment on the application and one individual comments that the previous application (No. A/NE-TKL/724) was approved by the Committee under streamlined arrangement.

12. Planning Considerations and Assessment

- 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 use 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 use 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 3 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 miscellaneous rural fringe landscape character comprising temporary structures, active farmlands and woodland. The proposed use is

considered not incompatible with the surrounding environment. In this regard, Chief Town Planner/Urban Design & Landscape, Planning Department 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 and environmental nuisance to the sensitive receivers (i.e. domestic structures) in the vicinity of the Site is expected (**Plan A-2**). However, no environmental complaint against the Site was received 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. Also, should the application be approved, the applicant will be advised to follow the COP to minimize the possible environmental impacts on the surrounding areas.
- 12.5 DLO/N of LandsD objects to the application for reasons that there is illegal occupation of the GL which is not covered by the subject planning application. While land administration issues should be handled under separate regime, the lot owner should be advised to cease illegal occupation of GL as demanded by LandsD. The applicant indicates that he would liaise with LandsD to rectify/regularize the fencing of the Site and settle the land issues as per LandsD's request (**Appendix Ib**).
- 12.6 Commissioner for Transport (C for T) has no comment on the application from the traffic engineering point of view. 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 (D of FS) have no objection to or no adverse comment on the application.
- 12.7 Subject to a previous application revoked on 4.12.2023 due to non-compliance with the time-limited approval condition regarding provision of fire extinguishers, relevant proposal has been submitted in the current application and D of FS has no objection to the application. In this regard, sympathetic consideration may be given to the application. The applicant will be advised that should he fail to comply with any of the approval conditions resulting in revocation of planning permission, sympathetic consideration may not be given to any further applications.
- 12.8 There were seven similar applications involving five sites for temporary open storage uses within the same "AGR" zone in the vicinity of the Site in the past five years (**Plan A-1**). All five application sites falling within the Category 2 areas under the previous versions TPB PG-No. 13E/13F were approved by the Committee between 2019 and 2023 mainly on the grounds as mentioned in paragraph 7. The planning circumstances of the current application are similar to the approved applications.
- 12.9 The public comments on the application as detailed in paragraph 11 and local views conveyed by DO(N) of HAD in paragraph 10.3 above are noted.

13. **Planning Department's Views**

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments as detailed in paragraph 11 above, 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 15.3.2027. 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. from Mondays to Saturdays, and Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) 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 15.9.2024;
- (c) in relation to (b) 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 15.12.2024;
- (d) in relation to (c) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (e) 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 26.4.2024;
- (f) 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 15.9.2024;
- (g) in relation to (f) 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 15.12.2024;
- (h) if any of the above planning condition (a) or (d) 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;
- (i) if any of the above planning condition (b), (c), (e), (f) or (g) 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
- (j) 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 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.

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

Appendix I	Application Form with Attachments received on 17.1.2024
Appendix Ia	Supplementary Information received on 23.1.2024
Appendix Ib	FI received on 1.3.2024
Appendix II	Relevant Extracts of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous Applications
Appendix IV	Similar s.16 Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comments
Drawing A-1	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2024**