

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-FTA/195**

- Applicant** : TO Kam-shui, YU Fuk-hau, SIN Oi-hing represented by Ying Shing (Hopewell) Engineering Company Limited
- Site** : Lots 360AB, 360C S.A and 360C RP in D.D. 87, Kong Nga Po, Sheung Shui, New Territories
- Site Area** : About 3,214.6 m<sup>2</sup>
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Fu Tei Au & Sha Ling Outline Zoning Plan No. S/NE-FTA/16
- Zoning** : Agriculture (“AGR”)
- Application** : Proposed Temporary Warehouse and Open Storage of Containers 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 warehouse and open storage of containers for a period of three years. The Site falls within an area zoned “AGR” on the approved Fu Tei Au & Sha Ling Outline Zoning Plan No. S/NE-FTA/16 (**Plan A-1**). According to the covering 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) notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is partly occupied by a vacant warehouse and partly used for open storage of recycling materials without valid planning permission (**Plans A-3, A-4a and A-4b**).
- 1.2 According to the applicant, the proposed development comprises one 1-storey structure of about 7 m in height with a total floor area of 1,000 m<sup>2</sup> in the southern part of the Site for storage of machineries (**Drawing A-1**). One loading/unloading bay for container/heavy goods vehicle will be provided at the central part of the Site (**Drawing A-1**). The remaining uncovered area within the Site would be used for open storage of containers. The proposed ingress/egress point is at the southwestern corner of the Site leading to Kong Nga Po Road via a local road (**Plans A-1 and A-2**). The proposed development will open all day long from Mondays to Fridays. There will be no

operation on Saturdays, Sundays and public holidays. The layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 In support of the application, the applicant has submitted the Application Form with attachments (**Appendix I**) which was received on 9.1.2020.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the Application Form and further information at **Appendix I**. They can be summarized as follows:

- (a) the Site was once a licensed pigsty. In order to avoid inflection to the livestock by African Swine Fever virus, the applicant would like to convert the Site into temporary warehouse and open storage uses; and
- (b) the proposed development could act as freight transfer station for Liantang/ Heung Yuen Wai Boundary Control Point and contribute to the logistic industry.

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

The applicants are the sole “current land owners” of the lots. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Background**

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) advises that the Site is currently subject to two planning enforcement actions (No. E/NE-FTA/173 & No. E/NE-FTA174) against unauthorized developments (UDs) involving workshop use and storage use (including deposit of containers) at the southwestern portion of the Site and against UD involving storage use (including deposit of containers) on the northern and eastern portions of the Site respectively. Enforcement Notices (No. E/NE-FTA/173 & No. E/NE-FTA174) (**Plan A-2**) were issued on 16.9.2019 requiring discontinuation of the UD by 16.11.2019. According to the latest site inspection, the UD of the enforcement case (No. E/NE-FTA/173) has been discontinued whilst the UD of the enforcement case (No. E/NE-FTA/174) has not been discontinued upon expiry of the notice. The concerned party maybe subject to prosecution action.

## **5. Town Planning Board Guidelines**

Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13E) is relevant to the application. The Site falls within Category 3 area under the TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is at **Appendix II**.

## 6. **Previous Application**

The Site is not the subject of any previous application.

## 7. **Similar Application**

7.1 There is one similar application (No. A/NE-FTA/135) for proposed temporary open storage of building materials with ancillary warehouse and parking facilities for a period of 3 years within “AGR” zone in the Fu Tei Au and Sha Ling area. It was rejected by the Committee on 31.10.2014 mainly on the considerations that the application was not in line with the planning intention of AGR zone; it did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval has been granted at the Site, the proposed development was incompatible with the surrounding land uses, there were adverse departmental comments on the application, and the applicant failed to demonstrate that the development would have no adverse drainage, environmental and landscape impacts on the surrounding areas; and setting of undesirable precedent.

7.2 Details of the similar application is summarised at **Appendix III** and its location is shown on **Plan A-1**.

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

8.1 The Site is:

- (a) formed, paved, and fenced off;
- (b) occupied by a vacant warehouse at the southwest portion of the Site while the remaining area is currently used for open storage of recycling materials without valid planning permission; and
- (c) accessible by a local road leading to Kong Nga Po Road.

8.2 The surrounding areas have the following characteristics:

- (a) to the east and west of the Site are licensed pigsties;
- (b) to the north are some unused/vacant land and an open storage site; and
- (c) to the immediate south is a piece of vacant land and to its further south across the local road are some unused/vacant land, fallow agricultural land and a domestic structure located about 70m away from the Site.

## 9. **Planning Intention**

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.

## **10. Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

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

- (a) the Site comprises Lots Nos. 360 AB, 360C S.A and 360C RP in D.D. 87 which old Schedule lots held under the Block Government lease (demised for agriculture use) without any guaranteed right of access. The applicants should make their own arrangement, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the proposed use;
- (b) the existing structures on the Site were erected without approval from his office which are not acceptable under the Leases concerned. His office reserves the right to take enforcement actions against the aforesaid structures; and
- (c) should the application be approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) covering all the actual occupation area. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it 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) he does not support the application from traffic engineering point of view. The applicant should provide the following information/ measures for his consideration:
  - (i) the applicant shall justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site;
  - (ii) the applicant should advise the width of the vehicular access;
  - (iii) the vehicular access should be no less than 7.3m wide;

- (iv) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis;
- (v) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site;
- (vi) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (vii) the vehicular access between the Site and Man Kam To Road is not managed by TD. The applicant should seek comment from the responsible party.

## **Environment**

### 10.1.3 Comments of the Director of Environmental Protection (DEP):

- (a) he does not support the application as the temporary development is expected to generate traffic of heavy vehicles and there are domestic structures in the vicinity of the Site with the closest one located about 70m to the southwest of the Site (**Plan A-2**);
- (b) in view of the nearby watercourses, the applicant is advised to strictly observe all relevant pollution control ordinances, particularly on waste management and disposal, follow relevant measures given in the EPD's latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses" (CoP), and put in place necessary precautionary/pollution control measures to prevent any pollution of nearby watercourses as a result of the operational and construction activities. Best management practice should be adopted to avoid refuse and other pollution from entering the surface runoff and ponds and river; and
- (c) there is no existing public sewer in the vicinity of the Site at this stage. Although sewage generation is not anticipated based on the information from the applicant, in any event that there is any sewage generated from the proposed use, the applicant shall have to provide his own effective sewage treatment and disposal measures to cater for any sewage arising from the operation of the application. If septic tank and soakaway is proposed, its design and construction should follow the requirements of ProPECC 5/93. The Percolation Test and Minimum clearance requirements stated in ProPECC PN5/93 should be fully complied with and duly certified by consulting engineer / Authorised Person (AP).

## **Landscape**

### 10.1.4 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 the landscape planning perspective;
- (b) according to aerial photo of 2019 (**Plan A-3**), the Site is located in an area of miscellaneous rural fringe landscape character comprises clusters of trees, vegetated areas and unauthorized temporary structures. It is noted that the Site and its surrounding had been hard paved since 2004. Adverse landscape character alteration has taken place prior to planning application;
- (c) no similar application had previously been approved by the Board within the same “AGR” zone. The proposed development if approved, would set an undesirable precedent of landscape character alteration, and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment; and
- (d) since there is no major public frontage along the site boundary, it is considered not necessary to impose a landscape condition should the Board approve the application, as the effect on enhancing the quality of public realm is not apparent.

### **Agricultural and Nature Conservation**

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

- (a) she does not support from agricultural point of view;
- (b) the Site is currently cemented vacant land occupied by a warehouse. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are available. The Site possesses potential for agricultural rehabilitation and can be used for other agricultural activities such as greenhouses, plant nurseries, etc.;
- (c) the Site is not a licensed nor de-licensed livestock farm. It is however between two licensed pig farms. No application of including such warehouse facilities as part of pig farms’ agricultural structures has been received. She has no comment on the application from livestock farm licensing point of view; and
- (d) according to her site inspection, the Site is paved with a small portion of the Site encroach upon watercourses to its west and north (**Plan A-2**). The applicant should clarify if the proposed development would cause any impact to the watercourses.

### **Drainage**

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

- (a) he has no objection from the public drainage viewpoint;

- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent areas; and
- (c) the Site is in an area where no public sewerage connection is available.

### **Water Supply**

#### 10.1.7 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

### **Fire Safety**

#### 10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for firefighting being provided to the satisfaction of his department;
- (b) having considered the design/nature of the proposed use, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs for his approval. In preparing the submission, the applicant is advised on the following points:
  - (i) the layout plan should be drawn to scale and depicted with dimensions and nature of occupancy;
  - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
  - (iii) good practice guidelines for open storage should be adhere to.
- (c) having considered the nature of the open storage, an approved condition on the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to his satisfaction should be included. The applicant should submit a valid fire certificate (FS 251) to his department for approval; and
- (d) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general

building plans.

**Building Matters**

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

- (a) he has no objection to the application;
- (b) there is no record of approval by the Building Authority (BA) for the existing buildings/ structures at the Site and BD is not in a position to offer comments on their suitability for the proposed use; and
- (c) there is also no record of submission of the proposed building/ structure to the BA for approval. For any new proposed buildings, his advisory comments under Buildings Ordinance (BO) are at **Appendix V**.

**District Officer's Comments**

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

- (a) he has consulted the locals regarding the application. The 1<sup>st</sup> Vice-Chairman of the Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of San Uk Ling, the IIR of Sheung Shan Kai Wat, the IIR of Tai Po Tin, the IIR of Chow Tin Tsuen and the Chairman of 打鼓嶺沙嶺居民福利會 object to the proposal mainly on the grounds that the proposed development will generate adverse traffic and environmental impacts. It is doubtful on the necessity of the Site operating all day long; and
- (b) the incumbent North District Council member of subject constituency, the RR of Sheung Shan Kai Wat, the RR of Tai Po Tin, the IIR of Lei Uk, the RR of Lei Uk and the RR of Chow Tin Tsuen have no comment on the application. The remaining IIR of Chow Tin Tsuen offers no comment with concern on the potential environmental pollution generated by the proposed development.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (c) Division Commander (Ta Kwu Ling), Hong Kong Police Force (DVC TKLDIV, HKPF).



## **11. Public Comments Received During Statutory Publication Period**

On 17.1.2020, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix IV**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining five public comments submitted by WWF-HK, The Hong Kong Bird Watching Society, Kadoorie Farm and Botanic Garden, Designing Hong Kong Limited and an individual object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; it is a ‘destroy first, apply later’ case; the application does not comply with TPB PG No. 13E; the proposed development would create adverse traffic impact to the surrounding area; and setting of undesirable precedent.

## **12. Planning Considerations and Assessments**

12.1 The Site falls within Category 3 area under the TPB PG-No. 13E promulgated by the Board on 17.10.2008. The following considerations in the Guidelines are relevant:

Category 3 areas: applications would normally not be favorably considered unless the applications are on sites with previous planning approvals. In that connection, sympathetic consideration may be given if the applicant has demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. 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, planning permission could be granted on a temporary basis up to a maximum period of 3 years.

12.2 The application is for a proposed temporary warehouse and open storage of containers for a period of 3 years in an area zoned “AGR” on the OZP. The proposed development is not in line with the planning intention of “AGR” zone which 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. DAFC does not support the application as the Site possesses potential for agricultural rehabilitation and can be used as greenhouse, plant nurseries etc. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.

12.3 The Site is located in an area of miscellaneous rural fringe landscape character comprises clusters of trees, vegetated areas and temporary structures (**Plan A-3**). CTP/UD&L of PlanD has some reservation on the application from the landscape planning point of view. The proposed development, if approved, would set an undesirable precedent of landscape character alteration and would encourage more similar development within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment.

12.4 C for T does not support the application as the applicant has not provided information on the estimated traffic flow, justifications for the proposed parking/ loading and

unloading spaces, relevant satisfactory management/ control measures, traffic arrangement and vehicle manouvering within the Site and provision and management of pedestrian facilities. As such, the applicant fails to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding area. DEP does not support the application as the temporary development is expected to generate traffic of heavy vehicles and there are domestic structures in the vicinity of the Site with the closest one located about 70m to the southwest of the Site (**Plan A-2**). Other Government departments, including CHE/NTE of HyD, CE/MN of DSD, CE/C of WSD and D of FS have no objection or no comment on the application.

- 12.5 According to the TPB PG-No. 13E, the Site falls within Category 3 area (**Appendix II**) where applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. The proposed development does not comply with the TPB PG-No. 13E in that the Site is not the subject of any previous planning approval; there are adverse departmental comments and local objections to the application; and the applicant has failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas.
- 12.6 There is one similar application for temporary warehouse and open storage (No. A/NE-FTA/135) rejected by the Committee on 31.10.2014 mainly on the considerations that the application was not in line with the planning intention of “AGR” zone; it did not comply with the Town Planning Board Guidelines No. 13E in that no previous planning approval has been granted, the proposed development was incompatible with the surrounding land uses, there were adverse departmental comments on the application, and the applicant failed to demonstrate that the development would have no adverse drainage, environmental and landscape impacts on the surrounding areas; and setting of undesirable precedent. The planning circumstances of the subject application is similar to that rejected application.
- 12.7 Regarding the local objections conveyed from DO(N) of HAD and adverse public comments as mentioned in paragraphs 10.1.10 and 11 above, the relevant Government departments’ 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) of HAD and public comments in paragraphs 10.1.10 and 11 above respectively, 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 “AGR” zone, which 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. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
  - (b) the proposed development does not comply with the Town Planning Board Guidelines No. 13E for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13E) in that no

previous planning approval has been granted at the Site and there are adverse departmental comments and local objection on the application;

- (c) the applicant fails to demonstrate that the proposed development would not generate adverse traffic impact on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

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 6.3.2023. 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. from Mondays to Fridays 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) no workshop activities shall be carried out on the Site at any time during the planning approval period;
- (d) the provision of peripheral fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 6.9.2020;
- (e) 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 6.9.2020;
- (f) in relation to (e) 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 6.12.2020;
- (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 17.4.2020;
- (h) the submission of proposals for fire service installations and water supplies for firefighting 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 6.9.2020;
- (i) in relation to (h) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 6.12.2020;

- (j) the submission of traffic impact assessment within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 6.9.2020;
- (k) in relation to (j) above, the implementation of traffic improvement measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 6.12.2020;
- (l) if any of the above planning condition (a), (b) or (c) 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;
- (m) if any of the above planning conditions (d), (e), (f), (g), (h), (i), (j) or (k) 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
- (n) upon the expiry of the planning permission, the reinstatement of the 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 at **Appendix V**.

### **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 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**

<b>Appendix I</b>	Application Form with attachments received on 9.1.2020
<b>Appendix II</b>	Relevant Extract of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses Under Section 16 of the Town Planning Ordinance (TPB PG-No. 13E)
<b>Appendix III</b>	Similar s.16 Application for Temporary Open Storage within “Agriculture” Zone in the Fu Tei Au and Sha Ling area
<b>Appendix IV</b>	Public Comments
<b>Appendix V</b>	Recommended Advisory Clauses

<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a &amp; A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
MARCH 2020**