

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HLH/39

<u>Applicant</u>	: Ms. FUNG Yin Wan Dorothy represented by Mr. MOK Fai Kim
<u>Site</u>	: Lot 629 in D.D. 84, Hung Lung Hang, New Territories
<u>Site Area</u>	: About 624.58 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Open Storage of Construction Materials for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for a temporary open storage of construction materials for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Hung Lung Hang OZP No. S/NE-HLH/11. 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) notwithstanding that the use is not provided for under the Notes of the OZP. The site is currently used for the applied use without planning permission.
- 1.2 According to the applicant, the temporary development comprises one 1-storey temporary structure (not more than 2.5m in height) with a total floor area of about 14 m² at the northern boundary of the Site. One parking space is also provided for heavy goods vehicles at the centre of the Site (**Drawing A-1**). The Site is accessible via a local track from Kong Nga Po Road (**Plan A-1**). The operation hours are from 9:00 a.m. to 5:00 p.m. from Mondays to Saturdays and there is no operation on Sundays and public holidays.
- 1.3 In support of the application, the applicant has submitted the Application Form with attachments which was received on 21.11.2019 (**Appendix I**).

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Part 7 of the application form at **Appendix I**. They can be summarized as follows:

- (a) there are several waste recycling workshops in the vicinity of the Site;
- (b) the Site is not suitable for agricultural purpose; and
- (c) the development is on a temporary basis for open storage use.

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

The applicant is the sole “current land owner” of the Site. 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) advised that the Site is part of the subject of planning enforcement action against an unauthorized development (UD) involving storage (including deposit of containers). An Enforcement Notice (EN) was issued on 9.8.2019 to the notice recipient requiring the discontinuance of the UD by 9.11.2019. According to the latest site inspection, the UD has not been discontinued upon the expiry of the notice. The concerned party may be 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**

There is no previous application for the Site.

7. **Similar Applications**

- 7.1 There are six similar applications (No. A/NE-HLH/17, 20, 21, 32, 33 and 38) for temporary open storage/ storage uses within the “AGR” zone in the vicinity of the Site in the Hung Lung Hang area (**Plan A-1**). All applications were rejected by the Rural and New Town Planning Committee or the Board on review or dismissed by the Town Planning Appeal Board Panel (TPAB) between April 2011 and January 2020 mainly on the grounds of not in line with the planning intention of the “AGR” zone, not complying with the TPB PG-No. 13E in that no previous planning approval has been granted to the sites; adverse departmental comments received on the applications; no/insufficient information to demonstrate that the developments would not generate adverse

environmental, traffic and landscape impacts on the surrounding areas; setting undesirable precedents for other similar applications within the “AGR” zone.

7.2 Details of the applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) paved and fenced off;
- (b) currently used for open storage of construction materials; and
- (c) accessible from Kong Nga Po Road via a local track (**Plan A-1**).

8.2 The surrounding areas have the following characteristics:

- (a) rural character mixed with open storage yards, temporary structures for domestic and storage uses, tree clusters, fallow agricultural land, and vacant land;
- (b) to the north is temporary domestic structure and fallow agricultural land;
- (c) to the immediate east is vegetated area, further east across the local track are workshops and open storage yards; and
- (d) to the south and west are fallow agricultural/ vacant land and open storage yards.

9. Planning Intention

The planning intention of the “AGR” zone in the Hung Lung Hang area 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 summarised as follows:

Land Administration

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

- (a) the lot under application is an Old Schedule Lot held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make his own arrangement. The

Government shall accept no responsibility in such agreement and there is no guarantee that any adjoining Government land will be allowed for the applied use;

- (b) the existing structure on the Site was erected without approval from his office. The aforesaid structures are not acceptable under lease concerned. His office reserves the right to take enforcement actions against the aforesaid structures; and
- (c) if the application is approved, the owner of the lot 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 fee as considered appropriate by his office.

Traffic

10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) the application does not contain the traffic-related information for his review such as the estimated daily vehicular trip to/from the Site, the layout plan in scale for the swept path analysis and the dimension of the access and run-in/out etc. The applicant is advised to provide such transport-related information for his consideration;
- (b) unless the applicant could satisfactorily address his concerns, he cannot render support to the application from the traffic engineering point of view; and
- (c) the local track leading to the Site is not managed by Transport Department. The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

10.1.3 Comments of the Chief Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

he has no comment on the application from highways viewpoint. The access road to the Site is not maintained by Highways Department.

Agriculture

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

the Site is currently paved and used for open storage. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water

source are available. The Site can be used for agricultural activities such as greenhouse, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

Environment

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

- (a) he does not support the application as there is a domestic structure about 20m to the north of the Site (**Plan A-2**);
- (b) there was no record of environmental complaint against the Site for the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”.

Drainage

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

- (a) he has no in-principle objection to the application 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.

Landscape

10.1.7 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) she has reservation on the application from landscape planning perspective;
- (b) the Site is located in an area of rural landscape character comprises cluster of trees, temporary structures and a densely vegetated woodland within an area zoned “Green Belt” in close proximity to the east of the Site. Based on the aerial photos taken in 2015 and 2019 (**Plans A-3a and A-3b**) and the site record, vegetation clearance including removal of existing trees in the northern part of the Site is observed, the Site had been hard paved for open storage use. Significant adverse landscape impact has taken place prior to

planning approval; and

- (c) the proposed development would not cause further adverse landscape impact on the surrounding area, the applied use is nevertheless considered not compatible with the landscape character of the area. According to the record, 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 by vegetation clearance and site formation prior to planning approval, and would encourage more similar development within the area. The cumulative impact such approval would further degrade the landscape quality of the surrounding environment.

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 being provided to the satisfaction of his department; and
- (b) in consideration of the design/nature of the proposal, Fire Service Installations (FSIs) are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy;
 - (ii) the location of where the proposed FSI to be installed should be clearly marked on the layout plans; and
 - (iii) attached good practice guidelines for open storage should be adhered to;
- (c) having considered the nature of the open storage, an approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be incorporated if the application is approved. To address this approval condition, the applicant is required to 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 Buildings Ordinance (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) if the existing structures are erected on leased land without approval of his department, they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
- (b) before any new building works are to be carried out on the Site, the prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (c) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (d) the temporary converted containers for site office / storage are considered as temporary buildings are subject to control under the Building (Planning) Regulations (B(P)R) PT. VII.;
- (e) the Site shall be provided with means of obtaining access thereto from a street under the B(P)R 5 and emergency vehicular access shall be provided under B(P)R 41D;
- (f) if the Site is not abutting on a specified street having a width not less than 4.5m wide, the development intensity shall be determined by the BA under B(P)R 19(3) at the building plan submission stage; and
- (g) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments will be given at building plan submission stage.

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 1st Vice-Chairman of Ta Kwu Ling District Rural Committee (TKLDRC), Indigenous Inhabitant Representative (IIR) of Tai Po Tin and IIR of Lei Uk, the IIR of Sheung Shan Kai Wat and the IIR of Ha Shan Kai Wat objected to the application mainly on the grounds that the heavy goods vehicle will create nuisance to local residents; and proposed development will generate adverse environmental pollution and traffic impact; and

- (b) the former and current North District Council members of subject constituency, the Resident Representative (RR) of Lei Uk, the RR of Tai Po Tin and the RR of Sheung Shan Kai Wat had no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 29.11.2019, the application was published for public inspection. During the statutory public inspection period, 7 public comments were received (**Appendix IV**). The former North District Council member and an individual indicate no comment on the application. The remaining five comments from Kadoorie Farm and Botanic Garden, WWF-HK, the Hong Kong Bird Watching Society, the Conservancy Association and an individual object to the application mainly for the reasons that the application is not in line with the planning intention of the “AGR” zone; the application does not comply with TPB PG-No.13E; approval of the application will further legitimize unauthorized development; approval of the application would set an undesirable precedent for similar applications within the “AGR” zone and enforcement action against the unauthorized use has been carried out, “destroy first, apply later” approach should be deterred.

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 favourably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have 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 Site falls within the “AGR” zone on the OZP (**Plan A-1**). The temporary open storage under the application 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 the agricultural point of view as the Site possesses potential for agricultural rehabilitation and can be used as greenhouse or plant nurseries. 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 hard-paved and situated in an area of rural character mixed with tree groups, temporary structures and a densely vegetated woodland to the east of the Site. The applied use is considered not entirely compatible with the landscape character of the area. CTP/UD&L, PlanD has reservation on the application from landscape planning perspective. It is noted that existing vegetation and trees in the northern part of the Site were cleared and the Site has been hard paved extensively (**Plans A-3a and A-3b**). Approval of the application would set an undesirable precedent of landscape character alteration by vegetation clearance and site formation, 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 from the traffic engineering viewpoint as the applicant fails to demonstrate in the submission that the temporary development will not cause adverse traffic impact on the surrounding areas in that the applicant has not provided traffic-related information for his review including the estimated vehicular trip to/from the Site and the dimension of the access and run-in/out etc. There is a domestic structure about 20m to the north of the Site (**Plan A-2**). In this regard, DEP does not support the application. Other relevant Government departments consulted, including CHE/NTE, HyD, CE/MN, DSD and D of FS, have no adverse comment on or no objection to the application.
- 12.5 According to the TPB PG-No.13E, the Site falls within Category 3 areas (**Appendix II**) where applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. The application 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 and public comments on the application; and the applicant has failed to demonstrate that the development would have no adverse traffic impact on the surrounding areas.
- 12.6 There are six similar applications (No. A/NE-HLH/17, 20, 21, 32, 33 and 38) for temporary open storage/ storage uses within the “AGR” zone in the vicinity of the Site in the Hung Lung Hang area (**Plan A-1**). All applications were rejected by the Rural and New Town Planning Committee or the Board on review or dismissed by the Town Planning Appeal Board Panel (TPAB) between April 2011 and January 2020 mainly on the grounds of not in line with the planning intention of the “AGR” zone, not complying with the TPB PG-No. 13E in that no previous planning approval has been granted to the sites; adverse departmental comments received on the applications; no/insufficient information to demonstrate that the developments would not generate adverse environmental, traffic and landscape impacts on the surrounding areas; setting undesirable precedents for other similar applications. The circumstances of the current application are similar to those rejected applications.
- 12.7 Regarding the five public comments against the application as detailed in paragraph 11 above, the Government departments’ comments and the planning assessments above are relevant.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12 and having taken into account the local and public comments mentioned in paragraphs 10.1.10 and 11 respectively, the Planning Department does not support the application for the following reasons:

- (a) the development is not in line with the planning intention of the “AGR” zone for the Hung Lung Hang area, 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. There is no strong justification in the submission for a departure from such planning intention, even on a temporary basis;
- (b) the application does not comply with the 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) in that there is no previous approval for open storage granted for the Site; and there are adverse comments from the relevant Government departments and local objections against the application; and
- (c) the applicant fails to demonstrate that the development would have no adverse traffic impact on the surrounding areas.

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 17.1.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 9:00 a.m. from Mondays to Saturdays, 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) no workshop activities shall be carried out on the Site at any time during the planning approval period;
- (d) the provision of boundary 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 17.7.2020;
- (e) the submission of 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 17.7.2020;
- (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 17.10.2020;

- (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 28.2.2020;
- (h) the submission of proposals for fire service installations and water supplies for fire-fighting 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 17.7.2020;
- (i) in relation to (h) above, the implementation of proposals for fire service installations and water supplies for fire-fighting 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 17.10.2020;
- (j) the submission of a traffic review within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 17.7.2020;
- (k) in relation to (j) above, the implementation of traffic mitigation 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 17.10.2020;
- (l) if any of the above planning conditions (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 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 V**.

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 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

Appendix I	Application Form with Attachments received on 21.11.2019
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13E for Application for Open Storage and Port Back-up Use
Appendix III	Similar s.16 Applications for Temporary Open Storage within “Agriculture” Zone in the vicinity of the Application Site in the Hung Lung Hang Area
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and A-3b	Aerial Photos
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**