

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/622

<u>Applicant</u>	Shun Lee Development & Engineering Co. represented by Aikon Development Consultancy Ltd.
<u>Site</u>	Lots 1344 (Part) and 1345 (Part) in D.D. 82, Ping Che, North District, New Territories
<u>Site Area</u>	About 8,481 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zoning</u>	“Agriculture” (“AGR”)
<u>Application</u>	Renewal of Planning Approval for Temporary Open Storage of Construction Equipment and Materials for a Period of 3 Years until 14.10.2022

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for temporary open storage of construction equipment and materials for a period of three years until 14.10.2022 (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission until 14.10.2019.
- 1.2 The Site, in part or in whole, is involved in 11 previous applications (No. A/DPA/NE-TKL/70 and 96, and No. A/NE-TKL/19, 100, 156, 225, 281, 315, 342, 443 and 553) (**Plan A-1**). The last application (No. A/NE-TKL/553) for the same applied use as the current application and submitted by the same applicant was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 14.10.2016 for a period of three years up to 14.10.2019. The applicant has complied with all the approval conditions of the last approved application.
- 1.3 According to the applicant, there are 22 converted-container structures and 5 temporary structures, with a total floor area of about 513 m², for site offices, guard house, general

storage use. They are either one or two storeys (ranging from 2.3m to 5m) in height. The uncovered area of the Site will mainly be used for open storage of construction equipment and materials. Two parking spaces for private car and medium/large vehicle, and two loading/unloading bays for medium/large vehicle are provided within the Site (**Drawing A-1**). Compared with the last approved scheme under application No. A/NE-TKL/553, there are slight changes in the site layout and a reduction in the number of containers from 26 to 21 (i.e. - 4) under the current application. The Site is accessible via a local track branching off from Ping Che Road (**Plan A-2**). The total number of vehicular trips to/from the Site will be not more than 25 per week. The operation hours of the Site are between 7:00 a.m. and 11:00 p.m. Mondays to Saturdays, and no operation on Sundays and public holidays. The site layout plan, vehicular access plan and landscape plan submitted by the applicant are at **Drawings A-1 to A-3**.

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

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|---|------------------------|
| (a) Application Form received on 11.7.2019 | (Appendix I) |
| (b) Supplementary Planning Statement | (Appendix Ia) |
| (c) Further Information received on 28.8.2019 | (Appendix Ib) |

2. **Justifications from the Applicant**

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

- (a) the Site is the subject of previously approved planning applications for temporary open storage of construction equipment;
- (b) the Site falls within Category 2 area under the Town Planning Board Guidelines No. 13E. As no adverse departmental comments were received in the previous planning approvals and the applicant has demonstrated genuine effort to comply with the approval conditions, the current application is considered in line with the said Town Planning Guidelines;
- (c) there are no substantial changes in the planning circumstances since the approval of the previous application;
- (d) no adverse infrastructural nor environmental impacts are anticipated and the existing drainage provision and landscape treatment would continue to be properly maintained all the time;
- (e) the temporary nature of the proposed use would not jeopardize the planning intention of the “AGR” zone or implementation of any planned infrastructural development; and
- (f) the temporary development could maximise land utilisation in an area which are predominant by industrial or open storage uses.

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

The applicant is not the “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. 31) by

obtaining consents from the concerned land owners. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

According to the Chief Town Planner/ Central Enforcement and Prosecution, Planning Department, the Site is not involved in any of the active enforcement cases.

5. Town Planning Board Guidelines

- 5.1 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) are relevant to the application. The Site falls within Category 2 area under TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is attached in **Appendix II**.
- 5.2 The Town Planning Board Guidelines No. 34C (TPB-PG No. 34C) on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' are relevant to this application. The relevant planning criteria are summarized in **Appendix III**.

6. Previous Applications

- 6.1 The Site, in part or in whole, is involved in 11 previous applications (No. A/DPA/NE-TKL/70 and 96, and No. A/NE-TKL/19, 100, 156, 225, 281, 315, 342, 443 and 553). Four applications (No. A/DPA/NE-TKL/70 and 96, and No. A/NE-TKL/19 and 100) for open storage / temporary open storage of containers, container trailers, construction materials and machinery were rejected by the Committee or by the Board on review between 1993 and 1998 mainly on the grounds that the developments were not in line with the planning intention for the area; the developments were incompatible with the surrounding land uses; and the setting of undesirable precedents for similar applications.
- 6.2 Application No. A/NE-TKL/156 was approved with conditions by the Board on review in 2001 for a period of two years on the considerations that the development was in line with the long-term planning for the area as the Site was designated as "Open Storage" and 'Road' on the former Recommended Outline Development Plan for the Ping Che and Ta Kwu Ling New Development Area; no local objection was received; and approval of the application would not have adverse impacts on the infrastructure provision. The application was revoked on 25.2.2002 due to non-compliance with approval condition.
- 6.3 The subsequent six applications (No. A/NE-TKL/225, 281, 315, 342, 443 and 553) for the same temporary open storage of construction equipment use for three years were approved by the Committee between 2002 and 2016 on similar grounds in that there were no material changes in the planning circumstances since the previous temporary approvals were granted; the applicant had made effort to comply with previous approval conditions; compliance with relevant Town Planning Board Guidelines; and government departments consulted had no major adverse comment on or no objection to the applications. Except application No. A/NE-TKL/315 which was revoked on 8.2.2010, relevant approval conditions of other applications had been complied with.

6.4 Details of the previous applications are summarized at **Appendix IV** and its location is shown on **Plan A-1**.

7. Similar Applications

7.1 There are 16 similar applications involving 9 sites within or partly within “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area.

7.2 Seven similar applications (No. A/NE-TKL/334, 390, 454, 460, 555, 564 and 567) involving three sites for temporary open storage of construction equipment/materials/waste paper, waste plastics and waste metal cans for recycling/ curtain wall testing centre were approved with conditions by the Committee between 2010 and 2018 mainly on considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; the Site falls largely within the Category 1 area where favourable consideration will normally be given to applications; and there were no adverse departmental comments and local objections.

7.3 The other nine similar applications (No. A/NE-TKL/317, 330, 332, 338, 346, 354, 480, 514 and 560) involving six sites for similar temporary open storage uses were rejected by the Committee or by the Board on review between 2009 and 2017 mainly on considerations that the proposed developments were not in line with the planning intention of “AGR” zone; the developments did not comply with the relevant Town Planning Board Guidelines; there are no previous approval of open storage granted for the Site; and the applicants failed to demonstrate that developments would not generate adverse impacts on the surrounding areas.

7.4 Details of these similar applications are at **Appendix V** and their locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Areas (Plans A-1 to A-3 and A-4a and A-4b)

8.1 The Site is:

- (a) flat, formed and fenced off;
- (b) currently used as open storage of construction materials and equipment; and
- (c) accessible via a village track leading to Ping Che Road (**Plan A-2**).

8.2 The surrounding areas have the following characteristics:

- (a) situated in a rural landscape character area dominated by open storage uses and tree groups intermixed with some temporary structures;
- (b) fronting Ping Yuen River and its tributary to the immediate north, east and west and to the immediate west are fallow agricultural land;
- (c) to the immediate east across the river is an approved planning application No.

A/NE-TKL/555 for temporary open storage of construction materials, equipment and machineries; and

- (d) to the south across the local track is a mix of open storage yards of construction material, a temporary site office and temporary domestic structures.

9. Planning Intention

The planning intention of the “AGR” zone in Ping Che and Ta Kwu Ling area is to primarily retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

10.1 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 lots under application are Old Schedule Lots held under Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access;
- (b) existing structures were erected on Lot 1344 without prior approval of his office. The aforesaid structures are not acceptable under the Lease concerned. His office reserves the right to take necessary lease enforcement action against the irregularities; and
- (c) the lot owner did not apply to his office for a Short Term Waiver (STW) to cover all the existing structures on site after the previous planning application No. A/NE-TKL/553 was granted; and
- (d) if the planning application is approved, the owners of Lot 1344 shall apply to his office for a STW to cover all the existing structures on site. 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 will 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) having reviewed the further information submitted by the applicant (**Appendix Ib**), he has no further comment on the application from the

traffic engineering point of view; and

- (b) the local track leading to the Site is not managed by her office. 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 road connecting the proposed ingress/egress of the Site to Ping Che Road is not maintained by HyD.

Drainage

10.1.4 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) the Site is in an area where no public sewer connection is available;
- (c) part of the Site falls within the project limit of “PWP Item 119CD – Drainage Improvement in Northern New Territories – Package C (Remaining Works)” (**Plan A-2**). An approval condition on the setting back of the site boundary to avoid encroachment on the project limit of PWP Item 119CD as and when required is recommended should the application be approved by the Board; and
- (d) should the application be approved, conditions should be included to maintain the existing drainage facilities properly and submission of a condition record of the existing drainage facilities.

Environment

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest one is located to the southeast of the Site at a distance of about 40m (**Plan A-2**);
- (b) there was no environmental complaint against the Site during the past three years; and
- (c) the applicant is advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP to minimize potential environmental nuisance to the surrounding area.

Building Matters

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

- (a) there is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application;
- (b) if the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they are unauthorised building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;
- (c) before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (d) for UBW erected on leased land, enforcement action may be taken by BD 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;
- (e) the temporary converted containers for site office / storage are considered as temporary buildings are subject to control under the Building (Planning) Regulations Pt. VII;
- (f) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively;
- (g) if the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage; and
- (h) detailed comments under the BO will be provided at the building plan submission stage.

Fire Safety

10.1.7 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 fire-fighting being provided to the satisfaction of his department; and
- (b) there are inadequate information provided by the applicant for streamlining the process of such renewal case. Detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

Agriculture

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

- (a) he has no strong view against the application from agricultural point of view considering that the previous application for the same use as the current applicant was approved by the Board; and
- (b) from nature conservation point of view, it is noted that applications for similar use at the Site had been approved with conditions before. Should the application be approved, the applicant should be advised to adopt good site practice to avoid surface runoff from polluting the adjacent watercourse (**Plan A-2**).

Landscape

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

she has no objection to the application from the landscape planning point of view as there is no change in the landscape aspect of this renewal application, and no significant landscape impact arising from the renewal is identified.

District Officer's Comments

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

he has consulted the locals regarding the application. The 1st Vice-Chairman of Ta Lwu Ling District Rural Committee supported the proposal on the grounds that the application is a renewal application and there are no adverse comments received. The North District Council (NDC) member of the subject constituency, the Indigenous Inhabitant Representative (IRR) and Resident Representative (RR) of Tai Po Tin, the IIR and RR of Lei Uk 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 19.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received (**Appendix VI**). A NDC member and the Chairman of Sheung Shui District Rural Committee indicate no comment on the application.

12. Planning Considerations and Assessments

12.1 The application is for renewal of planning permission for temporary open storage of construction equipment and materials for a further period of three years. The Site falls within Category 2 area under the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E) promulgated by the Board on 17.10.2008. 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, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

12.2 The temporary development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. However, DAFC has no strong view against the application from agricultural point of view considering that the previous application for the same use as the current applicant which was approved by the Board. Approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.

12.3 Compared with the last approved scheme under application No. A/NE-TKL/553, there are slight changes in the site layout and reduced number of containers under the current application. There is no material change in the planning circumstances of the area since the approval of the last application. The temporary use under application is considered not incompatible with the surrounding land uses which are of mixed uses comprising open storage yards, fallow agricultural land and temporary domestic structures (**Plan A-2**). CTP/UD&L, PlanD has no objection to the application from the landscape planning point of view as there is no change in the landscape aspect of this renewal application and no significant landscape impact arising from the renewal is identified.

12.4 Although DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures, in the vicinity of the Site (**Plan A-2**), it is noted that there is no record of environmental complaint for the Site in the past three years. To address the concerns of DEP, relevant approval conditions restricting the operation hours and no operation on Sundays and public holidays during the planning approval period are recommended. Moreover, the applicant would be advised to follow the environmental mitigation measures set out in the revised ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. Other relevant government departments, including C for T, D of FS, CE/MN of DSD, have no objection to or no adverse comment on the application.

12.5 The application generally complies with the Town Planning Board Guidelines No. 13E for ‘Application for Open Storage and Port Back-up Uses’ in that there are previous approvals for similar use on the Site and no major adverse departmental comments have been received on the application. Moreover, the application generally complies with the TPB PG-No. 34B on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ as there has not been any

material change in planning circumstances since the approval of the last application; there are no major adverse departmental comments against the renewal application; all the approval conditions for the last application have been complied with; and the approval period sought which is for the same as the last approval granted by the Board is not unreasonable.

- 12.6 Of the 16 similar applications in the vicinity of the Site (**Plan A-1**), seven were approved by the Committee between 2010 and 2018 mainly on considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections. For the remaining nine similar applications (**Plan A-1**), they were all rejected by the Committee or by the Board on review between 2009 and 2017 mainly on considerations that the proposed developments were not in line with the planning intention of “AGR” zone; the developments did not comply with the relevant Town Planning Board Guidelines; there are no previous approval of open storage granted for the Site; and the applicants failed to demonstrate that developments would not generate adverse impacts on the surrounding areas. The circumstances of the current application are similar to those approved applications.
- 12.7 There are no adverse public comments and local objections against the application received.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department considers that the temporary use under application 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 further period of 3 years, and be renewed from 15.10.2019 until 14.10.2022. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the stacking height of the materials stored within five meters of the periphery of the Site shall not exceed the height of the boundary fence at any time during the planning approval period;
- (d) the peripheral fencing and paving of the Site shall be maintained at all times during the planning approval period;
- (e) the setting back of the site boundary to avoid encroachment on the project limit of “PWP Item 119CD – Drainage Improvement in Northern New Territories – Package C (Remaining Works)” as and when required by the Director of Drainage

Services;

- (f) the existing drainage facilities implemented under Application No. A/NE-TKL/553 on-site should be maintained properly at all times during the planning approval period;
- (g) existing trees on the Site shall be maintained in good condition at all times during the planning approval period;
- (h) the submission of a condition record of the existing drainage facilities within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.1.2020;
- (i) 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 26.11.2019;
- (j) 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 15.4.2020;
- (k) in relation to (j) 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 15.7.2020;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) 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 (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 VII**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development is not in line with the planning intention of the "Agriculture" zone in the Ping Che and Ta Kwu Ling area 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 permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form with Attachments received on 11.7.2019
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further Information received on 28.8.2019
Appendix II	Relevant Extract of TPB Guidelines No. 13E for Application for Open Storage and Port Back-up Uses
Appendix III	Relevant Extract of TPB Guidelines No. 34B on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix IV	Previous s.16 Applications
Appendix V	Similar s.16 Applications within / partly within the “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Vehicular Access Plan
Drawing A-3	Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2019**