

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/638

<u>Applicant</u>	Mr. LEE Hoi Ming represented by Mr LAW Ming Fat
<u>Site</u>	Lot 1110 S.A (Part) in D.D. 82, Ta Kwu Ling, New Territories
<u>Site Area</u>	About 431.67 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>	Temporary Warehouse with Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary warehouse with ancillary office for a period of three years (**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 Covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the 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.
- 1.2 The Site is accessible from Ping Che Road via a local track (**Plan A-2**). According to the applicant, the temporary development comprises eight 1-storey temporary structures with a total floor area of about 207.11 m² for storage of tools, office uses, etc. (**Drawing A-2**). Four private car parking space (measuring 2.5m x 5m) and one loading / unloading space for light goods vehicle (measuring 3.5m x 7m) will be provided within the Site. The operation hours of the Site are between 7:00a.m. and 7:00p.m. Mondays to Saturdays and no operation on Sundays and public holidays. The location plan and site layout plan submitted by the applicant are at **Drawings A-1 and A-2** respectively. The Site is currently used as warehouse without a valid planning permission.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received by the Board on 19.3.2020 (**Appendix I**)
 - (b) Further Information received on 21.4.2020 (**Appendix Ia**)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the attachments at **Appendices I to Ia**. They can be summarised as follows:

- (a) there are no domestic structures in the vicinity to the Site and nuisance to local residents are minimal;
- (b) the Site is accessible by public transport;
- (c) the temporary development would not cause adverse traffic and environmental impact;
- (d) there are about 5 to 10 workers at the Site; and
- (e) the temporary development mainly involves storage of tools like wires and electric drill.

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

The applicant is the sole “current land owner”. 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 (CTP/CEP, PlanD), the Site is subject to an active enforcement case No. E/NE-TKL/423 (**Plan A-2**) against storage use. Enforcement Notice was issued on 5.12.2019 requiring the notice recipient to discontinue the unauthorised development by 5.2.2020. According to his recent site inspection, the unauthorized development was partly discontinued. His office will closely monitor the Site according to the established procedures.

5. **Previous Application**

There is no previous application for the Site.

6. **Similar Application**

There is no similar application for temporary warehouse falling partly / entirely within the same “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area.

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

7.1 The Site is:

- (a) flat, formed and fenced off;
- (b) currently used as warehouse without a valid planning permission; and

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

7.2 The surrounding areas have the following characteristics:

- (a) to the north are some vacant land, and to the further north are a mix of vacant land, active and fallow agricultural land within the village 'environs' of Tong Fong (**Plan A-2**);
- (b) to the east and north-east are a mix of open storage use, temporary structures for warehouse, domestic uses, and vacant land;
- (c) to the south are open storage use, temporary vacant structures and vacant land; and
- (d) to the immediate west are open storage use, and to the further west is Ping Che Road.

8. 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.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application and/or the public comment received are summarised as follows:

Land Administration

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

- (a) the Site comprises private lots and they are Old Schedule lot held under the Block Government lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access, and there is no guarantee that any adjoining Government land will be allowed for the vehicle access of the use;
- (b) it is noted that the Site is completely surrounded by private lots. The applicant should make his own arrangement for acquiring access. The Governmental shall accept no responsibility in such arrangement;
- (c) the development schedule indicates a toilet will be erected on the Site. The applicant should note that any toilet facilities should meet current health requirements;
- (d) the existing structures on the Site were erected without approval from her

office. The aforesaid structures are not acceptable under the Leases concerned. Her office reserves the right to take enforcement actions against the aforesaid structures; and

- (e) the applicant shall apply to her 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 they will be approved. If the STW is approved, their commencement date would be backdated to the first date of occupation and they will be subject to such terms and conditions to be imposed including payment of waiver fee/rent and administrative fees as considered appropriate by her office.

Traffic

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

- (a) unless the applicant could satisfactorily address her following comments, she cannot render support to the application from the traffic engineering perspective:
 - (i) the applicant should advise the estimated amount of materials/goods to be stored in the Site;
 - (ii) the applicant should advise the traffic generation and attraction from and to the site and the traffic impact to the nearby road links and junctions;
 - (iii) the applicant shall justify the adequacy of the parking spaces so provided by relating to the number of vehicles visiting the Site;
 - (iv) the vehicular access should be no less than 7.3m wide;
 - (v) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site and manoeuvring within the subject site, and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis;
 - (vi) the applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the subject site;
 - (vii) it is noted that the Site is not directly connected to Ping Che Road (**Plan A-2**). The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (viii) the vehicular access between the Site and Ping Che Road are not managed by TD. The applicant should seek comment from the responsible party. The applicant should also demonstrate the satisfactory manoeuvring along this vehicular access, preferably using the swept path analysis.

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

- (a) the section of Ping Che Road near to the Site is under HyD's maintenance purview. However, the access track to the Site from Ping Che Road will pass through other private lots and a strip of area along Ping Che Road which is an unallocated government land. The applicant is required to sort out the land issues with relevant land authority/ owners; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) he has no comment on the application; and
- (b) 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".

Landscape

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

- (a) she has some reservations on the application from the landscape planning point of view;
- (b) the Site is located in an area of landscape character comprises rural inland plains, which typically comprises of mainly vegetated areas and some structures. The Site was densely vegetated back in 2015 (**Plan A-3a**), however, it had been hard paved and structures had been erected for operation as shown in 2018 aerial photo (**Plan A-3b**). Adverse landscape impact within the "AGR" zone has taken place prior to planning approval;
- (c) the approval of the current application would set an undesirable precedent of landscape character alteration prior to planning approval in the "AGR" zone, and would encourage more similar development within the area. The cumulative impact of such approvals 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 as its effect on enhancing the quality of public realm is not apparent.

Agriculture

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

- (a) he does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation; and
- (b) agricultural activities are active in the vicinity (**Plan A-2**), and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc.

Drainage

9.1.7 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 impact to the adjacent area. In their submission, the applicant requires assessing and identifying the project's potential drainage impacts and demonstrate in their submission with the implementation of necessary mitigation measures, the project will not cause an unacceptable increase in the risk of flooding in areas upstream of, adjacent to or downstream of the development; and
- (c) there is public sewerage near the Site.

Fire Services

9.1.8 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 fire-fighting being provided to his satisfaction;
- (b) in consideration of the design/ nature of the proposed use, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his satisfaction;
- (c) the applicant should be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) he has no objection in-principle under the Buildings Ordinance (BO) to the proposed use on the application site;
- (b) there is no record of submission of the proposed building/ structure to the Building Authority (BA) for approval; and
- (c) his advisory comments to the application are at **Appendix III**.

District Officer's Comments

9.1.10 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 Kwu Ling District Rural Committee and the Indigenous Inhabitant Representative (IIR) of Tong Fong objected the proposals on the grounds that the development would cause environmental and traffic impact to the surrounding area. The incumbent North District Council member of the subject constituency, the Resident Representative (RR) of Tong Fong, the IIR and RR of Lei Uk have no comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department; and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

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

On 27.3.2020, the application was published for public inspection. During the statutory public inspection period, two public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. An individual objects to the application on the grounds that the development is not in line with the planning intention of the "AGR" zone; and the importance of retaining some agricultural land in Hong Kong.

11. Planning Considerations and Assessments

11.1 The application is for a temporary warehouse with ancillary office for a period of 3 years in an area zoned "AGR" on the OZP. The temporary use 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 (**Plan A-1**). It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Since the Site has

potential for agricultural rehabilitation, DAFC does not support the application from agriculture point of view. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of the “AGR” zone, even on a temporary basis.

- 11.2 The Site is situated in an area of landscape character comprises rural inland plains, which typically comprises of mainly vegetated areas and some temporary structures. There are also some open storage uses in the vicinity of the Site which are unauthorised developments and subject to active enforcement actions. CTP/UD&L, PlanD has some reservations on the application as the Site was densely vegetated back in 2015 and it had been hard paved and structures had been erected for operation as shown in 2018 aerial photo (**Plans A-3a and A-3b**). The approval of the current application would set an undesirable precedent of landscape character alteration prior to planning approval in the “AGR” zone, and would encourage more similar development within the area. The cumulative impact of such approvals would further degrade the landscape quality of the surrounding environment.
- 11.3 From traffic engineering viewpoint, C for T does not support the application as there is insufficient information to demonstrate that the temporary development would not induce significant traffic impact to the surrounding. Other relevant Government departments consulted, including CE/MN of DSD, DEP, D of FS and CE/C of WSD, have no adverse comment on / no objection to the application.
- 11.4 There are no similar applications for temporary warehouse which fall partly / mostly within the same “AGR” zone in the vicinity of the Site.
- 11.5 Regarding the adverse public comments and local objection conveyed by DO(N), HAD, the Government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and taking into account the local objections conveyed by DO(N), HAD and public comments in paragraphs 9.1.10 and 10 above 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, which is intended 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; and
 - (b) the applicant fails to demonstrate that the development would have no adverse traffic impacts on the surrounding areas.
- 12.2 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 **15.5.2023**. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 7:00 a.m. on 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) 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 15.11.2020;
- (d) in relation to (c) 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 15.2.2021;
- (e) 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 15.11.2020;
- (f) in relation to (e) above, the implementation of traffic management proposals 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 15.2.2021;
- (g) 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 15.11.2020;
- (h) in relation to (g) 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 15.2.2021;
- (i) if any of the above planning conditions (a) or (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if any of the above planning conditions (c), (d), (e), (f), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (k) upon expiry of the planning permission, the reinstatement of the 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 III**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 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.

14. Attachments

Appendix I	Application Form with Attachments received on 19.3.2020
Appendix Ia	Further information received on 21.4.2020
Appendix II	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Lot Index Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3a	Aerial Photo in 2015
Plan A-3b	Aerial Photo in 2018
Plan A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**