

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-WKS/15

- Applicants** : Mr. CHAN Shang, Mr. CHAN Cheong Lin and Mr. CHAN Koon Yung, Managers of CHAN Ting Nam Tso, Mr. CHAN Wai Ching and Cheer Will Enterprise Limited represented by M&D Planning and Surveyors Consultant Ltd.
- Site** : Lots 514, 525 RP and 530 RP in D.D. 79 and Adjoining Government Land, Ta Kwu Ling North, New Territories
- Site Area** : About 4,943.94 m² (including about 550m² of Government Land)
- Lease** : (i) Block Government Lease (demised for agricultural use)
(ii) Government Land
- Plan** : Approved Wo Keng Shan Outline Zoning Plan (OZP) No. S/NE-WKS/10
- Zoning** : “Agriculture” (“AGR”) (about 99.2% of the Site) on the approved Wo Keng Shan OZP
- Application** : Proposed Temporary Open Storage of Construction Materials and Ancillary Warehouse and Offices for a Period of 3 Years

1. The Proposal

- 1.1 The applicants seek planning permission for a proposed temporary open storage of construction materials and ancillary warehouse and offices for a period of three years at the application site (the Site). The Site falls mostly within an area zoned “AGR” on the Wo Keng Shan OZP. A very minor portion of the Site (0.8%) falls within the “Recreation” zone on the approved Ta Kwu Ling North OZP No. S/NE-TKLN/2 (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “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.
- 1.2 According to the information submitted by the applicants, there are nine temporary single-storey structures (ranging from 2.5m to 5m in height) with a total floor area of about 1,050.39m² for storage of construction machineries, office, staff rest room and toilet uses respectively. Two private car parking spaces and one loading/unloading bay for heavy goods vehicle will be provided within the Site. The Site is connected to Heung Yuen Wai Highway via a vehicular access to the east of the Site (**Plan A-2**). The operation hours are between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays only. There will be no operation on Sundays and public holidays. A plan showing the layout of

the Site is at **Drawing A-1**.

1.3 In support of the application, the applicants have submitted the following documents:

- (a) Application form with Attachment received on 17.8.2020 (Appendix I)
- (b) Further Information received on 28.9.2020 (Appendix Ia)

2. Justifications from the Applicants

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

- (a) the proposed development helps maintain the supply of construction materials to support construction projects across Hong Kong;
- (b) the Site's proximity to Liantang / Heung Yuen Wai Boundary Control Point and Heung Yuen Wai Highway makes it an ideal location for the proposed development;
- (c) the tenant's original site for storage of construction materials would be affected by Kwu Tung North New Development Area;
- (d) the Site is not suitable for agricultural rehabilitation and the proposed development will optimize the use of valuable land resource;
- (e) the proposed development is compatible with the surrounding land uses and would not have adverse environmental and drainage impacts on the surroundings;
- (f) the proposed development would not set an undesirable precedent for similar uses in the surrounding; and
- (g) the proposed development is not located within conservation zone.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicants are the "current land owners". Detailed information would be deposited at the meeting for Members' inspection. For the Government land within the Site, the requirements as set out in the Town Planning Board Guidelines TPB PG-No.31A is not applicable.

4. Background

According to the advice of the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the suspected unauthorized development (i.e. filling of land) on part of the Site may be subject to enforcement action. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorized development under the Town Planning Ordinance, relevant action would be taken.

5. Town Planning Board Guidelines

Town Planning Board Guidelines No. 13F for 'Application for Open Storage and Port Back-up

Uses' (TPB PG-No.13F) promulgated by the Board on 27.3.2020 are relevant to the application. The Site falls within Category 3 area under the Guidelines. Relevant extract of the Guidelines is attached at **Appendix II**.

6. Previous Application

There is no previous application for the Site.

7. Similar Application

There is no similar application in the "AGR" zone in the vicinity of the Site in the Wo Keng Shan area.

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

8.1 The Site is:

- (a) partially formed and fenced off; and
- (b) accessible from a local track to its east leading to Heung Yuen Wai Highway.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate north are temporary structures and to the further northeast are village houses within "Village Type Development" zone;
- (b) to the east are vacant land and fallow agricultural land;
- (c) to the immediate west are fallow and active agricultural land; and
- (d) to the immediate south is Heung Yuen Wai Highway.

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 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 the Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicants should make their own arrangement for acquiring access and there is no guarantee that any adjoining Government land (GL) will be allowed for the access of the proposed use;
- (b) the existing structure on the Site, if any, is not acceptable under the Leases concerned. His office reserves the right to take enforcement actions against the aforesaid structures;
- (c) the GL adjoining the application lots (**Plan A-2**) is being illegally occupied by the applicants. The applicants should cease illegal occupation of the GL concerned. His office reserves the right to take enforcement actions against the unauthorized occupation of GL;
- (d) according to the development proposal, mobile toilets will be placed on the Site. The applicants should note that toilet facilities should meet current health requirements; and
- (e) if the planning application is approved, the owners of the lots concerned shall apply to his office for a Short Term Waiver (STW) and Short Term Tenancy (STT) covering all the actual occupation area. The application for STW and STT will be considered by Government in its landlord's and relevant capacities and there is no guarantee that they will be approved. If the STW and STT are 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 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 applicants should provide the following information/measures for his consideration:
 - (i) the applicants shall advise and substantiate the traffic generation and attraction from and to the Site and the traffic impact to the nearby road links and junctions;
 - (ii) the applicants shall advise and justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site;
 - (iii) the vehicular access should be no less than 7.3m wide;
 - (iv) the applicants shall demonstrate the satisfactory manoeuvring of vehicles entering and exiting from the Site, manoeuvring within the Site and into-out of the parking and loading/unloading spaces, preferably using swept path analysis;

- (v) the applicants shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site; and
 - (vi) the applicants shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
 - (b) the vehicular access outside the Site is not managed by TD. The applicants should seek comment from the responsible party.
- 10.1.3 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD):

proper drainage system should be provided such that no surface run-off will flow from the Site onto the adjacent road.

Environment

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

- (a) DEP does not support the application as there are sensitive receivers, i.e. residential dwellings/structures in the vicinity of the Site (the nearest about 35m to the northeast) (**Plan A-2**) and the development involves the use of heavy vehicles, and hence environmental nuisance is expected;
- (b) there was one substantiated environmental complaint related to deposition of construction waste against the Site during the past three years. However, upon inspection, no on-going landfilling activity or parked excavator was spotted on site. Thus, no enforcement action was taken; and
- (c) the applicants are advised to follow the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' issued by DEP to minimize the potential environmental impacts on the surrounding areas.

Landscape Aspect

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

- (a) she has reservation on the application from the landscape planning perspective;
- (b) the Site is located in an area of rural inland plain landscape character which comprises of mostly agricultural land, tree groups, small houses and highway structures. Based on aerial photo of Nov 2019 (**Plan A-3**), the Site is a piece of abandoned agricultural land with some scattered tree groups. Though no information of the existing landscape resources within the Site is provided, based on the layout plan of proposed development, potential negative landscape impacts of vegetation clearance, landscape character alteration and possible tree felling within the site arising from the development are anticipated;
- (c) the proposed use is considered not compatible with the landscape character

of the surroundings. There is a concern that approval of the application would set an undesirable precedent and would encourage more similar developments within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding environment within the “AGR” and “REC” zones;

- (d) it is noted that the Site adjoins public frontage. Should the TPB approve the subject application, it is considered necessary to impose a landscape condition for the submission and implementation of landscape proposal; and
- (e) the applicants are reminded that approval of the planning application does not imply approval of tree preservation clauses/ conditions under the Lease. The applicants should seek comments and approval from the relevant authorities for any proposed tree works.

Drainage

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

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

Building Matters

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

- (a) there is no record of approval by the Building Authority for the existing buildings/structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application; and
- (b) there is also no record of submission of the proposed building/ structure to BD for approval. His advisory comments are at **Appendix V**.

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 fire-fighting being provided to satisfaction of his department;
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicants are advised to submit relevant

layout plans incorporated with the proposed FSIs to FSD for approval. In addition, the applicants 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) the applicants should observe the good practice guidelines at **Appendix III**; and
- (c) moreover, having considered the nature of 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 applicants are required to submit a valid fire certificate (FS 251) to his department for approval; and
- (d) the applicants are reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

Agriculture

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

- (a) the Site is currently abandoned land. Herbaceous plants and trees of common species could be found within the Site. The agricultural activities are active in its vicinity 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. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view; and
- (b) her site inspection revealed that a watercourse (**Plan A-2**) was located within the Site, which will finally join the Ping Yuen River to the south (**Plan A-1**). The applicants should provide more information on whether the watercourse will be affected by the proposed use.

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 first Vice-Chairman of Ta Kwu Ling District Rural Committee, the Indigenous Inhabitant Representative (IRR) of Nga Yiu Ha, the four IIRs of Ping Yeung and Resident Representative of Ping Yeung object to the application as the proposed development would generate adverse traffic and environmental impact on the surrounding area. The incumbent North District Council (NDC) member has 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);
- (b) Director of Leisure and Cultural Services (DLCS); and
- (c) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 24.8.2020, the application was published for public inspection. During the statutory public inspection period, seven public comments were received (**Appendix IV**). The Chairman of Sheung Shui Rural Committee indicates no comment on the application. The Hong Kong Bird Watching Society, WWF-HK, the Kadoorie Farm and Botanic Garden Corporation, and three individuals object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone; approval of the application would set an undesirable precedent to the future similar applications within the “AGR” zone; the proposed development would contaminate the nearby watercourse; and the proposed development would generate adverse traffic and environmental impact on the surrounding area.

12. Planning Considerations and Assessments

12.1 The application is for a proposed temporary open storage of construction materials and ancillary warehouse and offices for a period of three years at the Site which falls mostly within the “AGR” zone on the approved Wo Keng Shan OZP (**Plan A-1**). 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 cultivation or plant nursery. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.

12.2 The Site falls within Category 3 area under the TPB PG-No. 13F on ‘Application for Open Storage and Port Back-up Uses’ promulgated by the Board on 27.3.2020. 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 genuine efforts have been demonstrated in compliance with approval conditions of the previous planning applications and relevant technical assessments/proposals have been included in the fresh applications, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Planning permission could be granted on a temporary basis up to a maximum period of three 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.

- 12.3 The Site is situated in an area of rural inland plain landscape character which comprises of mostly agricultural land, tree groups, domestic structures and highway. The proposed development is considered not compatible with the landscape character of the surrounding areas comprising vegetated areas and tree groups. CTP/UD&L, PlanD has reservation on the application from the landscape planning point of view. There is a concern that approval of the application would set an undesirable precedent and would encourage more similar developments within the area. The cumulative impact of such approval would further degrade the landscape quality of the surrounding area.
- 12.4 C for T does not support the application from the traffic engineering viewpoint as the applicants fail to demonstrate in the submission that the temporary development will not cause adverse traffic impact on the surrounding areas in that the applicants have not provided traffic-related information for his review including potential traffic impact arising from the development, adequacy of the parking spaces and loading/unloading spaces and satisfactory manoeuvring of vehicles entering to and exiting from the Site etc. DEP does not support the application as there are sensitive receivers, i.e. residential swellings/structures in the vicinity of the Site (the nearest about 35m to the northeast) and the development involves the use of heavy vehicles, and hence environmental nuisance is expected. Other Government departments, including CE/MN of DSD and D of FS have no objection or no adverse comment on the application.
- 12.5 The application does not comply with the TPB Guidelines No. 13F in that the Site falls within Category 3 area where application would normally not be favourably considered unless the applications are on sites with previous planning approvals. The Site is not the subject of previous planning approval for similar open storage uses; there are adverse departmental comments and local objections to the application; and the applicants have failed to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the surrounding area.
- 12.6 Regarding the local objection conveyed by DO(N), HAD and the adverse public comments as detailed in paragraphs 10.1.10 and 11 above respectively, Government departments' comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 11 and having taken into account local objection conveyed by DO(N), HAD and public comments mentioned 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 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 proposed development 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. 13F) in that there is no previous approval for open storage granted for the Site and there are adverse departmental comments and local objections;

- (c) the applicants fail to demonstrate that the proposed development would not cause adverse traffic impact on the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for the similar applications within the “AGR” zone. The cumulative effect of approving such similar 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 9.10.2023. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m. on Mondays to Saturdays, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (c) the provision of periphery 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 9.4.2021;
- (d) the submission of a landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 9.4.2021;
- (e) in relation to (d) above, the implementation of landscape proposal within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 9.7.2021;
- (f) 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 9.4.2021;
- (g) in relation to (f) 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 9.7.2021;
- (h) the provision of fire extinguisher(s) with valid fire certificate (FS 251) 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 20.11.2020;
- (i) 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 9.4.2021;
- (j) in relation to (i) 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 9.7.2021;

- (k) 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 9.4.2021;
- (l) in relation to (k) 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 9.7.2021;
- (m) 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;
- (n) if any of the above planning conditions (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) 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
- (o) upon expiry of the planning permission, the reinstatement of the “AGR” portion 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 applicants.
- 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 Attachment received on 17.8.2020
Appendix Ia	Further Information received on 28.9.2020
Appendix II	Relevant extract of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13F)
Appendix III	The Good Practice Guidelines for Open Storage Sites
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
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**