

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

**APPLICATION NO. A/NE-HLH/36**

<b><u>Applicant</u></b>	:	Chow Keung Transportation Company Limited
<b><u>Site</u></b>	:	Lot 396 in D.D. 87, Hung Lung Hang, New Territories
<b><u>Site Area</u></b>	:	About 1943 m <sup>2</sup>
<b><u>Lease</u></b>	:	Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	:	Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
<b><u>Zoning</u></b>	:	“Agriculture” (“AGR”)
<b><u>Application</u></b>	:	Temporary Logistics Centre 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 logistics centre 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 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 Site mainly comprises four structures with a total floor area of about 223 m<sup>2</sup>, including two toilets at the northern and southern boundary of the Site, a two-storey site office at the southern part of the Site. The remaining two-storey structure is located at the northern part of the Site providing car parking spaces and staff resting room on the first and second floor respectively (**Drawing A-1**). 2 twenty-foot containers (H: 2.6m x W: 2.2m x L: 6.1m) and 22 forty-foot containers (H: 2.6m x W: 2.2m x L: 12.2m) are provided at the eastern and southern part of the Site for goods storage respectively (**Drawing A-1**). Five car parking spaces for private vehicle, one medium goods vehicle, a heavy machine, two trailers and two forklifts are also provided within the Site (**Drawing A-1**). The Site is accessible via a local track from Kong Nga Po Road (**Plan A-1**). The operation hours of the temporary logistics centre are between 8:00 a.m. to 6:00 p.m. from Mondays to Saturdays and there will be 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 19.7.2019 (**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) the company has been located in Kwu Tung (i.e. Lots 728 S.A to 729 S.A ss.6 in D.D. 95) since 2001 with a total area of about 1,858 m<sup>2</sup> including storage area of about 107 m<sup>2</sup> and office of 94 m<sup>2</sup>. The site will be resumed as part of the North East New Territories New Development Areas, it is imminent for the company to find an alternative site to minimize the impact on the business operation;
- (b) in view of the decline of logistics industry and the increase of rental rates in recent years, relocation to the application site in Hung Lung Hang is an interim measure to address the problems;
- (c) similar cases can be found in the vicinity of the Site. A large open storage of container site adjacent to the Site was found in 1990. Site formation has been carried out several years ago. Using the Site for the temporary logistics centre can better utilize land resources without damaging to the environment; and
- (d) the Site is located away from the domestic structures than the existing location in Kwu Tung. As such, the possible impact can be minimized.

## **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 subject to planning enforcement action against an unauthorized development involving storage use (including deposit of containers) and use for place for parking of vehicles. An Enforcement Notice (EN) was issued on 14.5.2019 to the notice recipient requiring the discontinuance of the unauthorized development by 14.8.2019. If the requirement of the EN is not complied with, appropriate prosecution action may be considered.

## **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 Application**

There is no similar application for temporary logistics centre and related use(s) within or partly within the “AGR” zone in the vicinity of the Site in Hung Lung Hang area.

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

8.1 The Site is:

- (a) flat, paved and fenced off; and
- (b) currently used for a logistics centre with some containers without planning permission; 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 storage uses, tree clusters, fallow agricultural land, and vacant/unused land;
- (b) to its north across the pond are open storage yards;
- (c) to the immediate west and northwest are tree groups, some fallow agricultural land and some temporary structures; and
- (d) to the immediate east and south are open storages without planning permission, which are subject to enforcement action against an unauthorized development involving storage use (including deposit of containers) (**Plan A-2**).

**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, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access of the applied use;
- (b) the existing structures on the Site (**Plans A-4a and A-4b**) were erected without approval from his office. The aforesaid structures are not acceptable under the lease concerned. His office reserves the right to take necessary lease 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 proposed vehicular access to the Site is via a local track connecting with Kong Nga Po Road (**Plan A-1**). The applicant should demonstrate that there is sufficient internal circulation area for vehicles to manoeuvre. In particular, the applicant should demonstrate on a scaled plan, preferably by swept path, whether vehicles can manoeuvre within the Site without reversing on the local track. The estimated vehicular trip to/from the Site for each class of vehicle is also outstanding. Further information should be provided 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.

### **Environment**

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

- (a) he has no comment on the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” issued by DEP; and
- (b) there was no record of environmental complaint against the Site for the past three years.

### **Landscape**

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

- (a) she has no objection to the application from landscape planning perspective;
- (b) the Site is hard paved and already in operation with no significant sensitive landscape resource observed. Significant adverse impact on existing landscape resources arising from the application is not anticipated. Moreover, the Site is situated in an area of rural character surrounded by open storages and container parks, the applied use is considered not entirely incompatible with the surrounding area; and
- (c) there is no major public frontage along the site boundary, should the Committee approve the application, it is considered not necessary to impose a landscape condition as the effect of additional landscaping on enhancing of public realm is not apparent.

### **Fire Safety**

10.1.6 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) the applicant is reminded that if the proposed structure(s) is required to comply with the Building Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

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

- (a) before any new building works (including containers as temporary buildings) 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 Buildings Ordinance (BO);
- (b) 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;
- (c) in connect with (b) above, the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation (B(P)R 5 and emergency vehicular access shall be provided under B(P)R 41D;
- (d) 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;
- (e) the temporary structures are subject to the control of Part VII of the B(P)Rs and require prior approval and consent under BO; and
- (f) detailed comments will be given at building plan submission stage.

### **Drainage**

10.1.8 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.

## **Agriculture**

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

the Site is currently a paved logistics centre. The 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.

## **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 objects to the application on the grounds of adverse traffic impact on the Hung Lung Hang area. The incumbent North District Council member of subject constituency, the Resident Representative (RR) of Sheung Shan Kai Wai, the Chairman of 打鼓嶺沙嶺村居民福利會, the RR of Chow Tin Tsuen, the Indigenous Resident Representative (IRR) and RR of San UK Ling have no comment.

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 26.7.2019, the application was published for public inspection. During the statutory public inspection period, six public comments were received (**Appendix III**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The remaining five comments from Designing Hong Kong Limited, Kadoorie Farm and Botanic Garden, World Wide Fund For Nature Hong Kong, the Hong Kong Bird Watching Society 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; approval of the application will further legitimize authorized development; approval of the application would set an undesirable precedent for similar applications within the "AGR" zone; the current application is similar to the previously rejected application related to open storage use; 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 temporary logistics centre 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 open storages/storage yards, temporary structures, fallow agricultural land and vacant/unused land. While there are some open storage/storage yards in the vicinity of the Site, some of them are unauthorized developments subject to enforcement action (**Plan A-2**). The logistics centre is considered not entirely incompatible with the surrounding areas where temporary structures and open storages can be found (**Plan A-3**). Significant adverse impact on existing landscape resources arising from the development is not anticipated, CTP/UD&L, PlanD has no objection to the application from landscape planning perspective.
- 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 logistics centre will not cause adverse traffic impact on the surrounding areas in that the applicant needs to satisfactorily address the aspects of vehicle manoeuvring, no reversing on the local track and estimated vehicular trip to/from the Site. DEP has no objection to the application and advises that the applicant should follow the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” to minimize any potential environmental impacts should the application be approved by the Board. Other relevant Government departments consulted, including 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 impacts on the surrounding areas.
- 12.6 The Site is subject to enforcement action against an unauthorized development involving



storage use (including deposit of containers) and use for place for parking of vehicles. An Enforcement Notice (EN) was issued on 14.5.2019 to the notice recipient requiring the discontinuance of the unauthorized development by 14.8.2019. If the requirement of the EN is not complied with, appropriate prosecution action may be considered.

- 12.7 There are no similar applications within the same “AGR” zone under the OZP. Existing open storage/related uses found in the vicinity of the Site are either existing use tolerated under the Town Planning Ordinance or unauthorized development subject to enforcement action by the Planning Authority (**Plan A-2**). Approval of the current application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area.
- 12.8 Regarding the local objection conveyed by DO(N), HAD and adverse public comments against the application as detailed in paragraphs 10 and 11 above respectively, the Government department’s 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 public comments mentioned in paragraph 11, 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 TPB PG-No. 13E in that there is no previous approval granted for the Site; there are adverse departmental and public comments on the application; and the applicant has failed to demonstrate that the development would not cause adverse traffic impacts on the surrounding areas; and
  - (c) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 6.9.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

#### Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 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 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 6.3.2020;
- (d) 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 6.3.2020;
- (e) in relation to (d) above, the provision of drainage facilities within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.6.2020;
- (f) 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 6.3.2020;
- (g) in relation to (f) 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 6.6.2020;
- (h) 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 6.3.2020;
- (i) in relation to (h) 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 6.6.2020;
- (j) 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;
- (k) if any of the above planning conditions (c), (d), (e), (f), (g), (h) or (i) 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
- (l) 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 IV**.

**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 what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

**15. Attachments**

<b>Appendix I</b>	Application Form with Attachments received on 19.7.2019
<b>Appendix II</b>	Relevant Extract of TPB Guidelines No. TPB PG-No. 13E for Application for Open Storage and Port Back-up Use
<b>Appendix III</b>	Public Comments
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2019**