

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/KTN/59

<u>Applicant</u>	Take Keen Limited represented by Fotton ELA Architects Limited
<u>Site</u>	Lot 542 S.A RP in D.D. 92, Castle Peak Road, Kwu Tung North, Sheung Shui, New Territories
<u>Site Area</u>	about 1,374m ²
<u>Lease</u>	Old Schedule lot held under the Block Government Lease (demised for agricultural use)
<u>Plan</u>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<u>Zoning</u>	“Agriculture” (“AGR”) (about 99.1%) and “Other Specified Uses” annotated “Amenity Area” (“OU(A)”) (about 0.9%)
<u>Application</u>	Renewal of Planning Approval for Temporary Warehouses and Open Storage of Metal and Steel, Scrap Metals and Materials, Construction Materials and Miscellaneous Objects and an Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission for temporary warehouses and open storage of metal and steel, scrap metals and materials, construction materials and miscellaneous objects and an ancillary office at the application site (the Site) for a period of 3 years. The Site falls within mainly ‘AGR’ zone with minor portion in “OU(A)” zone on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, the proposed temporary use for a period of three years requires permission of the Town Planning Board (the Board). The Site is currently used for the applied use with planning permission granted under Application No. A/KTN/25 valid until 13.5.2019.
- 1.2 The Site is the subject of 7 previous applications which were all approved. The last Application No. A/KTN/25 submitted by the same applicant for the same use as the current application was approved by the Rural and New Town Planning Committee (the Committee) on 13.5.2016. The planning permission is valid until 13.5.2019 and all approval conditions have been complied with.
- 1.3 According to the submission, the Site is accessible at the south via a local track connecting Castle Peak road – Kwu Tong Section (**Drawing A-1**). There are 2 warehouses with a toilet, 1 storage room and 1 site office in the Site with total floor area of about 361.2 m² and maximum building height of 7.6m (1-storey). There are 2 canopies in the Site of about 45.6 m² covered area. No parking space is provided

on site but loading/unloading area is provided within the Site. The layout and development parameters under this application are the same as those in the approved previous Application No. A/KTN/25.

- 1.4 According to the submission, the operating hours are the same as the last approved application from 8:00 a.m. to 5:30 p.m. from Mondays to Saturdays, with no operation on Sundays and Public Holidays. Only LGV not exceeding 5.5 tonnes will access the Site with estimated vehicular trip of 1 to 2 per day. **Drawings A-1 and A-2** show the layout, landscape planting, drainage facility and existing fire service installations (FSIs).
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 12.3.2019 **(Appendix I)**
 - (b) Further Information (FI) dated 9.4.2019 **(Appendix Ia)**
 - (c) FI dated 12.4.2019 **(Appendix Ib)**
 - (d) FI date 17.4.2019 **(Appendix Ic)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 8 of the Application Form at **Appendices I, Ia and Ic**. They are summarized as follows:

- (a) The applicant would like to continue the operation of the current use for 3 more years at the Site.
- (b) All approval conditions of the previous application have been complied with. The applicant will continue to maintain the existing landscape, drainage and fire services facilities up to standard as previously approved. The FSIs proposal agreed under the previous application and the Certificate of FSI are submitted.
- (c) A toilet connected to an underground septic tank at the Site serving two staff will be in proper operation.

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

The Site is not subject to active planning enforcement action.

5. Town Planning Board Guidelines

Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Uses or Development (TPG PG-No.34B)

5.1 According to the Town Planning Board Guidelines TPB PG-No. 34B, the relevant assessment criteria for assessing applications for renewal of planning approval are summarized below:

- (a) whether there has been any material change in planning circumstances since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are major adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses” (TPB PG-No.13E)

5.2 The Site falls within Category 3 areas under the Town Planning Board Guidelines TPB PG-No.13E promulgated by the Board on 17.10.2008. The following criteria are relevant:

Category 3 areas: normally not be favourably considered unless the applications are on sites with previous planning approvals. In this connection, 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.

6. Previous Applications

6.1 The Site is involved in 7 previous applications (No. IDPA/NE-KTN/4, A/DPA/NE-KTN/7, A/NE-KTN/135, 152, 158, A/KTN/17 and 25). All were approved by the Committee/the Board. Details of the previous applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

6.2 Applications No. IDPA/NE-KTN/4 and A/DPA/NE-KTN/7 both for warehouse for storage of building materials and ironmongeries were approved in 1991 and in 1992 respectively on a permanent basis when the Site was zoned “Unspecified” use mainly on considerations that the development would not cause adverse impacts on the traffic, visual and drainage of the surrounding areas.

- 6.3 Applications No. A/NE-KTN/135, 152, 158 and A/KTN/17 for similar temporary warehouses/open storage of ironmongeries, scrap metal, building materials and office were approved between 2009 and 2016 mainly on considerations that the developments generally complied with TPB PG-No.13E, the proposed developments were not incompatible with the surrounding land uses, there were previously approved schemes, concerned departments had no adverse comments on the applications, and their concerns could be addressed by imposing approval conditions. Applications No. A/NE-KTN/135, 152 and A/KTN/17 were subsequently revoked due to non-compliance of approval conditions.
- 6.4 The last Application No. A/KTN/25 submitted by the same applicant for the same applied use as the current application was approved by the Committee on 13.5.2016 on similar considerations. The planning permission is valid until 13.5.2019 and all approval conditions have been complied with.

7. Similar Application

- 7.1 2 similar applications (No. A/NE-KTN/97 and 150) for open storage use on the same site, which fall partly within the same “AGR” and the adjoining “Green Belt” (“GB”) zones were rejected by the Board on review on 11.4.2003 and 23.3.2012 respectively mainly on grounds that the proposed developments were not in line with the planning intention of the “AGR” and “GB” zones, the proposed uses were incompatible to the surrounding uses, and there was insufficient information in the submission to demonstrate the proposed uses would not cause adverse ecological and traffic impacts to the surrounding areas.
- 7.2 Details of the similar applications are summarised at **Appendix III** and the location is shown on **Plan A-1**.

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

- 8.1 The Site is:
- (a) formed and fenced off with 2 warehouses in the northern portion whereas the southern portion is occupied by open storage of scrap metals, a container converted office, 2 canopies and a storage for tools with valid planning permission; and
 - (b) accessible via a local track connecting Castle Peak Road – Kwu Tung Section.
- 8.2 The surrounding areas have the following characteristics:
- (a) Castle Peak Road is running along the southern side of the Site;
 - (b) areas at both sides of the Site along Castle Peak Road are mainly open storage yards, workshop and car park; and
 - (c) to its north are mainly vacant land, fallow/active agricultural land and scattered domestic structures.

9. Planning Intentions

- 9.1 The planning intention of the “AGR” zone 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. It is stated in the Explanatory Statement of the OZP that the subject “AGR” site at the southern portion of Long Valley is predominantly dry active agricultural land intermixed with abandoned farmland/grassland, fruit trees and is to allow the continuation of the existing farming practices and to provide a buffer for the Long Valley to its north.
- 9.2 The planning intention of the “OU(A)” zone is primarily for the provision of landscaping and planting to enhance the environment.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

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

- (a) the Sites comprises Lot No. 542 S.A RP in D.D. 92. The lot is an Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access;
- (b) the applicant should make his/her own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement;
- (c) a Short Term Waiver (“STW”) No. 1070 was issued to the Lot for the purpose of warehouse for the storage of building materials and ironmongeries. The total permitted site coverage of the structures erected on the lot shall not exceed 339m²;
- (d) the total built-over area (BOA) of the structures erected on the application lot is larger than that of permitted one as stipulated in STW No. 1070;
- (e) the structures which are of the excessive BOA are not acceptable under the Lease concerned and the terms and conditions of STW No. 1070. His office reserves the right to take enforcement actions against the unauthorized structures; and
- (f) if the planning application is approved, the owner of the concerned lots shall apply to his office to revise the permitted BOA of the existing STW. The application for revision of the excessive BOA will be considered by Government in its landlord’s capacity and there is no guarantee that they will be approved. If the application for revision is approved, its 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 notes that the proposed vehicular access to the Site is via a local track connecting with Castle Peak Road – Kwu Tung Road. In view of the provided vehicular trip rate, loading/unloading arrangement within the Site to prevent their vehicle reversing outside the premises, he considers that the renewal of planning application can be tolerated from traffic engineering viewpoint; and
- (b) the local track leading to the Site is not managed by his department. The applicant should clarify the land status, management and maintenance responsibilities of the local track with relevant lands and maintenance authorities accordingly.

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

there is an unallocated Government land (UGL) which is not maintained by HyD between the ingress/egress of the Site and Castle Peak Road – Kwu Tung. If the applicant is required to gain access from this UGL to the Site, the applicant should sort out the access issue with the land authority.

Future Development

10.1.3 Comments of the Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD):

he has no comment on the application from the project interface point of view. A small part of the Site falls within the Remaining Package of the KTN NDA development.

Environment

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

- (a) the applicant is advised to follow the environmental mitigation measures as recommended in the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' in order to minimize the potential environmental impacts on the adjacent area; and
- (b) there is no environmental complaint case related to the Site for the past 3 years.

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

sewer connection for the Site is available.

Landscape

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

- (a) he has no objection to the application. Based on the aerial photo of 2018, the surrounding area is comprised of temporary structures, open storage, car parks, farmland and some clustered tree groups. The proposed use is considered not incompatible with the landscape setting in proximity;
- (b) according to site visit conducted on 22.3.2019, the Site was fenced off and hard paved. Existing trees in fair to good conditions were found within the Site. Adverse landscape impact arising from the applied development is not anticipated; and
- (c) should the application be approved, the following approval condition is recommended:

the existing trees within the Site shall be maintained in healthy condition at all times during the approval period.

Drainage

10.1.7 Comments of the CE/MN, DSD:

- (a) he has no objection in principle to the application from the public drainage point of view;
- (b) should the application be approved, the following conditions should be included to request the applicant to:
 - (i) submit a condition record of the existing drainage facilities implemented on the same site in the last planning application No. A/KTN/25. The condition record shall include clear photos showing the current conditions of all catchpits and each straight section of the existing drainage facilities, the locations and directions of the photos should be clearly marked on a copy of the drainage plan approved in the previous application; and
 - (ii) maintain these existing drainage facilities properly and rectify those facilities if they are found inadequate/ineffective.

Building Matters

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

- (a) noting that there were two blocks of temporary buildings used as warehouses under the Temporary Occupation Permit No. NT 15/200, which was expired on 5.10.2015. In this connection, the applicant is reminded that temporary building without valid permit will be regarded as unauthorized structure and appropriate action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against Unauthorized Building Works (UBW) as

an 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 Buildings Ordinance (BO);

- (b) the temporary converted containers for site office/storage are considered as temporary buildings and are subject to control under the Building (Planning) Regulations (B(P)R) Pt. VII;
- (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 from the BD should be obtained, otherwise they are UBWs. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
- (d) the Site shall be provided with means of obtaining access thereto from a street and EVA in accordance with Regulations 5 and 41D of the B(P)R respectively; and
- (e) detailed comments under the BO will be provided at building plan submission stage.

Nature Conservation

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

he notes that the agricultural activities are active in the vicinity and agricultural infrastructures such as road access is available. As the Site possesses potential for agricultural rehabilitation, he does not support the application from agricultural point of view.

Fire Safety

10.1.10 Comments of the Director of Fire Services (D of FS):

- (a) he has no in-principle objection to the application subject to FSIs being provided to the satisfaction of D of FS;
- (b) if the structure(s) in the Site is required to comply with the Buildings Ordinance (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans;
- (c) it is noted that the latest fire certificate submitted by the applicant is different from the FSI plan approved under the application No. A/KTN/25. The applicant is required to submit a FSI proposal for his satisfaction. The requirements on the FSI proposal submission are at **Appendix V**;
- (d) having considered the nature of the open storage, approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval is required; and
- (e) to address this condition, the applicant should submit a valid fire

certificate (FS251) to his department for approval.

District Officer's Comments

10.1.11 Comment of the District Officer/North, Home Affairs Department (DO/N, HAD):

he consulted the locals from 19.3.2019 to 9.4.2019. The North District Council (NDC) member of the subject Constituency supports the application. The Chairman of Sheung Shui District Rural Committee, the Indigenous Inhabitant Representative (IIR) and Resident Representative (RR) of Yin Kong have no comment on the application.

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

- (a) Commissioner of Police (C of P);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD).

11. Public Comments Received During Statutory Publication Period

On 19.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.4.2019, 2 public comments were received (**Appendices IVa** and **IVb**). 1 comment from a North District Council member objects to the application on grounds that the applied use cause traffic problem on Castle Peak Road and generates adverse traffic impact to the nearby village. Another comment from an individual indicates no comment on the application.

12. Planning Considerations and Assessments

12.1 The application is for renewal of planning permission for temporary warehouses and open storage of metal and steel, scrap metals and materials, construction materials and miscellaneous objects and an ancillary office at the Site for a period of 3 years. The Site falls mainly within 'AGR' zone with minor portion in "OU(A)" zone on the approved Kwu Tung North OZP No. S/KTN/2. Although the applied use is not in line with the planning intention of the "AGR" zone and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation, it should be noted that the Site has already been formed, and was first granted planning permission for warehouse use in 1991 on a permanent basis. Subsequently, planning permissions were also granted for temporary open storage and warehouse uses on the Site. The "OU(A)" portion within the Kwu Tung North NDA Project falls within the Remaining Phase of the Project and PM/N, CEDD has no comment on the application from the project interface point of view. In view of the above, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the concerned zoning on the OZP.

12.2 The applied use is considered not incompatible with the surrounding land uses which comprise mainly open storage yards, workshops, vacant land, farmland and scattered

domestic structures (**Plan A-2**).

- 12.3 The Site falls within Category 3 areas under the TPB PG-No. 13E promulgated by the Board on 17.10.2008. The relevant considerations are set out in paragraph 5.2. The application generally complies with the TPB PG-No. 13E in that the Site was previously approved for similar open storage/warehouses uses and concerned Government departments, except AFCD, have no major adverse comments on the application. To mitigate any potential environmental impacts, relevant approval conditions are recommended in paragraph 13.2 (a), (b), (c) and (e) below. The applicant is also advised to follow the environmental mitigation measures as recommended in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- 12.4 The current application for the renewal of the planning permission under Application No. A/KTN/25 for the same use for a further period of 3 years is in line with TPB PG-No. 34B in that there is no material change in planning circumstance to the Site and its surrounding area since approval of the last application; concerned departments including DEP, C for T, CE/MN, DSD, D of FS and CTP/UD&L, PlanD have no adverse comment on the application; adverse planning implications arising from the renewal of the planning approval are not anticipated; and all the approval conditions under the previous application have been complied with.
- 12.5 The Committee has approved 7 previous applications for similar uses at the Site as detailed in paragraph 6. Approval of the current application is in line with the previous decision of the Committee.
- 12.6 There is one local view conveyed by DO(N) supporting the application and one public comment objecting to the application mainly on grounds of adverse traffic impacts to the nearby village (as stated in paragraphs 10.1.10 and 11). Relevant Government departments’ comments and planning considerations set out above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the local views and public comments in paragraphs 10.1.10 and 11, the Planning Department considers that the development 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 period of 3 years, and be renewed from 14.5.2019 until **13.5.2022**. The following conditions of approval and advisory clauses are also suggested for Member’s reference

Approval conditions

- (a) no operation between 5:30 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) no vehicle exceeding 5.5 tonnes is allowed to access the Site, as proposed by the applicant, at any time during the planning approval period;

- (d) the stacking height of the materials stored within five metre of the periphery of the Site shall not exceed the height of the boundary fence at any time during the planning approval period;
- (e) no workshop activity is allowed on the Site at any time during the planning approval period;
- (f) the existing trees within the Site shall be maintained in healthy condition at all times during the planning approval period;
- (g) the existing drainage facilities on the Site shall be properly maintained and rectified if they are found inadequate/ineffective at all times during the planning approval period;
- (h) the submission of a condition record of the existing drainage facilities implemented on the Site within 3 months from the date of commencement of renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **14.8.2019**;
- (i) the provision of fire extinguishers within 6 weeks from the date of commencement of renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **25.6.2019**;
- (j) the submission of proposal for fire service installations within 6 months from the date of commencement of renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **14.11.2019**;
- (k) in relation to (j) above, the provision of fire service installations within 9 months from the date of commencement of renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **14.2.2020**;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (g) is not complied with during the 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 the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

[Conditions mainly follow the previous approval conditions except some conditions are updated taking into account the latest comments from CTP/UD&L, PlanD and CE/MN, DSD]

Advisory clauses

The recommended advisory clauses are attached at **Appendix V**.

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

the proposed use 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. There is no strong justification 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 the renewal of the planning 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 received on 12.3.2019
Appendix Ia	FI dated 9.4.2019
Appendix Ib	FI dated 12.4.2019
Appendix Ic	FI dated 17.4.2019
Appendix II	Previous Applications
Appendix III	Similar Applications
Appendices IVa and IVb	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	FSI Proposal approved under Application No. A/KTN/25
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos