

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/65

<u>Applicant</u>	Zurich Limited
<u>Site</u>	Lots 744 and 749 in D.D. 92 and Adjoining Government Land, 10 Yin Kong, Sheung Shui
<u>Site Area</u>	2,227 m ² (includes Government Land (GL) of about 103m ²)
<u>Lease</u>	Old Schedule Lots held under 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>	“Open Space” (“O”) (about 66.1 %), “Other Specified Uses” annotated “Nature Park” (“OU(Nature Park)”) (about 10.5%), and area shown as ‘Road’ (about 23.4%)
<u>Application</u>	Temporary Warehouse for Industrial and Construction Materials with Ancillary Workshop for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary warehouse for industrial and construction materials with ancillary workshop for a period of 3 years. The application site (“the Site”) falls within an area partly zoned “O” and “OU(Nature Park)”, and shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, temporary use not exceeding a period of 3 years in concerned zones or area shown as ‘Road’ requires permission of the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied uses without valid planning permission.
- 1.2 The Site is the subject of 7 previous applications submitted by the same applicant for similar temporary warehouse use approved between 2003 and 2018. The last application No. A/KTN/34 for the same use was approved with conditions on review by the Board on 8.6.2018 for a period of 3 years up to 8.6.2021. However, the planning permission was revoked on 8.6.2019 due to non-compliance of approval conditions relating to submission and implementation of fire services installations (FSIs) proposal (**Plan A-1**).

- 1.3 According to the applicant's submission, the applied development comprises three one-storey (not more than 7.62m in height) structures with total floor area of about 1,098 m² for storage of industrial and construction materials with ancillary workshop and office (**Drawing A-1**). One parking space for truck and one loading/unloading space for Heavy Goods Vehicle (HGV) are provided. The operation hour of the development is from 8:00 a.m to 6:00 p.m., Monday to Saturday, and no operation on Sundays and statutory holidays. The Site is accessible from a local track leading from Castle Peak Road – Kwu Tung. The applicant has submitted landscape plan, FSIs proposal and drainage plan in the current application.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary information (**Appendix I**) received on 12.7.2019

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 7 of the Application Form at **Appendix I**. They are summarized as follows:

- (a) The Site is the subject of a previous approved planning application No. A/KTN/34 for the same use for a period of 3 year until 8.6.2021. Since the applicant did not apply for extension of time for compliance of approval conditions, the approval was revoked due to non-compliance with approval conditions relating to submission and implementation of FSIs proposal. A FSIs proposal is submitted in support of the current application.
- (b) Apart from the approval conditions relating to FSIs requirement, the applicant has complied with other approval conditions of last application.
- (c) In the last application, the applicant had provided traffic information and assessed traffic impact of the warehouse to Castle Peak Road – Kwu Tung to address Transport Department (TD)'s comment. TD subsequently agreed that the applicant had showed effort to adjust the traffic flow of warehouse at different period of time to allow smooth traffic at the surrounding roads.

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 currently not a subject of any active enforcement case. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, appropriate enforcement action will be taken.

5. Previous Applications

The Site is involved in 7 previous applications (No. A/NE-KTN/104, 112, 132, 148, A/KTN/6, 28 and 34) submitted by the same applicant for mainly temporary warehouse of industrial and construction materials and ancillary workshop for a period of 3 years. They were all approved with conditions by the Committee/Board from 2003 to 2018 for a period of 3 or 2 years. Details of the previous applications are summarised at **Appendix II** and its location is shown on **Plan A-1**. The previous applications were approved mainly on the similar grounds that the approval would not frustrate the long-term planning intentions of the zones on the OZP, there were no adverse comment from most concerned government departments; the local concerns on potential traffic and environmental impacts could be addressed by incorporating relevant approval conditions; and the applied use was not incompatible to the surrounding land uses. However, the last application approved with conditions on review by the Board on 8.6.2018 was revoked on 8.6.2019 due to non-compliance with approval conditions relating to FSIs. The current application is submitted by the same applicant for the same use.

6. Similar Application

There is a similar application No. A/KTN/31 within the same “O” zone to the immediate south of the Site. Details of the similar application is summarised at **Appendix III** and its location is shown on **Plan A-1**. Application No. A/KTN/31 for temporary cold store with ancillary storage and office was approved with conditions by the Committee on 3.3.2017 for a period of 3 year mainly on grounds that the approval would not frustrate the long-term planning intentions of the zones on the OZP, the applied development was not incompatible with the surrounding land uses; and most concerned Government departments did not have adverse comments on the application. The planning permission was subsequently revoked on 3.5.2019 due to non-compliance with approval conditions.

7. The Site and Its Surrounding Areas (Plans A-1, A-2a and photos on Plans A-3, A-4a and A-4b)

7.1 The Site is:

- (a) currently used for the applied use without valid planning permission; and
- (b) accessible from a local track leading from Castle Peak Road – Kwu Tung.

7.2 The surrounding areas have the following characteristics:

- (a) to its north is Long Valley with active and fallow agricultural lands and some domestic structures;
- (b) to its east are a vehicle park, a warehouse and some domestic structures;
- (c) to its south are a warehouse and some domestic structures; to its south-east are the “Village Type Development” zone of Yin Kong Village and fallow agricultural land; and

- (d) to its west are logistics centres, a workshop and storage, an office and some domestic structures.

8. Planning Intentions

- 8.1 The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.
- 8.2 The planning intention of the “OU(Nature Park)” is primarily for the development of a nature park to protect and enhance existing wetland habitats for the benefit of the local ecology and promotion of nature conservation and education. The primary intention is to discourage new development unless it is required to support the conservation of the ecological integrity of the wetland habitats or the development of an essential infrastructure project with overriding public interest.
- 8.3 The area shown as “Road” is intended for road use.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views are summarised as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) the Site comprises private lots Nos. 744 and 749 in D.D.92 and the adjoining GL covered by Short Term Tenancy (STT) No. 784 (**Plan A-2b**). The application lots are Old Schedule lots held under Block Government Lease (demised for agricultural use) without any guaranteed right of access. The applicant should make its own arrangement, and there is no guarantee that any adjoining GL will be allowed for the vehicular access of the applied use;
- (b) the application lots are covered by Short Term Waiver (STW) No. 1018 for the purposes of a factory for manufacturing of rattan products and a timber yard with a total site coverage not exceeding 1,052m²;
- (c) the total site coverage of the existing structures erected on the application lots far exceeds the permitted one;
- (d) the actual occupation boundary partly encroaches on Lot No. 746 in D.D.92, which is covered by STW No. 945;
- (e) the total built-over area of the structures on the Site is larger than that

of the proposed one under the development schedule of the planning application;

- (f) STT No. 784 was issued for open storage of rattan only, and the STT tenant is not allowed to erect or allow remain on the premises any building or structure. The existing structures erected on the STT area are not acceptable under the terms and conditions of the STT concerned;
- (g) one of the existing structures on the private lots was erected for toilet use, the applicant should note that any proposed septic tank and soakage pit system should meet current health requirements, and that it should apply for retrospective certificates for building works and drainage works from his office;
- (h) the Site falls within the limits of Kwu Tung North and Fanling North New Development Area (KTN & FLN NDA);
- (i) the applicant is neither the waivee of STW No. 1018 nor the tenant of STT No. 784;
- (j) if the planning application is approved, the waivee of STW No.1018 should apply to his office for (i) modification of the terms and conditions of STW No. 1018 so as to cover all the existing structures on the lots; and (ii) retrospective certificates for building works and drainage works to cover the existing structure for latrine use. These applications will be considered by Government in its landlord's and relevant capacities and there is no guarantee that they will be approved. If the modification of STW is approved, it will be subject to such terms and conditions to be imposed including payment of waiver fee for the additional site coverage and administrative fee as considered appropriate by his office. Further, the commencement date will be backdated to the first date of discovery; and
- (k) if the planning application is approved, the tenant of STT No. 784 should apply to his office for regularization of the existing structures erected on the STT area. The application will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the application is approved, its commencement date will be backdated to the first date of occupation and subject to such terms and conditions to be imposed including payment of rent and administrative fee as considered appropriate by his office.

Future Development

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

he objects to the application as the Site will encroach the works area of Contract No. ND/2019/03 – KTN & FLN NDA, Phase 1: Development of Long Valley Nature Park scheduled to commence in December 2019.

9.1.3 Comments of the Chief Estate Surveyor/Acquisition, Lands Department (CES/A, LandsD)

- (a) the northern and eastern part of the Site (**Plan A-2b**) falls within the project limit for the development of the KTN NDA – Advance Stage and First Stage which will soon be commenced. Since imminent resumption of the concerned land within this year is anticipated, the lots will become GL and the STT784 will be terminated upon expiry of resumption notice. Issuance of short term land instrument at the said land when the lots have been resumed will not be considered as the said land is required for the First Phase development of KTN NDA. Therefore, his Office does not support the application on this part of the Site from land acquisition point of view; and
- (b) the southern part of the Site falls within the Remaining Stage of KTN NDA without firm implementation programme at this moment. His office has no comment on the planning application on this part of the Site from land acquisition point of view.

Traffic

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

- (a) the proposed vehicular access to the Site is via a local track (including Yin Kong Road) connecting with Castle Peak Road – Kwu Tung. Although the applicant states that there will be 1 parking space for HGV, there is no traffic-related information such as the estimated vehicular trip to/from the Site, vehicular access width, swept path analysis, etc. Also, it is mentioned in supplementary information submitted by the applicant that the Site would allow the access of normal private car but there is no such parking for private car. He cannot offer his support to the application at this stage; and
- (b) the local track (including Yin Kong Road) leading to the Site is not managed by his Department. The land status, management and maintenance responsibilities of the local track should be clarified with the relevant lands and maintenance authorities accordingly.

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

he has no comment on the application. The vehicular access leading from Castle Peak Road – Kwu Tung to the Site is not under HyD's purview.

Environment

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

- (a) He does not support the application as the applied use involving HGV

and there are sensitive uses in the vicinity of the Site. Environmental nuisance to the nearby residents is anticipated;

- (b) there is no environmental complaint case related to the Site in the past 3 years; and
- (c) should the applicant 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'.

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

the Site is in an area where no public sewer connection is available.

Landscape

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

- (a) he has no objection to the application from the landscape perspective;
- (b) with reference to the aerial photo taken in 2018, the surrounding area of the Site is rural fringe landscape. The surrounding area of the Site is comprised of temporary structures, car parks, scattered tree groups and farmland. The applied use is considered not incompatible with existing landscape setting in the proximity;
- (c) according to the aerial photo taken in 2018, the Site was hard paved and the temporary warehouses were already in place. With reference to the submitted landscape drawing, photos and planning statement, 9 existing trees were located along the site boundary within the Site and no tree felling would be involved. As further significant adverse landscape is not anticipated, he has no objection to the application from the landscape planning perspective; and
- (d) in view that the applied use is not adjoining any prominent public frontage, it is opined that the landscape condition in the planning permission is not recommended, should the application be approved by the Board.

Drainage

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

- (a) he has no objection in principle to the application from the public drainage point of view; and
- (b) should the application be approved, a condition requiring the

submission and implementation of drainage proposal for the Site should be included to ensure that it will not cause adverse drainage impact to the adjacent areas. The general requirements in the drainage submission are at **Appendix V**.

Building Matters

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

- (a) The Temporary Building Permit (TBP) no. NT 9/88 for the two warehouses at the subject lots issued by Building Authority expired on 16.7.2000 (i.e. 19 years ago). The owner shall enlist an Authorized Person (AP) to apply for the renewal. Particular attention is drawn to the latest Emergency Vehicular Access (EVA) requirement under Clauses D22.3 of the Fire Safety 2011 Code.
- (b) The temporary building without a valid TBP would be subject to enforcement action under BD's prevailing enforcement policy against Unauthorized Building Works (UBW).
- (c) There is no record of approval by the Building Authority for the remaining existing zinc cover structure at the Site and his Department is not in a position to offer comments on their suitability for the use related to the application.
- (d) If any existing structures are erected on leased land without approval of BD, they are UBW under the Building Ordinance (BO) and should not be designated for any proposed use under the application.
- (e) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are UBW. An AP should be appointed as the coordinator for the proposed building works in accordance with the BO.
- (f) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (g) His other advisory comments are at **Appendix V**.

Nature Conservation

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

The future Long Valley Nature Park in the "OU(Nature Park)" zone will be constructed by CEDD under KTN NDA development project.

Fire Safety

9.1.12 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) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. The applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval.
- (c) his advisory comments are at **Appendix V**.

District Officer's Comments

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

he has consulted the locals from 6.8.2019 to 20.8.2019. The Chairman of Sheung Shui District Rural Committee and the Indigenous Resident Representative of Yin Kong objected the application on the grounds of adverse fung shui and traffic impacts and disturbance to the residents. The incumbent North District Council (NDC) members of subject constituency and the Resident Representative (RR) of Kwu Tung South had no comment on the application.

9.2 The following Government departments have no adverse comment on the application. Their advisory comments, if any, are at **Appendix V**:

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

10. Public Comments Received During Statutory Publication Period

On 19.7.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 2 public comments from the Indigenous Inhabitant Representative of Yin Kong and Kadoorie Farm & Botanic Garden Corporation (**Appendix IVa and IVb**) are received. They objects to/raises concern on the application mainly on the grounds that the applied warehouse use will have adverse environmental and fire safety impacts to the surrounding residents, and will have adverse ecological impacts to the Long Valley; previous planning permission have been revoked; planning intention of "OU(Nature Park)" should be seriously considered.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary warehouse for industrial and construction materials with ancillary workshop for a period of 3 years. The Site falls within the KTN NDA and is zoned “O”, “OU(Nature Park)” and an area shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). The applied temporary warehouse is not in line with the planning intention of the Site for open space, Nature Park and road uses in the KTN NDA development. PM/N, CEDD objects to the application as the northern and eastern part of the Site (**Plan A-2b**) falls within the First Phase KTN & FLN NDA project for development of Long Valley Nature Park scheduled to commence in December 2019. According to CES/A, LandsD, the land resumption process of the concerned land will soon be commenced. That part of the Site will become GL and the existing STT will be terminated for NDA development upon expiry of resumption notice and issuance of short term land instrument will not be considered by LandsD. In view of the above, CES/A, LandsD does not support the application on that part of the Site from land acquisition point of view. Taking into account the imminent land resumption and implementation programme of KTN NDA as advised by CEDD and LandsD, approval of the application for 3 years up to 6.9.2022 would jeopardize the implementation of the planned development of the Site under the KTN NDA project.
- 11.2 The applied development is considered not incompatible with the surrounding land uses which comprises mainly vehicle park, warehouses, some domestic structures and agricultural land. However, C for T does not support the application as the applicant has not submitted the required traffic related information such as the estimated vehicular trip to/from the Site, vehicular access width, swept path analysis, etc. DEP does not support the application as the applied use involving HGV and there are sensitive uses in the vicinity of the Site. Other departments consulted including CE/MN, DSD, CTP/UD&L, PlanD and D of FS have no adverse comment on the application from drainage, landscape and fire safety points of view.
- 11.3 The Site is the subject of 7 previous applications for mainly warehouse use which were all approved with conditions by the Committee/Board as stated in paragraph 5 above. The last application for the same use submitted by the same applicant of the current application was approved with conditions on review by the Board on 8.6.2018 for 3 years up to 8.6.2021 but was revoked on 8.6.2019 due to non-compliance with approval conditions in relation to FSIs. After the approval of the last application in 2018, the Finance Committee of Legislative Council approved the funding for carrying out site formation and engineering infrastructure works and associated land acquisition cost in relation to the First Phase development of KTN NDA (covering part of the Site) on 3.5.2019. As advised by CEDD, the project involving of the northern and eastern part of the Site is scheduled to commence in December 2019. Given the firm development programme of KTN NDA, the planning circumstance of the application is different from that of the previous approved applications.
- 11.4 There are 4 local comments conveyed by DO(N) and 2 public comments (as stated in paragraphs 9.1.13 and 10), of which 4 object to/raise concerns on the application mainly on the grounds of being not in line with the planning intention of “OU(Nature Park)”, adverse environmental, ecological, traffic, fire safety, and fung shui impacts, as well as repeated revocation. Relevant Government departments’ comments and

planning considerations set out in paragraphs 11.1 to 11.3 above are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the local views and public comment in paragraphs 9.1.13 and 10, the Planning Department does not support the application for the following reasons:

- (a) part of the Site falls within the First Phase of the KTN NDA development project with imminent land resumption and development programme. Approval of the application would jeopardize the planned development of the Site under the KTN NDA project; and
- (b) the applicant fails to demonstrate that the applied development would not generate adverse traffic impact 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 1 year until **6.9.2020** instead of 3 years sought in view of the imminent resumption of part of the Site. The following conditions of approval with shorter compliance periods due to previous revocation and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 6 p.m. and 8 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and statutory holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the submission of a swept path analysis for the Site within 3 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by **6.12.2019**;
- (d) the submission of drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **6.12.2019**;
- (e) in relation to (d) above, the implementation of drainage proposal with 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**;
- (f) the submission of proposal for fire service installations within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **6.12.2019**;
- (g) in relation to (f) above, the implementation of proposal for fire service installations within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by

6.3.2020;

- (h) 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; and
- (i) if any of the above planning conditions (c), (d), (e), (f) or (g) 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.

Advisory clauses

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

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant 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. Attachment

Appendix I	Application form received on 12.7.2019
Appendix II	Previous Applications
Appendix III	Similar Application
Appendix IVa and IVb	Public Comment
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2a and 2b	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos