

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/584

- Applicant** : Kam Hing Realty Resources Limited represented by Goldrich Planners & Surveyors Limited
- Site** : Lot 2159 (Part) in D.D. 76 and Adjoining Government Land, Wang Leng, Ping Che, New Territories
- Site Area** : 664.4 m² (about) (including about 527.6 m² of Government land)
- Land Status**: (a) Block Government Lease (demised for agricultural use) for Lot 2159 (Part) in D.D. 76
(b) Letter of Approval (L of A) No. 4345 for erection of temporary structures for the purpose of chicken shed, watchman shed and agricultural storage
(c) Modification of Tenancy (MOT) No. 37244 for erection of temporary structures for the purpose of dwelling and shade for Lot 2159 in D.D. 76
(d) Government land
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Open Storage” (“OS”)
- Application** : Temporary Container Vehicle Repair Yard for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary container vehicle repair yard for a period of three years (**Plan A-1**). The Site falls within an area zoned “OS” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the Notes of the OZP, Container Vehicle Repair Yard is a Column 2 use, which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied uses without a valid planning permission.
- 1.2 According to the applicant, the development under application comprises of three 1-2 storey structures (about 5m to 6m in height) with a total floor area of about 394.1 m² for an open shed and two storerooms. All vehicle repair activities are carried out within the open shed which allows 4 container vehicles to be repaired at the same time. The two storerooms locate under the open shed to its southeast and northwest respectively. The uncovered area is mainly for manoeuvring of vehicles. The Site is accessible via a

local track leading to Ping Che Road. The proposed operation hours are from 7:00 a.m. to 7:00 p.m. from Mondays to Saturdays and no operation on Sundays and public holidays. The land status plan, site layout plan and section plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.

- 1.3 The Site is the subject of six previous applications (**Plan A-1**) (No. A/DPA/NE-TKL/80, A/NE-TKL/91, 133, 165, 321 and 387) for various repair workshop and warehouse uses submitted by the same applicant of current application. All of the applications were approved by the Committee or the Board on review. Details of these previous applications are summarised in paragraph 6 below. Compared with the last approved application No. A/NE-TKL/387 for temporary warehouse and container vehicle repair yard, the current application site is the northern part of the previous application with the same layout and a decrease in site area of 3,785.6 m² (from 4,450 m² to 664.4 m²) and total floor area of 1326.4 m² (from 1720.5 m² to 394.1 m²). The applicant has complied with all approval conditions under the last application and the planning approval lapsed on 11.8.2015.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on 2.2.2018 (**Appendix I**)
 - (b) Letter dated 6.3.2018 requesting for deferment of consideration of the application (**Appendix Ia**)
 - (c) Further Information received on 22.3.2018 (**Appendix Ib**)
- 1.5 At the request of the applicant (**Appendix Ia**), the Rural and New Town Planning Committee (the Committee) of the Board agreed on 16.3.2018 to defer making a decision on the application for two months pending the preparation of further information to address the departmental comments. The applicant submitted the further information (**Appendix Ib**) on 22.3.2018 and the application is re-scheduled for consideration by the Committee on 18.5.2018.

2. **Justifications from the Applicant**

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

- (a) the Site is the subject of six previously approved applications;
- (b) the development can create employment opportunities to local residents;
- (c) the development is compatible with surrounding environment comprising of open storage and workshops and would not cause adverse visual impact to the surrounding;
- (d) there are existing trees at the north and east boundary of the Site and the applicant is following the Guidelines for Tree Risk Assessment and Management Arrangement;
- (e) the applicant is maintaining the drainage system as stated in the approved drainage proposal and approved condition record of existing drainage under previous planning applications No. A/NE-TKL/321 and 387 respectively; and

- (f) the development would not cause adverse traffic impact on the surrounding area since there is enough space for manoeuvring of vehicles within the Site and the traffic generated/attracted by the development is low.

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. For the Government land within the Site, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) is not applicable to the application.

4. Background

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) states that the Site is not subject to any enforcement action.

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 1 area under the TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is at **Appendix II**.

6. Previous Applications

- 6.1 The Site is the subject of six previous applications (**Plan A-1**) (No. A/DPA/NE-TKL/80, A/NE-TKL/91, 133, 165, 321 and 387) for various repair workshop and warehouse uses submitted by the same applicant of current application. All of the applications were approved by the Committee or by the Board on review between September 1994 and August 2012 mainly on the considerations that the developments were in line with the planning intention of “OS” zone and complied with the TPB PG-No. 13E; the developments were not incompatible with the surrounding land uses; adverse environmental, drainage and traffic impacts arising from the developments were not expected; they were subject of previous planning approvals; and the approval conditions had been complied with.
- 6.2 The last approved application (No. A/NE-TKL/387) submitted by the same applicant was approved with conditions by the Committee on 10.8.2012. Compared with the last approved application, the current application site is the northern part of the previous application with the same layout and a decrease in site area of 3,785.6 m² (from 4,450 m² to 664.4 m²) and total floor area of 1326.4 m² (from 1720.5 m² to 394.1 m²). The applicant has complied with all approval conditions under the application and the planning approval lapsed on 11.8.2015.

6.3 Details of these previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

7. Similar Applications

7.1 There are two similar applications for temporary vehicle repair workshop and open storage which fall within/partly within “OS” zone to the north of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**).

7.2 Two similar applications (No. A/NE-TKL/376 and 481) relating to the same site were approved with conditions by the Committee between November 2011 and October 2014 mainly on the considerations that the applications were generally in line with the planning intention of “OS” zone and complied with the TPB PG-No. 13E; the proposed developments were compatible with the surrounding areas; and the applicant had complied with all approval conditions.

7.3 Details of these similar applications are summarised at **Appendix IV** and their locations are shown on **Plan A-1**.

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, formed, fenced off and accessible via a local track leading to Ping Che Road;
- (b) encroaches on a watercourse (**Plan A-2**); and
- (c) currently occupied by a vehicle repair workshop (**Plans A-4a and A-4b**) without a valid planning permission.

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate north and northeast of the Site are open storage of construction materials and machinery;
- (b) to the immediate northwest are three temporary domestic structures;
- (c) to its west are knolls densely covered with trees; and
- (d) to its south is the site of container vehicle repair yard and warehouse under the previous planning applications while to its further southeast across Ng Tung River are open storage of recycling materials and construction materials.

9. Planning Intention

The planning intention of the “OS” zone in Ping Che and Ta Kwu Ling area is primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard

proliferation of open storage uses. It provides for the orderly development of land for open storage uses which cannot be accommodated in conventional godown premises.

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

- (a) the Site comprises private lots and adjoining Government land. Lot 2159 (Part) in D.D. 76 is an Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guaranteed right of access;
- (b) the Site boundary only covers portion of Lot 2159 and adjoining Government land. The occupation areas covers portion of Lots 2156, 2158 and 2159 in D.D. 76 and surrounding Government land. The occupation area is bigger than the area under the application (about 2,535 m² instead of 664.4 m²);
- (c) L of A No. 4345 covers part of the Site and the remaining falls within the occupation area. It was issued for erection of temporary structures for the purpose of chicken shed, watchman shed and agricultural storage. MOT No. 37244, which falls partly within the Site and partly within the occupation area, was issued for erection of temporary structures for the purpose of dwelling and shade;
- (d) the Government land within the Site and the occupation area are being illegally occupied. Structures were erected on the Site and the occupation area. The structures concerned are not acceptable under the Leases / L of A / MOT conditions. His office reserves the right to take necessary lease enforcement actions against the structures concerned, and land control actions against the illegal occupation of Government land; and
- (e) if the application is approved, the applicant shall apply to his office for a Short Term Waiver (STW) and a Short Term Tenancy (STT). The applications for STW/STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If the STW/STT applications are approved, their commencement date will 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 has no objection to the application from the traffic engineering perspective; and
- (b) it is noted that vehicles will have to route through various village roads from the Ping Che Road before reaching the Site. The applicant should alert their users to be vigilant to ensure safety to other road users and pedestrians.

Environment

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

- (a) she does not support the application as there are domestic structures in the vicinity of the Site, the closest ones are located to the immediate east at a distance of about 7.5m (**Plan A-2**);
- (b) there was no substantiated environmental complaints against the Site during the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”.

Drainage

10.1.4 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 point of view;
- (b) the Site is in an area where no public sewer connection is available;
- (c) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that it will not cause adverse impact to the adjacent area; and
- (d) the general requirements in the drainage proposal are appended in **Appendix V**.

Building Matters

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

- (a) there is no record of approval by the Building Authority for the buildings/structures existing at the application site and BD is not in a position to offer comments on their suitability for the use related to the application; and
- (b) the applicant is reminded on the followings:
 - (i) if the existing structures are erected on lease land without approval of the BD (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application;
 - (ii) 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 unauthorized building works (UBW). An Authorized Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
 - (iii) for UBW erected on leased land, enforcement action may be taken by 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;
 - (iv) if the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with the building safety and other relevant requirements as may be imposed by the licensing authority;
 - (v) the Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)Rs) respectively; and
 - (vi) if the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)Rs at the building plan submission stage.

Agriculture

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

she has no comment on the application from nature conservation perspective as the Site is hard-paved and under existing use for some years.

Fire Safety

10.1.7 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 and water supplies for firefighting being provided to the satisfaction of his department;
- (b) emergency vehicular access arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by BD; and
- (c) detailed fire safety requirements will be formulated upon receipt of formal submission of the general building plans.

Water Supply

10.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) he has no objection to the application;
- (b) the Site is located within the flood pumping gathering ground;
- (c) the applicant shall comply with the latest effluent discharge requirements stipulated in the “Water Pollution Control Ordinance”;
- (d) the applicant shall prepare an action plan to prevent flood pumping gathering grounds from being contaminated by fuel or lubricating oil leaks from vehicles to the satisfaction of WSD; and
- (e) for provision of water supply to the development, the applicant may need to extend his inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD’s standard.

District Officer’s Comments

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

he has consulted the locals regarding the application. The Chairman of Fanling District Rural Committee, the incumbent North District Council (NDC) member of the subject constituency, the Indigenous Inhabitant Representative and Resident Representative of Kwan Tei Village and the 軍地北村福利會理事長 have no comment on the application.

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

- (a) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD);
- (b) Director of Electrical and Mechanical Services (DEMS);

- (c) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD); and
- (d) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

11. Public Comments Received During Statutory Publication Period

On 9.2.2018, the application was published for public inspection. During the statutory public inspection periods, two public comments were received (**Appendix VI**). The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. A villager of Kwan Tei North (attached with 21 signatures) objects to the application mainly on the grounds that the development would cause safety issue to villagers; there is inadequate ancillary transport facility; and the development would cause nuisances.

12. Planning Considerations and Assessments

- 12.1 The Site falls within Category 1 area under the TPB PG-No. 13E promulgated by the Board on 17.10.2008. The following considerations in the Guidelines are relevant:

Category 1 areas: favourable consideration will normally be given to applications within these areas, subject to no major adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments should be submitted if the proposed uses may cause significant environmental and traffic concerns.

- 12.2 The Site falls within the “OS” zone in which container vehicle repair yard requires planning permission from the Board. The temporary container vehicle yard is generally in line with the planning intention of the “OS” zone in Ping Che and Ta Kwu Ling area which is primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses which cannot be accommodated in conventional godown premises.
- 12.3 The temporary container vehicle repair yard is considered not incompatible with the surrounding land uses which are mainly open storages, vehicle repair yards and warehouses. Adverse landscape impact arising from the proposed development is not anticipated. In this connection, CTP/UD&L of PlanD has no objection to the application.
- 12.4 From transport perspective, the Site is accessible by a local track leading to Ping Che Road (**Plan A-1**). The applicant has submitted further information including traffic flow / pedestrian safety arrangement for consideration by C for T (**Appendix Ib**). After reviewing the further information, C for T has no objection to the application from traffic engineering point of view. Other relevant Government departments consulted, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on / no objection to the application.

- 12.5 DEP does not support the application as there are sensitive receivers, i.e. temporary domestic structures in the vicinity of the Site (**Plan A-2**), and environmental nuisance o the residents nearby may be created. Nevertheless, there is no environmental complaint for the Site in the past three years. To address DEP's concerns, approval conditions restricting the operation hours of the Site would be imposed. Moreover, the applicant will be advised to follow the environmental mitigation measures as set out in the revised 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites'.
- 12.6 The temporary development under the application generally complies with the TPB PG-No. 13E (**Appendix II**) in that there are no major adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions as stated in paragraph 13.2 below; and the developments would not cause adverse traffic and environmental impacts on the surrounding areas.
- 12.7 The Site is the subject of six previous applications for various repair workshop and warehouse uses. They were approved mainly on the grounds of in line with the planning intention of "OS" zone and complied with the TPB PG-No. 13E; not incompatible with the surrounding land uses; unlikely to have adverse environmental, drainage and traffic impacts; subject of previous planning approvals; and the approval conditions had been complied with. The permission of the last approved application (No. A/NE-TKL/387) lapsed on 11.8.2015. There has been no major change in the planning circumstances for the area since the approval of the previous applications.
- 12.8 There are two similar applications involving the same site which were approved with conditions by the Committee between November 2011 and October 2014 mainly on the consideration that the applications were generally in line with the planning intention of "OS" zone and complied with the TPB PG-No. 13E; the proposed developments were compatible with the surrounding areas; and the applicant had complied with all approval conditions. The planning circumstance of current application is similar to those of the approved similar applications.
- 12.9 Regarding the adverse local objections mainly on the safety issue and nuisances to the villagers caused by the development and the inadequacy of ancillary transport facility, the departmental comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and public comments in paragraph 11 above, the Planning Department has no objection to the application.
- 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 until **18.5.2021**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 7:00 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 peripheral fencing shall be maintained on Site at all times during the planning approval period;
 - (d) the existing trees and landscape planting on Site shall be maintained at all times during the planning approval period;
 - (e) 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 18.11.2018;
 - (f) in relation to (e) 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 18.2.2019;
 - (g) the submission of proposals for fire service installations and water supplies for firefighting within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.11.2018;
 - (h) in relation to (g) above, the implementation of proposals for fire service installations and water supplies for firefighting within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 18.2.2019;
 - (i) if any of the above planning conditions (a), (b), (c) or (d) 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
 - (j) if any of the above planning conditions (e), (f), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are at **Appendix VII**.

13.3 There is no strong planning reason to recommend rejection of the application.

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 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 with Attachments received on 2.2.2018
Appendix Ia	Letter dated 6.3.2018 requesting for deferment of consideration of the application
Appendix Ib	Further Information received on 22.3.2018
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13E for Application for Open Storage and Port Back-up Uses
Appendix III	Previous s.16 Applications
Appendix IV	Similar s.16 Applications for Temporary Vehicle Repair Workshop in the vicinity of the application site within/partly within the “Open Storage” zone in the Ping Che and Ta Kwu Ling Area
Appendix V	Detailed Comments of Chief Engineer/Mainland North, Drainage Services Department
Appendix VI	Public Comments
Appendix VII	Recommended Advisory Clauses
Drawings A-1 to A-3	Land Status Plan, Site Layout Plan and Section Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a & A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2018**