

REVIEW OF APPLICATION NO. A/KTN/40
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/40

Renewal of Planning Approval for Temporary Vehicle Repair Workshop (including Container Vehicle Repair Yard) for a Period of 3 Years within “Residential (Group A) 1”, “Residential (Group A) 3”, “Other Specified Uses” annotated “Business and Technology Park” and ‘Road’, Lots 759 S.A, 759 RP (Part), 761 S.A, 761 S.C (Part), 762 S.A and 762 S.C (Part) in D.D. 95 and Adjoining Government Land, Ho Sheung Heung Road, Kwu Tung, Sheung Shui, New Territories

1. Background

- 1.1 On 24.10.2017, the applicant, Auto Power Towing Canton HK Co. Ltd., sought renewal of planning approval for temporary vehicle repair workshop (including container vehicle repair yard) for a period of 3 years at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Residential (Group A)1” (“R(A)1”), “Residential (Group A)3” (“R(A)3”) and “Other Specified Uses” annotated “Business and Technology Park” (“OU(BTP)”) and an area shown as ‘Road’ on the approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2 (**Plan R-1**).
- 1.2 On 26.1.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason is ‘the applicant fails to demonstrate that the applied development would not cause adverse traffic impact on its surrounding areas and the North District’.
- 1.3 For Members’ reference, the following documents are attached:
- | | |
|---------------------------------------------------------------|------------------|
| (a) RNTPC Paper No. A/KTN/40A | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 26.1.2018 | (Annex B) |
| (c) Secretary of the Board’s letter dated 9.2.2018 | (Annex C) |

2. Application for Review

On 26.2.2018, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC’s decision to reject the application. In support of the review, the applicant submitted the following documents:

- | | |
|-----------------------------------------------------------------------------------------|--------------------|
| (a) Applicant’s Letter dated 26.2.2018 | (Annex D-1) |
| (b) Further Information (FI) dated 9.5.2018 providing a Traffic Impact Assessment (TIA) | (Annex D-2) |
- (accepted but not exempted from publication and recounting)*

requirements)

3. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the review application are at **Annexes D-1** and **D-2**. According to the TIA, the existing daily traffic generated by the Site is less than 10 vehicles per day and no further extension of the workshop area is proposed. Therefore, no additional traffic flows will be generated. For conservative assessment, it is assumed that the applied development would generate and attract 4 pcu in the morning peak hours and 4 pcu in the afternoon peak hours. The road network in the vicinity of the Site would be able to cope with the traffic generated by the applied use and would not cause any adverse impact from traffic perspective.

4. **The Section 16 Application**

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

4.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC are described in paragraph 8 of **Annex A**. There has been no material change of the situations (**Plan R-2**).

4.2 The Site is:

- (a) fenced off and currently occupied by a vehicle repair workshop (including container vehicle repair yard); and
- (b) accessible from Ho Sheung Heung Road.

4.3 The surrounding areas have the following characteristics:

- (a) to the north-west of the Site across Ho Sheung Heung Road is the MTR Core Store;
- (b) to its east are a wine factory, a marble workshop and some domestic structures;
- (c) to its south and south-east are some domestic structures, sauce factories and a bean curd factory;
- (d) to its south-west is a vacant school site; and
- (e) to its immediate west are some domestic structures and active and fallow agricultural lands.

Planning Intentions

4.4 There has been no change of planning intentions of both the “R(A)” and “OU(BTP)” zones, which are mentioned in paragraph 9 of **Annex A**.

4.5 The planning intention of “R(A)” zone is primarily for high-density residential

developments. Commercial uses are always permitted on the lowest two floors of a building excluding basements, or in a free-standing purpose-designed non-domestic building up to five storeys.

- 4.6 The planning intention of the “OU(BTP)” zone is primarily for medium-density development to provide a mix of commercial, office, design, research and development uses for promoting high technology business development.

Previous Applications

- 4.7 The previous applications at the time of the consideration of the s.16 application are mentioned in paragraph 6 of **Annex A**. Details of the applications are summarized at Appendix II of **Annex A** and their locations are shown on **Plan R-1**.
- 4.8 The Site is involved in 11 previous applications (No. A/NE-KTN/52, A/NE-KTN/57, A/NE-KTN/81, A/NE-KTN/87, A/NE-KTN/100, A/NE-KTN/117, A/NE-KTN/134, A/NE-KTN/145, A/NE-KTN/160, A/NE-KTN/178 and A/KTN/10). The former 9 previous applications were considered under the previous zoning of “Industrial (Group D)” (“I(D)”). The last 2 applications No. A/NE-KTN/178 and A/KTN/10 were considered under the current zonings of “R(A)1”, “R(A)3”, “OU(BTP)” and ‘Road’.
- 4.9 Application No. A/NE-KTN/52 for temporary container trailer/tractor park and vehicle repair workshop, application No. A/NE-KTN/57 for industrial use (inspection and handling of recyclable material) and application No. A/NE-KTN/81 for temporary container trailer park and open storage of containers were approved with conditions by the RNTPC in 1997, 1998 and 2001 respectively on considerations that the uses under applications were generally in line with the planning intention of the “I(D)” zone; the uses were not incompatible with the surrounding area and would not have adverse environmental and drainage impacts.
- 4.10 Applications No. A/NE-KTN/87, A/NE-KTN/100, A/NE-KTN/117, A/NE-KTN/134, A/NE-KTN/145 and A/NE-KTN/160 for temporary vehicle repair workshop were approved with conditions by the RNTPC between 2002 and 2013 on similar considerations of the previous applications and the previous planning permissions for similar uses were granted and there was no change in planning circumstance.
- 4.11 Application No. A/NE-KTN/178 for renewal of planning approval for temporary vehicle repair workshop (including container vehicle repair yard) for a period of 1 year was approved with conditions by the RNTPC on 7.2.2014 (when the Site had been rezoned to current zonings of “R(A)1”, “R(A)3”, “OU(BTP)” and ‘Road’) on considerations that although the applied use was not in line with the planning intention of the area, the application on a temporary basis would not frustrate the long-term planning intention; there was no major adverse departmental comments; appropriate approval conditions were recommended to address environmental concern; and the planning conditions under the previous approval (application No. A/NE-KTN/160) had been complied with, and was unlikely to have significant adverse traffic, drainage and landscape impacts on the surrounding area.
- 4.12 The last application No. A/KTN/10 submitted by the same applicant of the previous application for the same use for a period of 3 years was approved with conditions by the RNTPC on 6.2.2015 on similar considerations of the previous permission. The applicant has complied with all the approval conditions. The planning permission

lapsed on 7.2.2018.

Similar Application

- 4.13 There is no similar application within/partly within the same “R(A)1”, “R(A)3” and “OU(BTP)” zones and an area shown as ‘Road’.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 and Appendix IV of **Annex A**.
- 5.2 For the review application, the following Government departments have been further consulted and their comments are summarized as follows:

Traffic

- 5.2.1 Comments of the Commissioner for Transport (C for T):

he considers that the application can be tolerated from traffic engineering viewpoint. The proposed vehicular access to the Site is via Ho Sheung Heung Road. Based on the applicant’s TIA (**Annex D-2**), the applied development will not have adverse traffic impact to the road network and vehicles can manoeuvre within the Site without reversing on the public road.

Future Development

- 5.2.2 Comments of the Project Manager/North, CEDD (PM/N, CEDD):

he has no comment on the application from the project interface point of view. The Site falls within the Remaining Packages of Kwu Tung North New Development Area (KTN NDA) project.

Environment

- 5.2.3 Comments of the Director of Environmental Protection (DEP):

- (a) he does not support the application as there are domestic structures in less than 100m from the site boundary (the nearest domestic structures are in the south-east and west of the Site). Environmental nuisance to nearby residents is anticipated during operation stage;
- (b) there is no environmental complaint case related to the Site since 2015 to January 2018; 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’.

District Officer's Comments

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

he has consulted the locals on the application from 19.3.2018 to 3.4.2018 and on the FI from 31.5.2018 to 15.6.2018. The Chairman of Sheung Shui District Rural Committee (SSDRC), the North District Council (NDC) member of the subject constituency and the Resident Representatives (RRs) of Kwu Tung (North) and Kwu Tung (South) had no comments on the application.

- 5.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application (**Annex A**). Their previous views are summarized as follows:

Land Administration

5.3.1 The District Lands Officer/North, Lands Department (DLO/N, LandsD)'s previous comments on the application are stated in paragraph 10.1.1 of **Annex A** and recapitulated below:

- (a) the Site comprises Lots Nos. 759 S.A, 759 RP (Part), 761 S.A, 761 S.C (Part), 762 S.A and 762 S.C (Part) in D.D. 95 and the adjoining Government land. The lots are Old Schedule lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The lots are covered by Short Term Waivers (STW) Nos. 1477 and 1478 both for the purposes of a vehicle repair workshop while the Government land within the Site is covered by Short Term Tenancy (STT) No. 1352 for the purpose of open storage and facilities ancillary to the vehicle repair workshop;
- (b) the actual occupation area does not tally with the Site nor the STW/STT boundary. It is noted that there are structures erected within the Site. Although the total built-over area of the structures is within the development parameters mentioned in the application, it is noted that total built-over area is larger than the permitted one under respective STWs and STT. The aforesaid structures are not acceptable under the Leases concerned and his office reserves the right to take necessary lease enforcement and land control actions against the aforesaid structures. Meanwhile, applicant should make its own arrangement for acquiring access. The Government shall accept no responsibility in such arrangements; and
- (c) if the planning application is approved, the owners of the lots concerned shall apply to his office for regularization of STW and STT covering all the actual occupation area. The application for STW/STT will be considered by Government in its landlord's capacity and there is no guarantee that they will be approved. If they are approved, their commencement dates 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 fee/rental and administrative fees as considered appropriate by his office.

Traffic

- 5.3.2 Comments of the Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD) are stated in paragraph 10.1.3 of **Annex A** and recapitulated below:

The section of Ho Sheung Heung Road adjacent to the Site is under Highways Department's (HyD) maintenance purview. However, part of the existing vehicular access between Ho Sheung Heung Road and the Site falls on unallocated Government land (UGL) which is outside HyD's maintenance purview. The applicant is required to sort out the maintenance responsibility of the affected UGL with DLO/N.

- 5.3.3 Comments of the Commissioner of the Police (C of P) are stated in paragraph 10.1.4 of **Annex A** and recapitulated below:

He has no objection in principle subject to there being no activities in any form, whatsoever associated with Parallel Trading/General Merchandize Operations (GMO) activities.

Landscape

- 5.3.4 The Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)'s previous comments on the application are stated in paragraph 10.1.7 of **Annex A** and recapitulated below:

- (a) he has no objection from the landscape planning perspective;
- (b) the Site, which falls within the KTN NDA, is the subject of a previously approved application (No. A/KTN/10) in 2015 for the same use for a period of 3 years, and to which he had no objection from the landscape planning perspective;
- (c) the application is seeking renewal for the same use for a period of 3 years. Compared the aerial photo of 2015 (under previous application) and the latest aerial photo of 2017, the landscape setting in the area remains mostly the same. The area is of rural landscape character with mixed uses including open storages, container park, temporary structures and scattered trees. His site record dated 14.11.2017 noted that the Site is in operation as a vehicle repair workshop and surrounded by temporary structures. Thus, the proposed continuous use is not incompatible with the surrounding environment and adverse landscape impact is not anticipated. It is also noted that the existing trees planted under previous approval condition are retained on site but in general requires proper tree maintenance. One tree at the northwestern corner is dead and requires tree replacement; and
- (d) should the application be approved, approval conditions requiring replacement of the dead tree within 3 months; and maintenance of all trees in good condition, including tree replacement, throughout the approval period are recommended.

Fire Safety

5.3.5 The Director of Fire Services (D of FS)'s previous comments on the application are stated in paragraph 10.1.8 of **Annex A** and recapitulated below:

- (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 Fire Services Department; and
- (b) Emergency Vehicular Access (EVA) arrangement shall comply with Section 6, Part D of the Code of Practice for Fire Safety in Buildings 2011 administered by Buildings Department (BD).

Drainage

5.3.6 The Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)'s previous comments on the application are stated in paragraph 10.1.9 of **Annex A** and recapitulated below:

- (a) he has no objection in principle 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, 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/10 to the satisfaction of the Drainage Services Department or of the Board within three months. The condition record shall include clear photos showing the current conditions of the existing drainage facilities; and
 - (ii) maintain these existing drainage facilities properly and rectify those facilities if they are found inadequate/ineffective to the satisfaction of the Drainage Services Department or of the Board.

Building Matters

5.3.7 The Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD)'s previous comments on the application are stated in paragraph 10.1.10 of **Annex A** and recapitulated below:

- (a) if the existing structures are erected on leased land without approval of Buildings Department (BD) (not being a New Territories Exempted House), they are unauthorized under the Building Ordinance (BO) and should not be designated for any approved use under the application;
- (b) 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 co-ordinator for the proposed building works in accordance with the BO;

- (c) 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;
- (d) in connection with (b) above, 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 Building(Planning) Regulations respectively; and
- (e) 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 Building (Planning) Regulation at the building plan submission stage.

5.4 The following Government departments maintain their previous views of having no comment on the s.16 application as below:

- (a) Chief Engineer/Construction Session, Water Supplies Department (CE/C, WSD);
- (b) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Chief Estate Surveyor/Acquisition, Lands Department (CES/A, LandsD); and
- (e) Director of Electrical and Mechanical Services (DEMS) (new advisory comments at **Annex F**).

6. **Public Comments on the Review Application Received During Statutory Publication Periods**

- 6.1 1 public comment was received at s.16 application. The commenter objected to the application on traffic ground. Details are in paragraph 11 of **Annex A**.
- 6.2 The review application and the FI dated 9.5.2018 were published for public inspection on 9.3.2018 and 25.5.2018 respectively. During the statutory public inspection periods, a total of 3 public comments were received (**Annexes E-1 to E-3**). Two comments from the general public have no comment on the application. One comment submitted by a general public objects to the application mainly on the grounds that the subject vehicle repair workshop has long caused road congestion especially for the road section from Ho Sheung Heung Road to Castle Peak Road. The operator of the subject workshop should liaise with the Village Office on the traffic condition.

7. Planning Considerations and Assessments

- 7.1 On 26.1.2018, the RNTPC rejected the application on the ground that ‘the applicant fails to demonstrate that the applied development would not cause adverse traffic impact on its surrounding areas and the North District’. In response, the applicant has submitted a TIA (**Annex D-2**) indicating that the road network in the vicinity of the Site would be able to cope with the traffic generated by the applied development and would not cause any adverse impact from traffic perspective. The planning assessments on the application are in the following paragraphs.
- 7.2 The application is for renewal of planning approval for temporary vehicle repair workshop (including container vehicle repair yard) for a period of 3 years. The applied development is not in line with the planning intentions of “R(A)1”, “R(A)3” and “OU(BTP)” zones and area shown as ‘Road’ (**Plan R-1**). The Site falls within the Remaining Packages of KTN NDA 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 development of the Site.
- 7.3 The applied use is not incompatible with the existing surrounding land uses which comprise mainly factories, workshop, MTR Core Store and active and fallow agricultural lands intermixed with some domestic structures. The s.16 application was rejected mainly due to TD’s concern. Based on the applicant’s TIA submitted at s.17 review stage (**Annex D-2**) demonstrating that the applied development will not have adverse traffic impact on the road network and vehicles can manoeuvre within the Site without reversing on the public road, C for T considers that the application can be tolerated from traffic engineering viewpoint.
- 7.4 The renewal of planning approval will unlikely has significant adverse drainage and landscape impact on the surrounding areas. CE/MN, DSD and CTP/UD&L, PlanD have no adverse comment on the application. Although DEP does not support the application as there are domestic structures in less than 100m from the site boundary, there is no environmental complaint received in the past 3 years. The concern of DEP on possible environmental nuisance to surrounding areas could be addressed through the incorporation of approval conditions restricting the operating hours and days as well as maintaining the periphery fencing in paragraphs 8.2 (a) to (c) below. Any non-compliance with the approval conditions will result in revocation of the planning permission. Besides, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP in order to minimize any possible environmental nuisances.
- 7.5 The Site is involved in 11 previous applications (**Plan R-1**). The last 2 applications for the same use were submitted by the same applicant. 9 previous applications were approved when the Site was zoned “I(D)” and 2 were approved when the Site is under the current zonings. They were approved mainly on considerations that the applied use would not frustrate the long-term planning intention of the area; was not incompatible to the surrounding land uses; would not have adverse significant environmental and drainage impacts. The applicant has complied with all approval conditions under the last planning permission (application No. A/KTN/10). Approval of the current application is in line with the Board’s previous decision.

- 7.6 At the s.17 stage, of the 3 public comments received whilst 2 commenters raised no comment, 1 commenter objects to the application mainly on the grounds of adverse traffic impact as stated in paragraph 6 above. Relevant Government departments' comments and planning considerations set out in paragraph 7.3 above are relevant.

8. **Planning Department's Views**

- 8.1 Based on the assessment made in paragraph 7 and having taken into account the local views and public comments in paragraphs 5.2.4 and 6, the Planning Department considers that the applied development could be tolerated for a period of 3 years.
- 8.2 Should the Board 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 27.7.2021. The following conditions of approval and advisory clauses are also suggested for Member's reference:

Approval conditions

- (a) no operation between 8:00 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 statutory holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing peripheral fencing on the Site should be maintained at all times during the planning approval period;
- (d) no parking and reverse movement of vehicles should be allowed on public road outside the Site at all times during the planning approval period;
- (e) the existing trees on the Site shall be maintained in good condition at all times during the planning approval period;
- (f) the existing drainage facilities on the site should be properly maintained at all time and rectified if found inadequate/ineffective during the planning approval period;
- (g) the replacement of the dead tree on the Site within 3 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 27.10.2018;
- (h) the submission of a condition record of the existing drainage facilities on site 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 27.10.2018;
- (i) the submission of fire service installations and water supplies for fire fighting proposals 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 27.1.2019;
- (j) in relation to (i) above, the implementation of fire service installations and water supplies for fire fighting proposals 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 **27.4.2019**;

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

[Except for the new condition (g), other approval conditions are similar to those under the previous application No. A/KTN/10.]

Advisory clauses

The recommended advisory clauses are attached at **Annex F**.

- 8.3 There is no strong reason to recommend rejection of the application.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to approve the review 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.
- 9.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

10. Attachments

Annex A	RNTPC Paper No. A/KTN/40A
Annex B	Extract of Minutes of the RNTPC Meeting held on 26.1.2018
Annex C	Secretary of the Board's Letter dated 9.2.2018
Annex D-1	Applicant's Letter dated 26.2.2018
Annex D-2	FI dated 9.5.2018
Annexes E-1 to E-3	Public Comments on the Review Application
Annex F	Advisory Clauses

Drawing R-1	Layout Plan showing Car Park Layout
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JULY 2018**