

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/72

<u>Applicant</u>	Mr. Hui Muk Fai Daniel represented by Man Chi Consultants and Construction Limited
<u>Site</u>	Government Land, Castle Peak Road-Kwu Tung, Kwu Tung North, New Territories
<u>Site Area</u>	2,091 m ² (about)
<u>Lease</u>	Government land
<u>Plan</u>	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<u>Zoning</u>	“Other Specified Uses” annotated “Business and Technology Park” (“OU(BTP)”) (about 64%); and an area shown as ‘Road’ (about 36%)
<u>Application</u>	Temporary Shop and Services (for Sale of Construction Material) with Ancillary Warehouse, Open Storage, Office and Staff Accommodation for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (for sale of construction material) with ancillary warehouse, open storage, office and staff accommodation at the application site (the Site) for a period of 3 years. The Site falls partly within an area zoned “OU(BTP)” and partly within an area shown as ‘Road’ on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the Notes of the OZP, ‘shop and services’ use is always permitted in the “OU(BTP)” zone, but for area shown as ‘Road’, the applied use requires permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission.
- 1.2 According to the applicant’s submission, the development comprises a number of temporary structures with building height not more than 5.64m and total floor area of 1,198.23 m² (including 889.28 m² for shop, office and storage, and 308.95 m² for staff accommodation) (**Appendix Ic**). It is a self-service shop with racks displaying metal wares, tools and construction materials. An area of 65m² located near the entrance is for ancillary open storage of construction material for selling. Space for manoeuvring of vehicles is provided within the Site. There is no provision of parking space on site while a loading/unloading area is provided near the entrance. The Site

is accessible from Castle Peak Road – Kwu Tung. Only private cars and light goods vehicles enter/exit the Site for goods delivery/shopping purpose. There are about 1 to 2 vehicular trips during AM peak hours and 2 to 3 vehicular trips during PM peak hours. A 1.5m-wide building setback will be provided along the south-eastern site boundary (**Drawing A-4**). All 10 existing trees on site will be retained. The operation hours are from 9 a.m. to 6 p.m. daily. The ancillary accommodation is for the applicant, the staff and their family members. The layout plans and the location of the existing trees are at **Drawings A-1 to A-4**.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application form received on 1.9.2020 (Appendix I)
- (b) Planning Statement (Appendix Ia)
- (c) Further Information (FI) of 27.9.2020 # (Appendix Ib)
- (d) FI received on 28.6.2021(dated 27.6.2021)[#] and (Appendix Ic)
29.6.2021[#] providing a consolidated FI which supersedes
the FI¹ received on 22.3.2021
- (e) FI of 6.7.2021 # (Appendix Id)
exempted from publication requirement

1.4 The application was originally scheduled for consideration by the Committee on 23.10.2020. On 23.10.2020, 22.1.2021 and 14.5.2021 the Committee agreed to defer a decision on the application as requested by the applicant to allow time for the applicant to prepare FI to address departmental comments. On 28.6.2021, the applicant's FI was received and the application is scheduled at this meeting.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Planning Statement and FIs at **Appendices Ia to Id**. They are summarized as follows:

- (a) The shop in the Site was established in early 1950s by the late father of the applicant. The shop has been running by applicant's family. 14 family members of the applicant are currently residing at the Site as some of them are working at the shop. The Site and the applied use were covered by Crown Land Licence and thereafter by Short Term Tenancies (STT) from 1965 – 2017. The last STT No.1216 for the applied use with a total roofed-over area not exceeding 793.86 m² (including 323.64 m² for ancillary accommodation) was issued on 22.1.2002 to the applicant. A fire broke out on site on 22.2.2016 and the subsequent repairing works resulted in a building slightly different from the size of the building structure originally approved under the STT. In 2017, due to the implementation of a Government project, a portion of the STT with an area of 56 m² was resumed, and STT No.1216 was cancelled on 9.4.2017.
- (b) The total area of the existing structures is larger than that allowed under the former STT No.1216. The applicant will demolish part of the existing structures

¹ The FI including 3 emails dated 19.3.2021, 20.3.2021 and 21.3.2021 received by the Board on 22.3.2021 was accepted but not exempted from publication and recounting requirements.

(**Appendix Ic**) so as to make the total floor area for the ancillary staff accommodation not exceeding that allowed under the former STT, i.e. 323.64 m².

- (c) The applied use is not incompatible with the surrounding area. The applied use is able to meet the needs of the local residents/villagers. Approval of the current application would not set an undesirable precedent.
- (d) The application for temporary use will not jeopardise the long term planning intention of the “OU(BTP)” zone and ‘Road’. The applicant is well aware that the Site will be resumed/cleared by the Government for development of Kwu Tung North New Development Area (KTN NDA). He would hand back the land to the Government when the resumption/clearance is being carried out.
- (e) Environmental Protection Department (EPD)’s “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” (CoP) will be followed to minimize the potential environmental nuisance to the surroundings.
- (f) The shop has been serving the local residents who mainly access the Site on foot for long decades. The Site is accessible by public transport. As such, it is not expected that the applied use will generate additional traffic to the area. There will be sufficient space for manoeuvring of vehicle on site and no reversing of vehicles on public road. The existing drainage system is effectively functioning.
- (g) The application is well supported by the local residents/villagers, including the district council member and village representative.
- (h) The applicant will provide a clearance of 1.5m wide between the Site and the adjacent Lung Chau Vegetable Cooperative Society Limited (the Vegetable Cooperative Society) to address their concern on fire safety (**Drawing A-4**).

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

As the Site involves Government land only, 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 Site is currently not a subject of any active enforcement case.

5. **Previous Application**

The Site is not the subject of any previous application.

6. Similar Application

There is no similar application on the same “OU(BTP)” zone and ‘Road’ area.

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

7.1 The Site is:

- (a) fenced off at outer boundary and largely occupied by structures being used for the applied use without planning permission; and
- (b) accessible from Castle Peak Road – Kwu Tung.

7.2 The surrounding areas are rural in character and intermixed with domestic structures, social welfare facility, storage yards and food factories:

- (a) to the immediate west is Home of Loving Faithfulness which is a residential care home for disabilities (RCHD); to its further northwest are vehicle park, playground and football field;
- (b) to its north and east are mainly domestic structures and storage yard; to its further north are soy product factory/sauce factory; and
- (c) to its south is the Vegetable Cooperative Society, liquefied petrol gas (LPG) shop and Castle Peak Road- Kwu Tung.

8. Planning Intention

8.1 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.

8.2 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 on the application are summarized as follows:

Land Administration

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

- (a) The Site rests entirely on Government land, most of which was formerly covered by STT No. 1216 (the STT). As portion of the land covered by the STT was required in connection with the project, namely “Cycle Tracks Connecting North West New Territories – Section from Tuen Mun to Sheung Shui” (the Cycle Tracks project), the STT was

terminated with effect from 9.4.2017 to make way for the project.

- (b) The STT, as commencing from 1.4.2001, was granted to Mr. HUI Muk-fai, Daniel (i.e. the applicant) for the purpose of a yard and shop for the storage and sale of construction materials, including ancillary accommodation with a total roofed-over area not exceeding 793.86m² (of which not exceeding 323.64m² for ancillary accommodation) and having a height not exceeding 5.1m above ground level.
- (c) According to the Planning Statement submitted by the applicant, the applicant intends to seek his office to consider the re-issue of a new STT to cover the remaining land (which should be the remaining portion of the STT) not required by the project.
- (d) It is noted that the application boundary does not tally with the boundary of the remaining portion of the STT. The total built-over area for the applied structures is larger than the permitted ones under the ex-STT No. 1216.
- (e) He has no objection to the application subject to imposition of the following to the conditions of planning permission:
 - (i) No building or structure or support for any building or structure may be erected or constructed on, over, under above, below or within a designated area measuring 1.5m in width from the common boundary line of the Site and the adjoining STT No. 589 except that drains, sewers, channels, drainage facilities and any other services may be constructed or provided below the ground level of the designated area.
 - (ii) The applicant shall give a right of way at all times over the Unobstructed area to the tenant of adjoining STT No. 589 and other persons authorized by the tenant for carrying out repair and maintenance of the public utilities and services relating to STT No. 589.
- (f) If the planning application is approved, the applicant shall apply to his office for reissue of a new STT, the new STT application will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the new STT is approved, the commencement date would be backdated to the first date of occupation or to a date as deemed appropriate by his office, and it will be subject to such terms and conditions to be imposed including payment of rent and administrative fee as considered appropriate by his office.

Traffic

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

He considers that the application can be tolerated from traffic engineering viewpoint.

Future Development

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

The Site falls within the Remaining Phase of KTN NDA project. According to the latest implementation programme of the project, CEDD aims to commence the construction works for the remaining phase of KTN NDA in 2024. Should the application be approved, the planning permission should be valid until or before end 2023.

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

He has no comment on the application from land acquisition point of view.

Environment

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

- (a) Should the application be approved, the applicant is advised to follow the relevant mitigation measures as stated in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP) in order to minimize the potential environmental impacts on the adjacent area.
- (b) There is no environmental complaint case related to the Site in the past 3 years.

9.1.6 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

9.1.7 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 submitted planning statement and aerial photos of 2016 to 2019, it is observed that the proposed layout is similar to the current layout. According to her site inspection dated 17.9.2020, 10 number of the existing trees were found within the Site and they were all common species. No adverse impact on the existing landscape resource within the Site is anticipated due to the applied use.
- (c) Should the application be approved, all existing trees within the Site should be maintained satisfactorily at all times during the approval period.

- (d) As construction materials were found stockpiled near Tree Projection Zone of the existing tree (e.g. T1 in **Drawing A-3**), the applicant should be reminded that no storage of materials near the tree to avoid damage of the tree and soil compaction.

Drainage

9.1.8 Comments of 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, 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.

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

The Site is not hard paved. The applicant is required to provide drainage within the Site to intercept surface runoff from the Site onto Castle Peak Road – Kwu Tung.

Fire Safety

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

- (a) He has no in-principle objection to the application subject to fire service installations being provided to the satisfaction of his department.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required and the submission requirements are at **Appendix III**.

District Officer's Comments

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

He has consulted the locals on the application and the FI. The North District Council (NDC) member of the subject Constituency supports the application. Resident Representative (RR) of Kwu Tung (South) has no comment on the application but objects to the FI regarding fire safety and hygiene issue without providing reason. The Chairman of Sheung Shui District Rural Committee and the RR of Kwu Tung (North) have no comment on the application.

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

- (a) Head of Geotechnical Engineering Office, CEDD
- (b) Chief Engineer/Construction, Water Supplies Department
- (c) Commissioner of Police

10. Public Comments Received During Statutory Publication Period

The application and the FI were published for public inspection. During publication period, a total of 7 public comments were received. Of which, 5 from a LegCo member, the Vegetable Cooperative Society (located next to the Site) and 3 individuals (**Appendices II-1 to II-5**) object to the application. The remaining 2 from the same individual indicate no comment (**Appendices II-6 and II-7**). The LegCo member and the Vegetable Cooperative Society's objection are mainly for reasons that there is no clearance between the Site and the structures of the Vegetable Cooperative Society for building maintenance, and they have concern on fire safety as flammable goods are stored on site and fire was broken out at the Site in 2016. They suggest to reserve a 2m-wide access along the boundary between the two sites for safety and building maintenance purpose. Other objections are mainly on the grounds that the applied use has adverse traffic impact to the surroundings, deteriorates the living quality of the village, and creates traffic conflict with the pedestrians and cyclists in front of the Site. One individual also comments that the applicant should be encouraged and assisted in relocating to industrial estate.

11. Planning Considerations and Assessments

- 11.1 The applicant seeks planning permission for temporary shop and services (for sale of construction materials) with ancillary warehouse, open storage, office and staff accommodation at the Site for a period of 3 years. The Site falls partly within an area zoned "OU(BTP)" and partly within an area shown as 'Road' on the approved KTN OZP No. S/KTN/2. 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. The 'Road' area is reserved for road use. Whilst 'shop and services' use is always permitted in the "OU(BTP)" zone, some other components in the applied use is not in line with the planning intentions of "OU(BTP)" zone and 'Road'. The Site falls within the Remaining Phase of the KTN NDA Project. PM/N, CEDD advised that the construction works for the Remaining Phase is tentatively scheduled for commencement in 2024. Should the application be approved, an advisory clause stating that the Site may be resumed by the Government at any time during the planning approval period for the implementation of Government project is recommended.
- 11.2 The applied shop and services with ancillary warehouse, open storage, office and staff accommodation is considered not incompatible with the existing surrounding land uses intermixed with domestic structures, a social welfare facility, the Vegetable Cooperative Society, LPG shop, some storage yards and food factories. It has been in existence on the Site for a long time. A STT covering most of the Site was granted to the applicant by LandsD in 2001 for the applied use. The STT was cancelled in 2017 due to resumption of a strip of land for implementation of the Cycle Track Project. As compared to the STT, the size of the shop is increased from 470.22m² to 889.28m² whereas the ancillary staff accommodation is reduced from 323.64m² to 308.96m².

DLO/N, LandsD has no objection to the application. As requested by DLO/N, the applicant proposes to provide a 1.5m wide building set back from the Vegetable Cooperative Society site, along the south-eastern boundary of the Site. This is also suggested as an approval condition should the application be approved. DLO/N's other comments are included in the advisory clauses in **Appendix III**.

- 11.3 DEP has no objection to the application and there is no environmental complaint received in the past 3 years. C for T considers that the application can be tolerated from traffic engineering viewpoint. Other relevant Government departments including CE/MN, DSD, D of FS and CTP/UD&L, PlanD have no adverse comment on the application. Approval conditions as suggested by concerned departments are included in paragraph 12.2.
- 11.4 The Site is not the subject of any previous application and there is no similar application.
- 11.5 There are seven public comments received as stated in paragraph 10. In this regard, the relevant departmental comments as well as planning considerations and assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11, and having taken into account public comments in paragraph 10, the Planning Department considers that the temporary shop and services (for sale of construction material) with ancillary warehouse, open storage, office and staff accommodation could be tolerated for a period of 3 years .
- 12.2 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 13.8.2024. The following approval conditions and advisory clauses are suggested for Members' reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicles exceeding 5.5 tonnes, including container tractor/trailers, as defined in the Road Traffic Ordinance are allowed to enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) all existing trees within the Site should be maintained satisfactorily at all times during the approval period;
- (e) the provision of 1.5m-wide setback along the south-eastern site boundary, as proposed by the applicant, within 6 months from the date of planning approval to the satisfaction of the District Lands Officer/North, Lands Department or of the Town Planning Board by 13.2.2022;

- (f) the submission 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 13.2.2022;
- (g) in relation to (f) above, the implementation of proposal for fire service installations 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 13.5.2022;
- (h) 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 13.2.2022;
- (i) in relation to (h) above, the implementation of drainage proposal ~~with~~ **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 13.5.2022;
- (j) if any of the above planning condition (a), (b), (c) or (d) is not complied with during the planning approval period, the approved hereby given shall cease to have effect and shall be revoked without further notice; and
- (k) if any of the above planning condition (e), (f), (g), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

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

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

The applied use is not in line with the planning intentions of the "OU(BTP)" zone and area reserved for 'Road' which are primarily for medium-density development to provide a mix of commercial, office, design, research and development uses for promoting high technology business development and for road development respectively. No strong planning justification has been given in the submission for a departure from the planning intentions, even on a temporary basis.

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 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.

13.3 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.

14. Attachment

Appendix I	Application form received on 1.9.2020
Appendix Ia	Planning statement
Appendix Ib	FI of 27.9.2020
Appendix Ic	FI received on 28.6.2021 and 29.6.2021
Appendix Id	FI of 6.7.2021
Appendices II-1 to II-7	Public Comments
Appendix III	Advisory Clauses
Drawings A-1 to A-4	Layout Plans
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4d	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**