

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/74

<u>Applicant</u>	:	Mr. HUI Man Wei
<u>Site</u>	:	Lot 4 (Part) in D.D. 95, Kwu Tung North, Sheung Shui, New Territories
<u>Site Area</u>	:	820 m ²
<u>Lease</u>	:	Block Governemnt Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
<u>Zonings</u>	:	Area shown as ‘Road’ (about 97.4%); “Green Belt” (“GB”) (about 1.3 %) “Government, Institution or Community” (“G/IC”) (about 1.3%)
<u>Application</u>	:	Temporary Open Storage of Metal Scaffold with Ancillary Rest Room and Tool Room 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 open storage of metal scaffold with ancillary rest room and tool room for a period of 3 years. The Site falls mainly within an area shown as ‘Road’ (97.4% of the Site) on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the covering Notes of the OZP, in any 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 submission, the applied use comprises 2 single-storey structures (2.6m high) with total area of 29.28m² for storage of tool and resting. No toilet will be provided on site. The estimated number of on-site staff is 2. The operation hours are from 8 a.m. to 5 p.m., Mondays to Saturdays, and no operations on Sundays and public holidays. Only vehicle below 5.5 tonnes will enter/exit the Site. The Site is accessible from Ho Sheung Heung Road via a local road. One vehicular trip is generated per day. A loading/unloading area is provided on site but without provision of any parking space. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received on 5.2.2021 (Appendix I)
 - (b) Supplementary information of 8.2.2021 (Appendix Ia)
 - (c) Further information (FI) dated 26.2.2021[#] (Appendix Ib)

(d) FI received on 1.6.2021[#]

(Appendix Ic)

[#]*exempted from publication requirement*

1.4 The application was originally scheduled for consideration by the Committee on 26.3.2021. On 26.3.2021, 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 1.6.2020, 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 the Application Form, supplementary information and FI at **Appendices I, Ia, Ib and Ic**. They are summarized as follows.

- (a) The applied use will not affect the land surface. The Site for temporary use will not frustrate the long-term planning intention of the land.
- (b) The applied use for the Site allows better use of land resource since it is not suitable for planting.
- (c) No adverse traffic impact is anticipated.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines in Satisfying the “Owner’s Consent/Notification” Requirements under Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to Sheung Shui District Rural Committee (SSDRC). Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is subject to an active planning enforcement action (No. E/NE-KTN/183) (**Plan A-2**) against unauthorized development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued on 28.9.2020 to the concerned notice recipients requiring discontinuation of the UD by 28.11.2020. As revealed by recent site inspection, the UD had not been discontinued upon expiry of the notice. The concerned notice recipients may be subject to prosecution action.

5. **Town Planning Board Guidelines**

On 27.3.2020, the Board promulgated the revised Town Planning Board Guidelines for Application for Open Storage (OS) and Port back-up Uses (PBU) (TPB PG-No. 13F). The Site falls within Kwu Tung North New Development Area (KTN NDA) which is covered by the revised Guidelines. Relevant extracts of the Guidelines are attached at **Appendix II**.

6. **Previous Applications**

There is no previous application involving the Site.

7. **Similar Applications**

There is no similar application within the same 'Road' area.

8. **The Site and Its Surrounding Areas** (Plans A-1 and A-2, aerial photo on **Plan A-3** and **Plans A-4a to A-4b**)

8.1 The Site:

- (a) is partly fenced off and mainly occupied by metal scaffolds and two containers for applied use; and
- (b) is accessible by a local road leading to Ho Sheung Heung Road.

8.2 The surrounding area is rural in nature with some open storage and domestic structures:

- (a) to its immediate west is fallow agricultural land; to its immediate southwest are domestic structures; to its further west and southwest are mainly hill slope covered with vegetation;
- (b) to its north and northwest are open storage yard, domestic structures and area covered by vegetation;
- (c) to its northeast and east are recyclable collection centre, vehicle repair workshop, domestic structures and area covered by vegetation; and
- (d) to its south are warehouse, parking of vehicles and refuse collection chamber, and to its southeast is a hill slope with vegetation.

9. **Planning Intention**

The area shown as 'Road' is intended for road use.

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 Comments of the District Lands Officer/North, Lands Department (DLO/N,

LandsD):

- (a) The Lot is an Old Schedule Agricultural Lot held under the Block Government Lease without any guarantee of right of access.
- (b) It is noted that the existing occupation boundary is different to the proposed site boundary under application. Also, unauthorized occupation of Government Land was found on both eastern side and northern side of the Lot and two unauthorized structures for the purpose of ancillary rest room and tool room were erected on the Lot and government Land respectively. Since the existing structure on the Lot is unacceptable under lease, his department reserves the right to take lease enforcement actions against the irregularities found. For the unauthorized occupation and erection of another existing structure on the Government Land, his department will also consider taking appropriate land control actions against the irregularities concerned.
- (c) If the planning application is granted, the owner of the Lot/occupier shall apply to his office for Short Term Wavier and Short Term Tenancy to cover the captioned temporary structures and the Government Land being occupied. Such applications will be considered by his department acting in the capacity as landlord at its sole discretion and there is no guarantee that such terms and conditions, including but not limited to payment to fees and premium, to be imposed by his department.

Future Development

10.1.2 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, the construction works for the Remaining Phase is scheduled for commencement in 2024.

Traffic

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

- (a) He is unable to conclude if the application is acceptable as the applicant has not addressed his following comments.
- (b) The applicant shall justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site.
- (c) The applicant shall advise the width of the vehicular access.

- (d) The vehicular access should be no less than 7.3m wide.
- (e) The applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis.
- (f) The applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site.
- (g) The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety.
- (h) The vehicular access between the Site and Ho Sheung Heung Road is not managed by Transport Department. The applicant should seek comment from the responsible party.

Environment

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

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

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

The Site is in an area where no public sewerage connection is available.

Landscape

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

- (a) He has no objection to the application from the landscape planning perspective.
- (b) Based on the aerial photo taken in 2016 and 2020, the Site is an area of Miscellaneous Rural Fringe landscape character surrounded by temporary structures, roads and scattered tree groups. Large area of open storage is observed at the south of the Site. In between the Site are “GB” zones with uplands and hillsides landscape character. The applied use is not entirely incompatible with the surrounding environment.

- (c) With reference to the site record dated 22.2.2021, a watercourse is recorded near the northern and western part of the Site and the Site is fenced off, paved and in operation. Except one dead tree, no existing tree is found within the Site. Significant adverse impact on existing landscape resources within the Site arising from the applied use is not anticipated.
- (d) His advisory comments are at **Appendix IV**.

Drainage

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

- (a) He has no objection to the application from the public drainage viewpoint.
- (b) 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 drainage impact to the adjacent area.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to Fire Service Installations being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSI is anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSI to his department for approval.
- (c) Having considered the nature of the open storage use, approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be included. To address this condition, the applicant should submit a valid fire certificate (FS 251) to his department for approval.
- (d) His advisory comments are at **Appendix IV**.

Agricultural and Nature Conservation

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

- (a) He has no comment on the application from nature conservation point of

view. According to the aerial photos, the Site has been paved and remained for similar condition for some years. “Destroy first, build later” should not be encouraged.

- (b) There is a watercourse located to the west of the Site. Should the application be approved, the applicant is advised to adopt preventative measures to avoid adverse impact of the watercourse.

Local Consultation

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

He has consulted the locals. The North District Council (NDC) member of the subject Constituency supports the application. The Resident Representative (RR) of Kwu Tung (North) raises objection mainly on the grounds of traffic congestion, and that the Site is not suitable for the applied use. The Chairman of SSDRC indicates has no comment.

10.2 The following Government departments have no adverse comment on/ no objection to the application. Their advisory comments, if any, are in **Appendix IV**:

- (a) Chief Building Surveyor/ New Territories West, Buildings Department;
- (b) Chief Estate Surveyor/Acquisition Section, LandsD;
- (c) Head of the Geotechnical Engineering Office, Civil Engineering and Development Department;
- (d) Commissioner of Police;
- (e) Chief Highways Engineer/ New Territories East, Highways Department;
- (f) Chief Engineer/ Construction, Water Supplies Department; and
- (g) Director of Electrical and Mechanical Services

11. Public Comments Received During Statutory Publication Period

On 16.2.2021, the application was published for public inspection. During the statutory publication period, a total of 3 public comments (**Appendices III-1 to III-3**) were received. World Wide Fund For Nature Hong Kong and one individual object to the application mainly on the grounds that the Site was paved and likely used for open storage since 2020, the approval of application would legitimise unauthorized use of land and promote “destroy first, develop later” attitudes; and the applied use would cause adverse impacts to the nearby residents on fire safety, living quality and environmental aspects. The remaining one submitted by an individual indicates no comment.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of metal scaffold with ancillary rest room and tool room for a period of 3 years. The Site falls mainly within an area shown as ‘Road’ on the approved KTN OZP No. S/KTN/2 (**Plan A-1**). The applied use is not in line with the planning intention of the ‘Road’ designation. According

to PM/N, CEDD, the Site falls within the Remaining Phase of KTN NDA project. PM/N, CEDD advised that the construction works for the Remaining Phase is scheduled for commencement in 2024 tentatively. Construction works of the First Phase of the Project commenced in 2019.

- 12.2 The applied use for open storage of metal scaffold is considered not entirely compatible with the surrounding rural land uses, which are mainly with domestic structures, some open storage yards and areas with vegetation.
- 12.3 The Site falls within the KTN NDA. For application in NDAs, the following considerations under the TPB PG-No. 13F are relevant:

For existing open storage and port back-up uses with previous planning approval(s) and/or permitted under the previous OZPs, sympathetic consideration may be given to the application until the concerned site is required for implementation of NDA development, provided that the relevant approval conditions, if any, have been complied with. Technical assessments, where appropriate, should be submitted to demonstrate that the continued operation of the current uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas and the concerns of the departments and local residents, if any, can be addressed through the implementation of the approval conditions.

In view of the impending implementation of NDAs, new open storage and port back-up uses are generally not encouraged to infiltrate into the NDAs. There is a general presumption against such uses at greenfield areas and/or at sites with land use compatibility issue, e.g. in close proximity to existing residential dwellings which may be subject to environmental nuisances caused by the open storage and port back-up uses. Applications will normally be rejected unless under exceptional circumstances.

- 12.4 There is no previous planning permission covering the Site. The current application is for a new open storage use. In view of above, the applied use is not in line with TPB PG-No. 13F in that implementation of the KTN NDA Project has commenced and the applied use is not covered by any previous planning approval. Thus, new open storage use is not encouraged to infiltrate into the NDA.
- 12.5 C for T comments that he is not able to conclude that the application is acceptable as the applicant has not addressed his comments on the application. Other relevant departments, including DEP, CE/MN, DSD and D of FS have no adverse comment on the application.
- 12.6 There is no similar application in the vicinity of the Site. The nearby open storage/brownfield uses are operating without planning approval. Approval of the application, even on a temporary basis, would set an undesirable precedent for similar application.
- 12.7 One of the 3 local views conveyed by DO(N) and 2 of the 3 public comments as stated in paragraphs 10.1.10 and 11 respectively object to the application. The planning considerations and assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the applied use is not in line with the planning intention of the area reserved for 'Road' which is primarily intended for road use. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applied open storage use does not comply with the Town Planning Board Guidelines No.13F for Application for Open Storage and Port Back-up Uses in that there is no previous approval for open storage granted for the Site; and
 - (c) the applicant fails to demonstrate in the submission that the applied use would not result in adverse traffic impact.
- 13.2 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 3 years until 9.7.2024. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. to 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicles of 5.5 tonnes or above 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;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the submission of swept path analysis for the Site within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.1.2022;
- (f) the provision of vehicular access within 6 months from the dated of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.1.2022 ;
- (g) the submission of a proposal on traffic improvement measures to enhance pedestrian safety within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.1.2022;

- (h) in relation to (g) above, the implementation of the proposal on traffic improvement measures within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by **9.4.2022**.
- (i) the provision of fire extinguisher(s) and a valid fire certificate (FS 251) within 6 weeks from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **20.8.2021**;
- (j) the submission of fire services installations proposal 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 **9.1.2022**;
- (k) in relation to (j) above, the provision of 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 **9.4.2022**;
- (l) the submission of drainage proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.1.2022**;
- (m) in relation to (l) above, the implementation of drainage proposal within 9 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **9.4.2022**;
- (n) if any of the above planning condition (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 on the same date be revoked without further notice; and
- (o) if any of the above planning condition (e), (f), (g), (h), (i), (j), (k), (l) or (m) is
- (p) 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 IV**

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form received on 5.2.2021
Appendix Ia	Supplementary information of 8.2.2021
Appendix Ib	FI dated 26.2.2021
Appendix Ic	FI received on 1.6.2021
Appendix II	Relevant extract of TPB PG-No. 13F
Appendices III-1 to III-3	Public Comments
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JULY 2021**