

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/78

- Applicant** : Mr. TO Ho Sun Eddy represented by Mr. WONG Sun Wo William
- Site** : Lots 249, 252(Part), 253, 276 and 280 in D.D. 95, Kwu Tung North, Sheung Shui, New Territories
- Site Area** : 8,110 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/2
- Zonings** : “Residential (Group A)2” (“R(A)2”) (About 47%)
“Residential (Group A)3” (“R(A)3”) (About 11%)
Area shown as ‘Road’ (About 42%)
- Application** : Temporary Open Storage of Construction Material and Machine 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 construction materials and machine for a period of 3 years. The Site falls partly within areas zoned “R(A)2” and “R(A)3” (total 58%) and partly within an area shown as ‘Road’ (42%) on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan A-1**). According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. In addition, in ‘Road’ area, the applied use requires permission from the Board. Part of the Site is currently hard-paved and used for the applied use without planning permission.
- 1.2 According to the submission, the Site comprises 3 separated areas with a total land area of about 8,110m². Areas A and B are for storage of construction material and Area C is for storage of machine (**Drawing A-1**), with a total of 3 private car parking spaces, 2 medium goods vehicle parking spaces and 3 medium goods vehicle loading/unloading spaces. The Site is accessible from Ma Tso Lung Road via a local track. The estimated number of staff is 3. The operation hours are from 8 a.m. to 5 p.m. from Mondays to Saturdays, and no operation on Sundays and public holidays. The layout plan, landscape proposal and drainage proposal submitted by the applicant

are at **Drawings A-1, A-2 and A-3** respectively.

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

- (a) Application form received on 15.6.2021 with replacement page received on 17.6.2021 (Appendix I)
- (b) FI of 14.7.2021, 16.7.2021 and 20.7.2021[#] (Appendix Ia)
#exempted from publication requirement

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I and Ia**. They are summarized as follows.

- (a) The Site originally fell within “Open Storage” (“OS”) zone before the amendment of the OZP for Kwu Tung North New Development Area (KTN NDA).
- (b) The development will not cause adverse traffic impact to Ma Tso Lung Road, Ho Sheung Heung Road and Castle Peak Road.

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 sending notice to “current land owner” by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is not subject to any active enforcement 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 KTN NDA which is covered by the revised Guidelines. Relevant extracts of the Guidelines are attached at **Appendix II**.

6. **Previous Application**

The Site involves a previous application No. A/KTN/54 (**Plan A-1**) submitted by Civil Engineering and Development Department (CEDD) for proposed minor relaxation of maximum plot ratio and/or building height restrictions of 8 sites in Fanling North and KTN NDA, which was approved by the Committee on 16.11.2018. As this application concerns about the future permanent development in NDA and is not relevant to the current

application for temporary use, its details are therefore not covered in the paper.

7. **Similar Application**

- 7.1 There is a similar application No. A/KTN/35 within the same “R(A)2” zone for temporary recycle collection centre (metals), open storage of scrap metal and goods vehicle assembly with ancillary storage of tools for a period of 3 years. Details of the application are summarized at **Appendix III** and its location is shown on **Plan A-1**.
- 7.2 The application was rejected by the Committee in 2017 mainly on the grounds that temporary use under application is not in line with the planning intentions of the “Open Space” (“O”) and “R(A)2” zone; the applicant fails to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the residents nearby and the surrounding areas; and the approval of the application will set an undesirable precedent. The cumulative effect of approving such applications would result in a general degradation of the environment of the 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) comprises 3 separated areas. Areas A and C are currently hard-paved and used for the applied use without valid planning permission while Area B is covered by vegetation; and
- (b) is accessible from Ma Tso Lung Road via a local track.

8.2 The surrounding areas are predominantly rural in nature with the following characteristics:

- (a) to its north are domestic structures, unused/vacant land and pig shed;
- (b) to its east and northeast are mainly active and fallow agricultural land and domestic structures;
- (c) to its immediate south are domestic structures and parking of vehicles & trailers; to its further south are domestic structures and metal workshops; and
- (d) to its west and northwest are domestic structures, vehicle repairing workshop and vehicle workshop.

9. **Planning Intention**

- 9.1 The planning intention of the “R(A)” zone is primarily for high-density residential development. 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.

9.2 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 lots are Old Schedule Agricultural Lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access to the Site for the applied use.
- (b) The existing structures erected on the application lots without prior approval from his office are not acceptable under lease concerned. His office reserves the right to take necessary lease enforcement actions against the aforesaid structures.
- (c) North-western portion of the Site is in close proximity to a proposed Simplified Temporary Land Allocation (STLA) No. GLA-TDN to CEDD.
- (d) If the planning application is granted, the owner of the lot concerned shall apply to his office for Short Term Wavier (STW) covering all the actual occupation area and the structures concerned. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date 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 waiver fee and administrative fee as considered appropriate by his office.

Future Development

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

The Site falls within the KTN NDA Remaining Phase. 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. As such, the period of the Site should be ended on or before end 2023.

Traffic

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

- (a) He has no objection to the proposal from traffic engineering point of view.
- (b) The vehicular access between the Site and Ma Tso Lung Road is not managed by his department. The applicant should seek comment from the responsible party.

10.1.4 Comments of the Chief Highway Engineer/New Territories East, Highways Department:

The local track branching from Ma Tso Lung Road leading to the Site is not managed by his Regional Office.

Environment

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

- (a) He does not support the application since there are sensitive receivers in the vicinity (some residential dwellings are just next to the Site) and the applied use involves the use of heavy vehicles and environmental nuisance is expected (**Plan A-2**).
- (b) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the 'Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses' issued by DEP to minimise any potential environmental nuisances.
- (c) There are eight environmental compliant cases received in the past 3 years concerning muddy water discharged, odour issue, landfilling and noise nuisances from the Site. All of them were found unsubstantiated.

10.1.6 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

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

The Site falls within non-landscape sensitive zonings, and no significant landscape impact is anticipated.

Drainage

10.1.8 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.
- (c) His advisory comments are at **Appendix V**.

Fire Safety

10.1.9 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 (FSI) being provided to his satisfaction. Relevant layout plans incorporated with the proposed FSI should be submitted to his department for approval.
- (b) 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.
- (c) His advisory comments are at **Appendix V**.

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 and the Chairman of Sheung Shui District Rural Committee indicate 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 V**:

- (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; and
- (e) Chief Engineer/ Construction, Water Supplies Department.

11. Public Comments Received During Statutory Publication Period

On 25.6.2021, the application was published for public inspection. During the statutory publication period, a total of 6 public comments were received. Three of which (**Appendices IV-1 to 3**) submitted by San Tin Rural Committee, Kwu Tung Residents Committee and an individual support the application mainly on the grounds that the applied use will not cause adverse traffic and environmental impacts; and the development will create job opportunities for the local residents. One commenter suggests that the operation hours should start later from 8:30a.m. Two comments (**Appendices IV-4 to 5**) from individuals raise objection mainly for reasons that the development will cause adverse traffic, sewerage, environmental, fire risk and safety impacts to the local residents. The remaining one (**Appendix IV-6**) from an individual indicates no comment.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of construction material and machine for a period of 3 years. The Site, comprising 3 separated areas, partly falls within “R(A)2” and “R(A)3” zones (total 58% of the Site) and partly within an area shown as ‘Road’ (42%) on the approved OZP No. S/KTN/2 (**Plan A-1**). The applied use is not in line with the planning intentions of the “R(A)” zone and ‘Road’ designation. According to PM/N, CEDD, the Site falls within the KTN NDA Remaining Phase. Implementation of the KTN NDA First Phase has commenced in 2019. CEDD aims to commence the construction works for the Remaining Phase in 2024.

12.2 The applied use for open storage of construction material and machine is considered not compatible with the surrounding land uses, which are mainly with domestic structures, active and fallow agricultural land with some vehicle parks and workshops. Some domestic structures are just next to the Site.

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 No planning permission has been given to open storage or similar uses on 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 DEP does not support the application as there are sensitive receivers next to the Site and the applied use involves the use of heavy vehicles, and environmental nuisance is expected. Other Relevant Government departments consulted, including C for T, CE/MN, DSD, D of FS and CTP/UD&L, PlanD have no adverse comment on the application.
- 12.6 There is a similar application in the vicinity of the Site. Application No. A/KTN/35 for temporary recycle collection centre, open storage and goods vehicle assembly with ancillary storage of tools was rejected by the Committee in 2017 as stated in paragraph 7. The considerations for the rejected application are generally similar to those of the subject application.
- 12.7 Six public comments are received with supportive and objecting views as stated in paragraph 11. In this regards, the relevant departmental comments as well as 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 intentions of the “R(A)” zone which is primarily for high-density residential development and 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 intentions, even on a temporary basis;
 - (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 new open storage use is not encouraged to infiltrate into the New Development Area; and
 - (c) the applicant fails to demonstrate in the submission that the applied use would not result in adverse environmental impacts to the nearby residents.
- 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 13.8.2024. 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) the provision of fire extinguisher(s) 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 **24.9.2021**;
- (d) 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 **13.2.2022**;
- (e) in relation to (d) 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 **13.5.2022**;
- (f) 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 **13.2.2022**;
- (g) in relation to (f) 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 **13.5.2022**;
- (h) if any of the above planning condition (a) or (b) 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
- (i) if any of the above planning condition (c), (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

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

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 15.6.2021 with replacement page received on 17.6.2021
Appendix Ia	FI of 14.7.2021, 16.7.2021 and 20.7.2021
Appendix II	Relevant extract of TPB PG-No. 13F
Appendix III	Similar Application
Appendices IV-1 to IV-6	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Landscape Proposal
Drawing A-3	Drainage Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**