

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/KTN/96

<u>Applicant</u>	:	KWOK Bing Kwan represented by Metro Planning & Development Company Limited
<u>Site</u>	:	Lots 334 S.D (Part), 334 S.E (Part) and 334 S.F (Part) in D.D. 95, Ho Sheung Heung, Sheung Shui, New Territories
<u>Site Area</u>	:	About 2,240m ²
<u>Land Status</u>	:	Old Schedule Lot held under the Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kwu Tung North Outline Zoning Plan (KTN OZP) No. S/KTN/2 at the time of application Draft KTN OZP No. S/KTN/3 currently in force
<u>Zoning</u>	:	“Open Space” (“O”) (about 78%) and “Residential (Group A) 2” (“R(A)2”) (about 22%) in both approved KTN OZP No. S/KTN/2 and draft KTN OZP No. S/KTN/3
<u>Application</u>	:	Temporary Open Storage of Recyclable Materials 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 recyclable materials for a period of 3 years. The Site falls mainly within “O” zone and partly within “R(A)2” zone on the draft Kwu Tung North Outline Zoning Plan (OZP) No. S/KTN/3. According to the Notes of the OZP, temporary use not exceeding a period of 3 years in “O” and “R(A)2” zones requires permission of the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied use and ancillary workshop without valid planning permission (**Plan A-2**).
- 1.2 The Site is part of 6 previous applications for storage or other temporary uses. The last application No. A/KTN/39 for temporary recyclable collection centre (metals, papers and plastics) for a period of 3 years was rejected on 10.11.2017 (**Plan A-1**).

1.3 According to the applicant's submission, the applied use comprises 1 structure with a total floor area of not more than 820m² and maximum building height of not more than 6.5m (2-storey) for site office, toilet, and an open shed for storage. No workshop activities will be carried out at the Site. Two private car parking spaces and a heavy goods vehicle loading/unloading bay are provided. The Site is accessible from its south via a local track from Ma Tso Lung Road (**Plan A-2**). The operation hour is from 9:00 a.m. to 6:00 p.m., from Mondays to Saturdays, and no operation on Sundays and public holidays. The submitted layout plan is at **Drawing A-1**. The vehicular access plan, proposed drainage plan, estimated traffic generation submitted by the applicant are at **Appendix I**.

1.4 In support of the application, the applicant has submitted the following document:

Application Form with attachments received on 26.9.2022	(Appendix I)
Further Information (FI) dated 11.11.2022 [#]	(Appendix Ia)
Further Information (FI) dated 17.11.2022 [#]	(Appendix Ib)
[#] <i>accepted and exempted from publication</i>	

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form at **Appendix I** as summarized below:

- (a) The Site is subject to previous planning permission No. A/NE-KTN/19, which is similar in nature with the applied use.
- (b) Sympathetic consideration should be given according to The Town Planning Board (TPB) Guidelines for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' (TPB PG-No. 13F).
- (c) The applied development in temporary nature would not jeopardize the planning intention of current zonings and is not incompatible with the surrounding environment.
- (d) No container tractors/ trailers, as defined in the Road Traffic Ordinance, will access the Site.
- (e) Insignificant drainage, environmental and noise impact, and minimal traffic impact are anticipated.
- (f) Land for open storage in Kwu Tung is in shortage.
- (g) The recyclable materials to be stored at the Site includes paper, plastic, and metal.

3. **Compliance with the "Owner's Consent/Notification" Requirements**

The applicant is not the current land owner but has complied with the requirements as set out in the Town Planning Board (TPB) Guidelines on Satisfying the "Owner's

Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by posting site notice at the Site, and sending notice to Sheung Shui District Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13F) is relevant to the application. Relevant extracts of the Guidelines are at **Appendix II**.

5. Background

- 5.1 The Site is subject to planning enforcement action (No. E/NE-KTN/202) (Plan A-2) against unauthorized development (UD) of workshop use. Enforcement Notice (EN) was issued on 12.8.2022 requiring discontinuation of the UD. Site inspection after the expiry of EN on 12.10.2022 revealed that the UD was not discontinued, prosecution actions may be taken.
- 5.2 The Site and its surrounding area was zoned “Open Storage” (“OS”) before the area was rezoned to the current “O” and “R(A)2” zones under the KTN New Development Area (NDA) in 2013. The area has generally been being used for open storage or other similar uses.

6. Previous Applications

- 6.1 The Site involves 6 previous applications (A/DPA/NE-KTN/16, A/NE-KTN/19, 110, 113, A/KTN/35 and 39) for storage or other temporary uses. The former 4 applications were considered under the previous “OS” zone¹ while the last 2 applications No. A/KTN/35 and 39 are under the current zonings of “O” and “R(A)2”. Application details are summarized at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 The Site is also a part of 2 approved applications involving a number of planned housing sites in the KTN NDA for minor relaxation of plot ratio and/ or building height restrictions. They are not relevant to the applied development and are not mentioned in this paper.
- 6.3 Applications No. A/DPA/NE-KTN/16 and A/NE-KTN/19 both for storage and maintenance of general building materials, construction equipment, plant and machinery were approved on 2.7.1993 and 13.1.1995 respectively on similar grounds that the proposed development was generally in line with the planning intention of the “OS” zone at that time; and the proposed development was not incompatible with the surrounding land uses. Application No. A/NE-KTN/110 for temporary workshop for recycling and temporary open storage of containers

¹ Under the previous “OS” zoning, open storage use was always permitted, except for those specified in Column 2, e.g., storage of cement/ sand, chemical products/ dangerous goods, scrap metal, vehicles for stripping/ breaking or repair, which required planning permission.

for delivery of recycling materials and application No. A/NE-KTN/113 for temporary plastic recycling centre were rejected on 10.9.2004 and 20.5.2005 respectively mainly on the grounds of insufficient information in the submission to demonstrate no adverse noise, water quality and traffic impacts on the surrounding areas.

- 6.4 Applications No. A/KTN/35 and A/KTN/39 were considered under the current zonings. Application No. A/KTN/35 for temporary recyclable collection centre (metals), open storage of scrap metal and goods vehicle assembly with ancillary storage of tools and application No. A/KTN/39 for temporary recyclable collection centre (metals, papers and plastics) were rejected in 2017 mainly on similar grounds of adverse traffic and environmental impacts on the residents nearby and the surrounding areas; setting of an undesirable precedent; and not in line with the planning intentions of the “O” and “R(A)2” zones. Both Transport department (TD) and Environmental Protection Department (EPD) did not support the applications. All the 4 rejected applications involve workshop activities. Compared with the rejected cases, the current application is proposed for open storage use without workshop activities.

7. **Similar Application**

- 7.1 There is one similar application No. A/KTN/78 for temporary open storage of construction material and machine for a period of 3 years, which was rejected on 19.11.2021 mainly on the ground that the applied open storage use did not comply with the TPB PG-No. 13F in that there was no previous approval for open storage granted for the site and new open storage use was not encouraged to infiltrate into the NDA. Besides, the application was not in line with the planning intentions of the “R(A)” zone and area reserved for ‘Road’ and the applicant failed to demonstrate that the applied use would not result in adverse environmental impacts to the nearby residents.
- 7.2 Details of the similar application are summarized at **Appendix IV** and the location is shown on **Plan A-1**. Besides, there are two other similar applications No. A/KTN/94 and A/KTN/95 (**Plan A-2**) for open storage, which are to be considered by the Committee at this meeting.

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

- 8.1 The Site is:
- (a) currently used for the applied use and ancillary workshop without valid planning permission;
 - (b) formed and fenced off; and
 - (c) accessible via a local track connecting Ma Tso Lung Road.
- 8.2 The surrounding areas have the following characteristics:

- (a) to the north are some domestic structures, unused land, open storage yards and parking of lorry;
- (b) to the east are some domestic structures, active agricultural land, and vacant land;
- (c) to the west and south close to Ma Tso Lung Road are open storage yards, warehouses, workshops, domestic structures; and
- (d) to the further southeast is a pig shed.

9. Planning Intention

- 9.1 The planning intention of the “O” zone is intended primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.
- 9.2 The planning intention of the “R(A)” zone is intended 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.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraph 10.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices V and VI** respectively.
- 10.2 The following government departments do not support/ have reservations/ have concerns on the application.

Land Administration

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

- (a) The Site comprises Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government. There is no guarantee that any adjoining Government land shall be allowed for access to the Site.
- (b) He has reservation on the application since there are unauthorized building works on the private lots which are subject to lease enforcement actions according to case priority. The lot owners

should rectify/ regularize the lease breaches as demanded by his department.

- (c) According to records at the Land Registry, statutory orders under the Building Ordinance were registered against the application lots.
- (d) His advisory comments are at **Appendix VI**.

Future Development

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

- (a) The Site falls within the area of the KTN NDA Remaining Phase.
- (b) The construction works for the Remaining Phase of KTN NDA is aimed to commence in 2024 and the period of application should be ended on or before end 2023.

Environment

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

- (a) He does not support the application as the applied use will attract heavy vehicle traffic and there are residential premises within 100m of the Site. Environmental nuisance to nearby residents is anticipated.
- (b) 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.
- (c) There were 6 complaints in the past three years on noise nuisance generated from compressing waste metal materials with machines in the Site, of which 5 were non-substantial and 1 was substantiated.

11. Public Comments Received During Statutory Publication Period

The application was published for public inspection. During the statutory public inspection period, a total of 2 public comments (**Appendix VII**) from individuals were received. 1 commenter indicates no comment. Another commenter raises concerns on the environmental impact and implications to the future housing developments on the Site.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of recyclable materials for a period of 3 years on the Site, which mainly falls within “O” zone and partly within “R(A)2” zone. The applied use is not in line with the planning intention of the above zonings, which are intended primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public; and for high-density residential developments respectively. The Site falls within the area of the Remaining Phase of the KTN NDA Project, and the construction works for which 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.

12.2 The Site and its surrounding area was zoned “Open Storage” (“OS”) before the area was rezoned to the current “O” and “R(A)2” zones under the KTN NDA in 2013. The area has generally been being used for open storage or other similar uses. The applied use is not incompatible with the surrounding land uses which comprise mainly open storage/storage yards, vehicle parks, workshops, and active agricultural land with scattered domestic structures (**Plan A-2**).

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.

12.4 Although there was no previous planning approval given for the Site under the present “O” and “R(A)2” zonings, the Site was twice approved for open storage use before the KTN OZP was in force when the Site and the surroundings were zoned “OS”. Sympathetic consideration may be given to the current application for open storage use until the implementation of the NDA development.

12.5 DEP does not support the application as the applied use involves traffic of heavy vehicles which would generate environmental nuisance to the nearby residents. There was 1 substantiated complaint about the Site on noise nuisance generated from compressing waste metal materials with machines. The applicant has clarified that no workshop activities including compressing waste metal materials will be carried out at the Site (**Appendix Ib**). While the current application is applied for open storage without workshop use, to address DEP’s concern and mitigate any potential environmental impacts, approval conditions restricting operation hours and prohibiting workshop activity on the Site are recommended in paragraph 13.2 below. Should the application be approved, the applicant will

be 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 minimise the potential environmental impacts on the adjacent area. Other concerned departments, including Commissioner for Transport, Director of Drainage Services, Director of Fire Services and Chief Town Planner/Urban Design and Landscape, Planning Department have no adverse comments on the application. Approval conditions suggested by concerned departments are recommended in paragraphs 13.2 below. The applicant indicates that he will liaise with DLO/N, LandsD to rectify/regularize the lease breaches.

- 12.6 The Site involves 6 previous applications as stated in paragraph 6. Two applications (A/DPA/NE-KTN/16 and A/NE-KTN/19) for storage use were approved in 1993 and 1995. Four applications (A/NE-KTN/110, A/NE-KTN/113, A/KTN/35 and A/KTN/39) for workshop or involving workshop use were rejected in 2004, 2005, 2015, and 2017 respectively mainly on the grounds of insufficient information in the submission to demonstrate no adverse noise, traffic impacts and/ or water quality on the surrounding areas. There is a similar application No. A/KTN/78 rejected in 2021 mainly on the ground of no previous approval for open storage granted for the Site. The current application is different from the rejected applications in that it is for open storage without workshop activities.
- 12.7 There are 2 public comments (as stated in paragraphs 11). Relevant government departments’ comments and planning considerations 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 in paragraph 11, the Planning Department considers that the development under application could be tolerated for a period of 3 years.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 25.11.2025. The following conditions of approval and advisory clauses are also 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 operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no workshop activity is allowed on the Site at any time, as proposed by the applicant, during the planning approval period;
- (d) 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 **6.1.2023**;

- (e) 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 **25.5.2023**;
- (f) in relation to (e) 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 **25.8.2023**;
- (g) 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 **25.5.2023**;
- (h) in relation to (g) above, the implementation of drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **25.8.2023**;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) if any of the above planning conditions (a), (b), (c) or (i) 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 conditions (d), (e), (f), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

The recommended advisory clauses are attached at **Appendix VI**.

13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (a) the applied use is not in line with the planning intentions of the "O" and "R(A)" zones which are primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public; and for high-density residential development respectively. 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 applicant fails to demonstrate in the submission that the applied use would not result in adverse environmental impacts to the nearby residents.

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 approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form with attachments received on 26.9.2022
Appendix Ia	FI received on 11.11.2022
Appendix Ib	FI received on 17.11.2022
Appendix II	Relevant extract of TPB PG-No. 13F
Appendix III	Previous applications
Appendix IV	Similar application
Appendix V	Government departments' general comments
Appendix VI	Recommended advisory clauses
Appendix VII	Public comments
Drawing A-1	Proposed layout plan
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
NOVEMBER 2022**