

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-HLH/68

- Applicants** : Rich Warehouse Limited, Rich Loy Group Limited and Rich Loy (China) Development Limited represented by Metro Planning & Development Company Limited
- Site** : Lots 171 (Part), 172 (Part), 176 (Part) & 177 (Part) in D.D. 87, Ta Kwu Ling, New Territories
- Site Area** : About 6,800 m²
- Lease** : - Block Government Lease (demised for agricultural use)
- One of the lots (i.e. Lot No. 171 in D.D. 87) is covered by Modification of Tenancy No. 37279
- Plan** : Approved Hung Lung Hang Outline Zoning Plan (OZP) No. S/NE-HLH/11
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Open Storage and Warehouse of Construction Machinery and Construction Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for temporary open storage and warehouse of construction machinery and construction materials for a period of three years. The Site falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within the “AGR” zone requires planning permission from the Town Planning Board (the Board). The Site is formed and largely vacant in the northern portion, while the southern portion is used for open storage of construction machinery and construction materials without planning permission.
- 1.2 According to the applicants, the Site will be divided into the northern and southern portions both for open storage and warehouse uses. The development will involve six 1 to 2-storey structures with a total floor area of about 660m² for storage of construction machinery and materials, site offices and toilet use. The remaining area (about 6,220m²) is for open storage, and the centre of the Site near the ingress/egress will be manoeuvring space. Two loading and unloading bays (11m x 3.5m) for medium or heavy goods vehicles and two private car parking spaces (5m x 2.5m) will be provided within the Site (**Drawing A-1**). The estimated maximum vehicular trips will be about four. The Site is accessible via a local track leading from Ping Che Road (**Plan A-2**). The operation hours

of the Site are between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays only. There will be no operation on Sundays and public holidays.

1.3 The Site is the subject of a previous application No. A/NE-HLH/51 submitted by a different applicant for the same use which was approved by the Rural and New Town Planning Committee (the Committee) on 27.8.2021. Details of the previous application are set out in paragraph 6.2 below.

1.4 In support of the application, the applicants has submitted the following documents:

- (a) Application Form with attachments received on 13.10.2023 (**Appendix I**)
- (b) Further Information (FI) received on 6.2.2024[^] (**Appendix Ia**)
- (c) FI received on 6.4.2024 and 8.4.2024[^] (**Appendix Ib**)
- (d) FI received on 3.5.2024[^] (**Appendix Ic**)
- (e) FI received on 7.5.2024[^] (**Appendix Id**)

[^] *accepted and exempted from the publication and recounting requirements*

1.5 On 8.12.2023 and 5.4.2024, the Rural and New Town Planning Committee (the Committee) agreed to the applicants' request to defer making a decision on the application each for two months.

2. Justifications from the Applicants

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

- (a) the Site is in close proximity to other open storage yards. The temporary use is intended to meet the pressing demand for warehouse and open storage use in Ta Kwu Ling;
- (b) there is adequate circulation path near the ingress/egress for the manoeuvring of medium/heavy goods vehicles;
- (c) the Site is classified as "Category 2" Area according to Town Planning Board Guidelines for application for open storage and port back-up uses under section 16 of Town Planning Ordinance (TPB PG-No. 13G);
- (d) the temporary use will induce minimal traffic impact and insignificant noise and environmental impacts on the surroundings;
- (e) the Site is subject of a previous approval for the same use (Application No. A/NE-HLH/51); and
- (f) no container tractor/trailer and workshop activity will be allowed at the Site.

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

The applicants are the sole "current land owners" of the Site. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guideline

Town Planning Board Guidelines No. 13G for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No.13G) promulgated on 14.4.2023 is relevant to this application. The Site falls within Category 2 area under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is subject to planning enforcement actions (No. E/NE-HLH/148 and E/NE-HLH/149) against unauthorized developments (UDs) involving storage use (including deposit of containers) (**Plan A-2**). *For E/NE-HLH/148, enforcement notice (EN) was issued on 28.8.2023 requiring discontinuation of the UD. As site inspection on 5.2.2024 revealed that the UD still continued has not been discontinued upon the expiry of the EN, the Planning Authority (PA) is considering to instigate prosecution action. For E/NE-HLH/149, While the Reinstatement Notice has been issued under enforcement case no. E/NE-HLH/149 was issued on 4.3.2024 requiring the reinstatement of the concerned land. If the RN is not complied with, the PA will consider to instigate* Therefore, the Planning Authority is currently monitoring the Site closely and prosecution action may be instigated.

6. Previous Applications

- 6.1 The Site, in part or wholly, are the subject of three previous applications submitted by different applicants (**Plan A-1**). Among them, two applications (No. A/NE-HLH/6 and 20) for proposed temporary open storage of construction equipment and proposed temporary open storage of construction machinery and construction materials with ancillary site office were rejected by the Committee on 17.3.2006 and 6.9.2013 respectively. These applications were rejected mainly on the grounds that the proposed uses were not in line with the planning intention of the “AGR” zone, not complying with the then TPB Guidelines for Application for Open Storage and Port Back-up Uses in that no information had been submitted to demonstrate that the uses would not generate adverse traffic, landscape and environmental impacts on the surrounding areas.
- 6.2 Application No. A/NE-HLH/51 for the same use was approved on 27.8.2021 by the Committee after the Site was reclassified from Category 3 to Category 2 under the then TPB PG-No.13F. The application generally complied with TPB PG-No. 13F in that no major adverse departmental comments were received on the application; and the concerns of the relevant government departments could be addressed through implementation of approval conditions. However, the application was revoked on 27.5.2023 due to non-compliance with approval conditions in relation to provision of drainage facilities and fire services installation, and implementation of environmental mitigation measures. Compared with the previously approved application, the current proposal has increased the uncovered area from 4,486m² to 6,220m² for open storage and manoeuvring space and the number of structures from 1 to 6 and reduced the GFA from 2,450m² to 660m², while the site area, number of vehicle parking spaces and loading/unloading bays remain the same. The layout of the applied use is generally similar to the approved scheme under application No. A/NE-HLH/51.
- 6.2 Details of the previous applications are summarized at **Appendix III** and the locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 There are 15 similar applications involving nine sites for temporary open storage and/or warehouse uses within the same “AGR” zone in the vicinity of the Site in the Hung Lung Hang area in the past five years (**Plan A-1**). Six of them (No. A/NE-HLH/38, 39, 43, 44, 46 and 48) were rejected by the Committee between January and December 2020 mainly for reasons of not complying with the then TPB PG-No. 13E/13F in that no previous planning approvals were granted to the sites concerned; adverse departmental comments on the applications; insufficient information to demonstrate that the temporary uses would not generate adverse environmental, traffic and landscape impacts on the surrounding areas; and setting of undesirable precedent for other similar applications within the “AGR” zone.
- 7.2 The remaining nine applications (No. A/NE-HLH/54, 55, 59, 60, 61, 64, 66, 70 and 71) were approved with conditions between August 2022 and May 2024 after the relevant sites were reclassified from Category 3 to Category 2 under TPB PG-No.13F/13G. The applications generally complied with TPB PG-No. 13F/13G in that no major adverse departmental comments were received on the applications; and the concerns of the relevant government departments could be addressed through implementation of approval conditions.
- 7.3 Details of the similar applications are summarized at **Appendix IV** and the locations are shown on **Plan A-1**.

8. The Site and Its Surrounding Area (Plans A-1 to 4b)

- 8.1 The Site is:
- (a) fenced off and formed;
 - (b) largely vacant in the northern portion of the Site, while the southern portion is used for open storage of construction materials and machinery without planning permission; and
 - (c) accessible from Ping Che Road via a local track.
- 8.2 The surrounding areas are of rural inland plains landscape character comprising open storage, warehouse, temporary structures, tree clusters, vegetated areas and farmlands. Domestic structures can be found in the vicinity with the nearest located at about 5m to the north of the Site (**Plan A-2**).

9. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

- 10.1 Apart from the government departments as set out in paragraph 10.2 below, other

government departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided at **Appendices V** and **VI** respectively.

10.2 The following government departments do not support/have comments 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 Lots held under the Block Government Lease. All of them contain the restriction that no structures are allowed to be erected without the prior approval of the Government. No right of access via Government land (GL) is granted to the Site;
- (b) there are unauthorized structures erected on the Site. The lots owner(s) should immediately rectify the lease breaches and DLO/N of LandsD reserves the rights to take necessary lease enforcement action against the lease breaches without separate notice;
- (c) Lot No. 171 in D.D. 87 is covered by Modification of Tenancy (MOT) No. 37279 for erection of temporary structures. DLO/N of LandsD reserves the rights to take enforcement action for irregularities and cancel the MOT as appropriate; and
- (d) should planning approval be given to the subject planning application, the lot owners will need to apply to her office for a Short Term Waiver (STW) to permit the structure(s) erected/to be erected on site. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. The application will be considered by LandsD acting in the capacity of the lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, its commencement date would be backdated to the first date of the occupation and it will be subject to such terms and conditions, including among others the payment of fee and administrative fee, as may be imposed by the LandsD.

Agriculture

10.2.2 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- the Site falls within the “AGR” zone and is generally occupied by some structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from an agricultural perspective.

Environment

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

- (a) he does not support the application as there are sensitive users in the vicinity of the Site (the nearest domestic structure being less than 100m from the Site) (**Plan A-2**), and environmental nuisance is expected as the applied use involves use of heavy goods vehicles;
- (b) there is one substantive environmental complaint about dust emission pertaining to the Site received in the past three years. A legal notice under Air Pollution Control Ordinance was served on the site operator requiring the operator to take measures to ensure the processing of metal stock to be fully covered or fully enclosed to prevent dust emission. As the operator was found not complying with the legal notice, prosecution was initiated and the operator was eventually convicted with a fine;
- (c) the applicants are advised to comply with all environmental protection/pollution ordinances, in particular Noise Control Ordinance, and to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites and Temporary Uses”; and
- (d) since there is no mentioning of sewage treatment facilities proposed for the toilets proposed within the Site, please also remind the applicants to provide adequate supporting infrastructure/ facilities for proper collection, treatment and disposal of waste/ wastewater generated from the applied use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD’s Practice Note for Professional Person (ProPECC) PN 1/23 “Drainage Plans subject to Comment by the EPD” and located at least 20m from any nearby watercourse. Percolation test requirements should be certified by an authorised person.

11. Public Comments Received During Statutory Publication Period

On 20.10.2023, the application was published for public inspection. During the first three weeks of statutory public inspection period, three public comments were received. A Member of North District Council indicates no comment on the application (**Appendix VII**). An individual raises objection to the application mainly on the grounds that the applied temporary use is not in line with the planning intention of “AGR” zone and the previous approval has been revoked due to non-compliance with approval conditions. The remaining comment from Kadoorie Farm & Botanic Garden Corporation questions whether the Site currently involves in any enforcement action.

12. Planning Considerations and Assessments

12.1 The application is for a temporary warehouse and open storage of construction machinery and construction materials for a period of three years at the Site zoned “AGR” (**Plan A-1**). The applied use is not in line with the planning intention of the “AGR” zone as detailed in paragraph 9. DAFC does not support the application from the agricultural perspective as the Site possesses potential for agricultural rehabilitation. Nonetheless,

taking into account the planning assessment below, the applied use on a temporary basis of three years could be tolerated.

- 12.2 The Site falls within Category 2 areas under the TPB PG-No. 13F. The following considerations in the Guidelines are relevant:

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

- 12.3 The Site is located in an area of rural inland plains landscape character comprising open storage, warehouse, temporary structures, tree clusters, vegetated areas and farmlands (**Plans A-2 and A-3**). The Site is partly vacant with storage of construction machinery and materials at the southern portion of the Site. The applied use is considered not entirely incompatible with the surrounding environment. Chief Town Planner/Urban Design & Landscape, Planning Department has no objection to the application from the landscape planning perspective since significant adverse impacts on the landscape character and existing landscape resources within the Site are not anticipated.
- 12.4 DEP has expressed concerns on the application as the temporary use involves use of medium/heavy goods vehicles and environmental nuisance on the sensitive users in the vicinity of the Site (the nearest domestic structure is located about 5m to the north) (**Plan A-2**) is expected. While there is one substantive environmental complaint about dust emission due to open storage of construction particles as mentioned in paragraph 10.2.3 (b), the current application involves temporary use of open storage of construction machinery and materials, which is of different nature as compared to the complaint case. Nevertheless, to address these concerns, relevant approval conditions including restriction on the operation hours at the Site have been recommended in paragraph 13.2 below. Should the application be approved, the applicants will also be advised to follow the 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize the possible environmental impacts on the surrounding areas.
- 12.5 Commissioner for Transport and Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD) have no comment on the application from the traffic engineering point of view and drainage point of view respectively. Although DLO/N of LandsD has concerns on unauthorized structures erected within the Site, which are subject to lease enforcement actions, the applicants advise that they will rectify the matter and settle the land issue accordingly (**Appendix Ib**). Other concerned government departments, including Chief Highway Engineer/New Territories East of Highways Department and Director of Fire Services (D of FS) have no adverse comment on or no objection to the application.
- 12.6 The application generally complies with TPB PG-No. 13G in that no major adverse departmental comments have been received on the application and the concerns of the relevant government departments could be addressed through implementation of approval conditions.
- 12.7 The Site is the subject of the previous application No. A/NE-HLH/51 for the same use approved by the Committee on 27.8.2021 mainly on the considerations as detailed in

paragraph 6.2 (**Plan A-1**). The planning permission was subsequently revoked in 2023 due to non-compliance with approval conditions on the provision of drainage facilities and fire services installation and implementation of environmental mitigation measures. Nevertheless, the current application is submitted by different applicants with a different proposal. The applicants have submitted drainage and FSIs proposals for the current application and CE/MN, DSD has accepted the drainage proposal under current application while D of FS also has no objection to the application. Sympathetic consideration may be given to the current application.

- 12.8 There has also been nine similar applications (No. A/NE-HLH/54, 55, 59, 60, 61, 64, 66, 70 and 71) approved between August 2022 and May 2024 after the area has been reclassified from Category 3 to Category 2 under TPB PG-No.13F/13G and the applications generally complied with TPB PG-No. 13F/13G in that no major adverse departmental comments have been received on the applications and the concerns of the relevant government departments could be addressed through implementation of approval conditions. The planning circumstances of the current application are similar to the approved applications.
- 12.9 Regarding the public comments on the application as detailed in paragraph 11 above, government departments' comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account public comments as detailed in paragraphs 11 above, the Planning Department considers that the applied temporary use could be tolerated for a period of three 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 three years until 24.5.2027. 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 applicants, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicants, is allowed on the Site during the planning approval period;
- (c) the implementation of the accepted drainage proposal 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 24.2.2025;
- (d) in relation to (c) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (e) 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 5.7.2024;
- (f) the submission of a fire service 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 24.11.2024;

- (g) in relation to (f) above, the implementation of the fire service installations proposal 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 24.2.2025;
- (h) if any of the above planning conditions (a) (b) or (d) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (i) if any of the above planning conditions (c), (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 VI**.

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

- the applied temporary use is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good agricultural land / farm / fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the 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 applicants.

15. Attachments

Appendix I	Application Form with Attachments received on 13.10.2023
Appendix Ia	FI received on 6.2.2024
Appendix Ib	FI received on 6.4.2024 and 8.4.2024
Appendix Ic	FI received on 3.5.2024
Appendix Id	FI received on 7.5.2024
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13G

Appendix III	Previous Applications
Appendix IV	Similar s.16 Applications for Temporary Open Storage within the “AGR” zone in the vicinity of the Site in the Hung Lung Hang Area
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
Plans A-4a to A-4b	Site Photos

PLANNING DEPARTMENT
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