

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/671

<u>Applicant</u>	:	Mr. WU Kuen represented by Fotton ELA Architects Ltd.
<u>Site</u>	:	Lots 965 RP (Part) and 966 RP in D.D. 82, Ping Che Road, Ping Che, New Territories
<u>Site Area</u>	:	About 1636.02m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zoning</u>	:	“Agriculture” (“AGR”)
<u>Application</u>	:	Temporary Open Storage of Recyclable Materials and Ancillary Workshop 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 and ancillary workshop for a period of three years (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. 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) notwithstanding that the use is not provided for under the Notes of the Plan. The Site is currently used as the applied use without a valid planning permission.
- 1.2 The Site is accessible from Ping Che Road (**Plan A-2**). According to the applicant, the temporary development involves six temporary structures (**Drawing A-1**), including a canopy for temporary storage and ancillary workshop uses (Structure 6) covering two converted-container structures for office and storage uses (Structures 1 and 2) and a fire pump room (Structure 3). The remaining two structures including an electricity meter room (Structure 4) and an unused canopy (Structure 5) are located at the south-eastern portion of the Site. The total floor area of the development is about 852.44 m², with the height ranging from 2.3m to 5m (1 to 2 storeys). One medium goods vehicle parking space (11 m x 3.5 m) & one private car parking space (5m x 2.5m), and one loading/unloading bay for medium goods vehicle (11 m x 3.5 m) are provided at the uncovered area and under the canopy respectively. The operation hours of the Site are between 8:00 a.m. and 6:30 p.m. Monday to Saturdays, and no operation on Sundays and

public holidays. A layout plan with development parameters as submitted by the applicant is shown on **Drawing A-1**.

- 1.3 The Site, in part or in whole, is the subject of seven previously approved applications for temporary open storage of building materials/construction materials/ recyclable materials with ancillary workshop submitted by the same applicant. The last application No. A/NE-TKL/564 for the same applied use as the current application was approved by the Rural and New Town Planning Committee (the Committee) on 4.5.2018. That planning permission was revoked on 4.10.2020 mainly due to non-compliance with an approval condition requiring the provision of water supplies for firefighting and fire service installations (FSIs).
- 1.4 Compared with the last application No. A/NE-TKL/564, all development parameters including the site layout under the current application remain unchanged.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with attachments received on 18.5.2021 **(Appendix I)**
 - (b) Supplementary Information received on 24.5.2021 **(Appendix Ia)**
 - (c) Further Information received on 25.6.2021 **(Appendix Ib)**
(accepted and exempted from publication)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments at **Appendices I and Ia**. They can be summarized as follows:

- (a) the Site is the subject of a previously approved application No. A/NE-TKL/564 for the same applied use as the current application. Compared with the last application, there are no changes on the layout and development parameters under the current application;
- (b) despite the best effort made by the applicant and his consultants, the previously approved application No. A/NE-TKL/564 had been revoked due to non-compliance with an approval condition regarding provision of water supplies for firefighting and FSIs within the prescribed time limit. Upon the revocation of the application, the applicant continued to spend effort to implement the FSIs and achieved satisfactory fresh water sample tests;
- (c) the temporary storage of recyclable materials is considered as an environmental-friendly industry and should be supported from the environmental protection point of view;
- (d) there will be a total of about 6 vehicular trips per day generated by the proposed development. The applicant will also continue to deploy a staff to regulate traffic and ensure pedestrian safety; and
- (e) the previously approved landscape proposal, FSIs proposal, pedestrian management plan and the condition record of the existing drainage facilities under the last approved application are submitted in support of the current application.

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

The applicant is the sole “current land owners” of the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

According to the Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD), the Site is not subject to active enforcement action. His office will closely monitor the Site according to the established procedures.

5. Town Planning Board Guidelines

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) promulgated on 27.3.2020 is relevant to the application. The Site falls within Category 2 area under the Guidelines, relevant extract of which is at **Appendix II**.

6. Previous Applications

- 6.1 The Site, in part or in whole, is the subject of seven previous applications. Six applications (No. A/NE-TKL/157, 219, 241, 295, 334 and 460) for temporary open storage of building/construction materials were approved for the reasons that there were no major adverse impacts or adverse departmental comments on the applications; there were similar applications approved in the vicinity; the applications were the subject of previous approvals; compliance with relevant Town Planning Board Guidelines; and the granting of a temporary approval for three years would not frustrate the long-term planning and future development of the area.
- 6.2 The latest application No. A/NE-TKL/564 for the same applied use of the current application was approved by the Committee on 4.5.2018 on similar considerations as detailed in paragraph 6.1 above. The planning permission was revoked on 4.10.2020 due to non-compliance with an approval condition requiring the provision of water supplies for firefighting and FSIs. Compared with the last application No. A/NE-TKL/564, the current application is submitted by the same applicant with the same applied use and there are no changes to the layout and development parameters.
- 6.3 Details of the previous applications are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

7. Similar Applications

- 7.1 There are 11 similar applications within the same “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area (**Plan A-1**).
- 7.2 Seven applications (No. A/NE-TKL/390, 443, 454, 553, 555, 622 and 642) involving two sites for temporary open storage of construction equipment/materials/machineries were approved with conditions by the Committee between September 2012 and September

2020 mainly on the considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections.

- 7.3 The other 4 similar applications (No. A/NE-TKL/480, 514, 560 and 625) involving three sites for temporary open storage of construction materials and equipment/ machineries / container uses were rejected by the Committee between September 2014 and October 2019 mainly on considerations that the proposed developments were not in line with the planning intention of “AGR” zone; the developments did not comply with the relevant Town Planning Board Guidelines; there were adverse departmental comments and local objections; the applicants failed to demonstrate that developments would not generate adverse impacts on the surrounding areas; and the setting of undesirable precedents for similar applications.
- 7.4 Details of these similar applications are at **Appendix IV** and their locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) mainly flat and formed, and fenced off;
- (b) currently used as the applied use without valid planning permission; and
- (c) abutting Ping Che Road.

8.2 The surrounding areas have the following characteristics:

- (a) situated in a rural landscape character area dominated by active/fallow farmland, open storage use, unused/vacant land and village houses;
- (b) to the north is an open storage yard of containers and some fallow farmland while to the further northeast across Ping Che Road is village houses of Tong Fong;
- (c) to the east across Ping Che Road are fallow farmland, unused land and a temporary structure for domestic purpose; and
- (d) to the west is vacant land, active/fallow farmland and Ping Yuen River.

9. **Planning Intention**

The planning intention of the “AGR” zone 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.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

10.1.1 Comment of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) the lots under application are Old Schedule lots held under Block Government Lease (demised for agricultural use) without any guaranteed right of vehicular access. The applicant should make his own arrangement for acquiring access to the application lots, and there is no guarantee that any adjoining Government Land will be allowed for vehicular access to the Site for the applied use;
- (b) the actual occupation area exceeds the application boundary i.e portions of Lots 967 and 980 RP have been occupied. The existing structures on the application lots were erected without approval from her office. Her office reserves the right to take necessary lease enforcement actions against the irregularities on private lots as appropriate; and
- (c) should the application be approved, the owner of the lots concerned have to apply to her office for a Short Term Waiver (STW). The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. In addition, the application for STW will be processed by her office without prejudice to the aforesaid leases enforcement action. If the STW is approved, its commencement date will 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 fees as considered appropriate by her office.

Traffic

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

- based on the information submitted by the applicant, there would be about a total of 6 vehicular trips generated per day. In view that the temporary development will generate minimal vehicular trips, he considered that the traffic impact induced by the temporary development is tolerable from the traffic engineering point of view.

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

- (a) he has no adverse comment on the application; and
- (b) nevertheless, the existing run-in/out is in poor condition. Should the application be approved, the applicant is required to submit a run-in/out proposal to ensure that the proposal is prepared based on HyD's Standard Drawings, and re-construct a proper ingress and egress for the Site to the satisfaction of HyD. Upon termination of the application, the applicant is

required to reinstate the ingress and egress to their original state and to his satisfaction at applicant's own cost.

Environment

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

- (a) he does not support the application as there are domestic structures in the vicinity of the Site, the closest one is located to the southeast of the Site at a distance of about 60m (**Plan A-2**);
- (b) there was no substantiated environmental complaints against the Site during the past three years; and
- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses" (COP), and comply with all environmental protection/ pollution control ordinances.

Landscape

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

- (a) she has no objection to the application from the landscape planning perspective;
- (b) significant change to the existing landscape character due to the continued use of the existing development is not envisaged. It is also noted that all existing trees within the Site are proposed to be preserved; and
- (c) should the application be approved, it is considered not necessary to impose a landscape condition in view that no significant adverse landscape impact arising from the proposed use is envisaged and there is existing tree buffer within the Site abutting Ping Che Road.

Agriculture

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

- (a) he does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation. Agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries etc; and
- (b) should the application be approved, precautionary measures to avoid disturbance and pollution to the river as the Site is closely located to Ping Yuen River.

Drainage

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

- (a) he has no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, the applicant is required to:-
 - (i) submit a condition record of the existing drainage facilities on Site as previously implemented on the same site in the planning application No. A/NE-TKL/564 to his satisfaction within three months; and
 - (ii) maintain those existing drainage facilities properly and rectify those facilities if they are found inadequate / ineffective during operation.

Building Matters

10.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) he has no in-principle objection under the Buildings Ordinance to the use on the Site. There is no record of approval of the Building Authority for the buildings/structures existing at the Site; and
- (b) his advisory comments to the application are at **Appendix VI**.

Fire Safety

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

- (a) having reviewed the applicant's submission at **Appendix Ib**, he has no in-principle objection to the application subject to the provision of fire service installations and water supplies for firefighting, as proposed by the applicant, to his satisfaction;
- (b) having considered the nature of the open storage use, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval is recommended for inclusion in the planning permission. To address this condition, the applicant should submit certificate(s) under Regulation 9(1) of the Fire Service (Installations and Equipment) Regulations (Chapter 95B) to his department for compliance of condition;
- (c) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed; and
- (d) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

- he has consulted the locals regarding the application. The 1st Vice-Chairman of Ta Kwu Ling District Rural Committee (TKLDRC) objected to the application on the grounds that the development involving storage of plastic would pollute the river nearby. The incumbent North District Council member of subject Constituency had no comment on the application but raised concern on the possible traffic and environmental impact induced by the development. The Indigenous Inhabitant Representative (IIR) of Lei Uk, the Resident Representative (RR) of Lei Uk, the IRR of Tong Fong, the RR of Tong Fong, the IIR of Fung Wong Wu, the RR of Fung Wong Wu and the Chairman of Fung Shui Area Committee had no comment.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department.

11. Public Comments Received During Statutory Publication Periods (Appendix V)

On 28.5.2021, the application was published for public inspection. During the statutory public inspection period, three public comments were received. The Chairman of Sheung Shui District Rural Committee indicates no comment on the application. Kadoorie Farm and Botanic Garden and one individual object to the application mainly on the grounds that the application is the subject of previously approved applications and the last application was revoked; and the development would cause environmental nuisances to the area and pose threats to public health.

12. Planning Considerations and Assessments

12.1 The application is for a temporary open storage of recyclable materials and ancillary workshop for a period of 3 years at the Site zoned "AGR" on the OZP. The applied use is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. DAFC does not support the application as the Site has potential for agricultural rehabilitation. Nonetheless, it is considered that the approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the "AGR" zone.

12.2 The Site falls within Category 2 area under the TPB PG-No. 13F promulgated by the Board on 27.3.2020. 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 application generally complies with the TPB PG-No. 13F in that no major adverse departmental comments have been received on the application; and the concerns of the relevant government departments can be addressed through the implementation of approval conditions.
- 12.4 The temporary development is considered not entirely incompatible with the surrounding land uses which comprises open storage yard, active/fallow farmland, vacant land and village houses (**Plan A-2**). CTP/UD&L, PlanD, has no objection to the application from the landscape planning perspective and considers that significant adverse landscape impact arising from the temporary development is not anticipated.
- 12.5 C for T, based on the information submitted by the applicant that there is a total of about 6 vehicular trips per day induced by the temporary development, considers that the application is tolerable from traffic engineering point of view. Although DEP does not support the application as there are sensitive receivers, i.e. domestic structures, in the vicinity of the Site (**Plan A-2**), relevant approval conditions restricting the operation hours and no operation on Sundays and public holidays during the planning approval period are recommended to address the concerns of DEP. Moreover, the applicant would be advised to follow the environmental mitigation measures set out in the latest COP, and comply with all environmental protection/ pollution control ordinances. Other concerned Government departments, including D of FS, CE/MN of DSD and CE/C of WSD, have no adverse comment on or no objection to the application.
- 12.6 The Site is the subject of seven previously approved planning applications for similar open storage uses submitted by the same applicant as the current application. The last approved application No. A/NE-TKL/564 for the same applied use as the current application was approved by the Committee in May 2018 mainly on the considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections. The planning permission was revoked on 4.10.2020 mainly due to non-compliance with an approval condition requiring the provision of water supplies for firefighting and FSIs. For the current application, the applicant has submitted a FSIs proposal and a water test report to demonstrate his efforts in compliance with relevant approval condition under the current application. In this regard, D of FS has no objection to the application. Should the Committee decide to approve the application, shorter compliance periods on the approval conditions are proposed to closely monitor the progress of compliance. Moreover, the applicant will be advised that should they fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration will not be given to any further application.
- 12.7 Of the 11 similar applications in the vicinity of the Site (**Plan A-1**), seven of them involving two sites for temporary open storage of construction equipment/materials/machineries were approved with conditions by the Committee between 2012 and 2020 mainly on the considerations that the proposed developments generally complied with the relevant Town Planning Board Guidelines; there were similar applications approved in the vicinity; and there were no adverse departmental comments and local objections. The planning circumstances of the current application

are similar to the approved similar applications.

- 12.8 Regarding the local objection conveyed by DO(N), HAD and the two adverse public comments as detailed in paragraphs 10.1.10 and 11 above respectively, 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 the local objections conveyed by DO(N) of HAD and public comments in paragraphs 10.1.10 and 11 above, the Planning Department considers that the temporary use 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 9.7.2024. The following conditions of approval with shorter compliance periods and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:30 p.m. and 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 heavy goods vehicles exceeding 24 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance, is allowed for the operation of the Site at any time during the planning approval period;
- (d) the peripheral fencing shall be maintained at all times during the planning approval period;
- (e) the submission of a condition record of the existing drainage facilities on the Site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 9.10.2021;
- (f) the submission of run-in/out proposal within 3 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 9.10.2021;
- (g) in relation to (f) above, the implementation of run-in/out proposal within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 9.1.2022;
- (h) 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 20.8.2020;
- (i) the provision of water supplies for fire-fighting and fire service installations, as proposed by the applicant, 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;

- (j) if any of the above planning conditions (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 be revoked immediately without further notice;
- (k) if any of the above planning conditions (e), (f), (g), (h) or (i) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) upon the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

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 development is not in line with the planning intention of the "AGR" zone which 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. There is no strong planning justification in the submission for a departure from such 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 applicant.

15. Attachments

Appendix I	Application form with attachments received on 18.5.2021
Appendix Ia	Supplementary Information received on 24.5.2021
Appendix Ib	Further Information received on 25.6.2021
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13F for Application for Open Storage and Port Back-up Uses
Appendix III	Previous Applications
Appendix IV	Similar Applications

Appendix V	Public Comments
Appendix VI	Recommended 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 and 4b	Site Photos

PLANNING DEPARTMENT
JULY 2021