

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/744

<u>Applicants</u>	: Mr. LEUNG Kin Chung and Ms. YEUNG Kam Lai represented by Metro Planning & Development Company Limited
<u>Site</u>	Lots 1504 S.B, 1505, 1506, 1509 RP and 1510 RP in D.D. 76 and Adjoining Government Land (GL), Ta Kwu Ling, New Territories
<u>Site Area</u>	: About 2,980m ² (includes about 153m ² of GL or about 5% of the Site)
<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>	: Proposed Temporary Warehouse and Open Storage of Construction Materials for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary warehouse and open storage of construction materials for a period of three years at the application site (the Site), which falls within an area zoned “AGR” on the approved Ping Che and Ta Kwu Ling 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 fenced off, hard paved and largely vacant with some private vehicles found in the western portion of the Site (**Plans A-4a to A-4c**).
- 1.2 According to the applicant, the proposed development involves an open-air area of about 462m² for open storage of construction materials in the east, and two single-storey (about 8.5m in height) warehouse structures with a total floor area of about 408m² in the east and west (**Drawing A-1**). The open-air area at the central part of the Site is reserved for vehicle circulation spaces. Also, three private carparking spaces and one loading/unloading bay for medium/heavy goods vehicles are proposed on site (**Drawing A-1**). The proposed operation hours are from 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. The Site is directly accessible via Sha Tau Kok Road - Ma Mei Ha (**Plan A-2**). The site layout plan is shown in **Drawing A-1**.

- 1.3 The Site is subject to three previously approved applications (No. A/NE-TKL/539, 621 and 655) (**Plan A-1**) for proposed temporary warehouse/open storage of construction materials for a period of three years submitted by different applicants as the current application. The last application No. A/NE-TKL/655 was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 28.5.2021. However, it was subsequently revoked on 28.8.2023 due to non-compliance with approval conditions in relation to the provision of drainage facilities and fire service installations (FSI) and water supplies for fire-fighting.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with attachments received on 29.11.2023 (**Appendix I**)
 - (b) Further information (FI) received on 15.1.2024* (**Appendix Ia**)
 - (c) FI received on 8.3.2024* (**Appendix Ib**)
- (*accepted and exempted from publication and recounting requirements)*
- 1.5 On 26.1.2024, the Committee agreed to the applicant's request to defer making a decision on the application for two months to allow more time for the applicant to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FIs at **Appendices I to Ib**, and as summarized below:

- (a) the Site has been the subject of an approved application No. A/NE-TKL/655 for proposed temporary warehouse and open storage use since 2021. It is intended to address the increasing demand for warehouse and open storage facilities in Ta Kwu Ling;
- (b) the Site falls within Category 2 area under 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. 13G) in that the planning permission could be granted on a temporary basis subject to no adverse departmental comments;
- (c) the proposed development is not incompatible with the surrounding environment. All existing trees within the Site will be preserved;
- (d) there would be no more than four vehicular trips generated during the peak hours. Sufficient spaces within the Site are provided such that there would be no queuing up of vehicles outside the Site. No adverse traffic impact would be induced by the proposed development; and

- (e) no workshop activity is proposed at the Site. No adverse environmental impact would be induced by the proposed development.

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

The applicants are the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is the subject of an active planning enforcement case (**Plan A-2**) involving storage use and parking of vehicles under case No. E/NE-TKL/449. Enforcement Notice was issued on 8.12.2023 and expired on 8.2.2024. The Site is under monitoring by the Planning Authority according to established procedures.

5. **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. 13G) is relevant to the application. The Site falls within Category 2 areas under the Guidelines. Relevant extract of the Guidelines is at **Appendix II**.

6. **Previous Applications**

- 6.1 The Site is the subject of three previously approved applications (No. A/NE-TKL/539, 621 and 655) for proposed temporary open storage of construction materials for a period of three years submitted by different applicants as the current application. These three applications were approved by the Committee between 2016 and 2021, mainly on considerations that they generally complied with the then TPB Guidelines (i.e. TPB PG-No. 13E) in that there were no major adverse departmental comments on the application; and the concerns of relevant government departments could be addressed through implementation of approval conditions. As compared with the last approved application No. A/NE-TKL/655, the use and development parameters of the current application remain the same.
- 6.2 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 were six similar applications involving three sites for temporary open storage uses falling partly within the “AGR” zone in the vicinity of the Site (**Plan A-1**).
- 7.2 Four applications (No. A/NE-TKL/377, 490, 585 and 674) for temporary open

storage of construction materials involving the same site falling mostly within Category 2 areas were approved by the Committee between 2011 and 2021 mainly on considerations that the applications complied with the then TPB PG-No.13E in that there were no major adverse impacts or adverse departmental comments on the applications; there were previous planning approvals and the approval conditions had been complied with; and the renewal applications had complied with the relevant TPB Guidelines.

- 7.3 Two applications (No. A/NE-TKL/418 and 624) for temporary open storage of construction materials, with their sites falling entirely within Category 3 areas, were rejected by the Committee in 2013 and 2019 respectively, mainly on the grounds that the applications were not in line with the planning intention of “AGR” zone; did not comply with the then TPB PG-No.13E in that there were adverse impacts or adverse departmental comments on the applications; and the proposed uses would generate adverse impacts on the surrounding areas.
- 7.4 Details of these similar applications are summarized 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 and photos on Plans A-3, A-4a to A-4c)

8.1 The Site is:

- (a) mainly flat, fenced off and hard paved;
- (b) largely vacant with some private vehicles found in the western portion of the Site; and
- (c) directly accessible from Sha Tau Kok Road - Ma Mei Ha.

8.2 The surrounding areas are rural in character predominated by open storage yards, active/fallow agricultural land, village houses and vacant land.

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 paragraphs 10.2 and 10.3 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 have comments on/do not support 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 which contains 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) the GL within the Site (about 153m² as mentioned in the Application Form) has been fenced off without any permission. Any occupation of GL without Government's prior approval is an offence under Cap. 28. Her office objects to the planning application since there is illegal occupation of GL which regularization would not be considered according to the prevailing land policy. The lot owners should immediately cease the illegal occupation of GL. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;
- (c) subject to the approval of the Board to the planning application which shall have reflected the rectification as aforesaid required, the lot owners shall apply to this office for a Short Term Waiver (STW) to permit the structures to be erected. The application for STW will be considered by the Government in its capacity as a landlord and there is no guarantee that it will be approved. The STW, if approved, will be subject to such terms and conditions including the payment of waiver fee and administrative fee as considered appropriate to be imposed by her office. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered;
- (d) unless and until the unlawful occupation of GL is duly rectified by the lot owners, her office object to the application; and
- (e) having reviewed the applicant's FI (**Appendix Ia**), she reiterates that no regularization for illegal occupation of the GL would be considered according to the prevailing land policy. Her office reserves the rights to charge appropriate fee for illegal occupation since first occupation and take necessary control action against the illegal occupation of GL without further notice.

Environment

- 10.2.2 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, with the closest ones located to the south across Sha Tau Kok Road at a distance of about 30m (**Plan A-2**);
- (b) there was no substantiated environmental complaints against the Site during the past three years; and
- (c) the applicant should be advised to follow the environmental mitigation measures as set out in the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ (CoP) in order to minimize any possible environmental nuisances.

Agriculture

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

he does not support the application from agricultural point of view as the subject site possesses potential for agricultural rehabilitation. 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.

10.3 The following government department has relayed the following local views/comments on the application:

District Officer’s Comments

10.3.1 Comments of the District Office (North), Home Affairs Department (DO(N), HAD):

- (a) he consulted the locals regarding the application. The Chairman of Lung Shan Area Committee has no comment; and
- (b) the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Hung Leng, the Chairman, 1st Vice-chairman and vice-chairman of Fanling District Rural Committee object to the application on the grounds that the proposed development would cause traffic, environmental and noise impacts on the surroundings; would be not in line with the planning intention of “AGR”; and the heavy goods vehicular traffic would cause safety issues to the villagers.

11. Public Comments Received During Statutory Publication Period

11.1 On 8.12.2023, the application was published for public inspection. During the statutory public inspection period, two public comments were received.

One individual indicates no comment on the application (**Appendix VIIa**) and one individual objects to the application (**Appendix VIIb**) mainly on the grounds that the previously approved application was revoked and the applicant failed to comply with relevant approval conditions.

12. Planning Considerations and Assessment

12.1 The application is for a proposed temporary warehouse and open storage of construction materials for a period of three years at the Site zoned “AGR” on the OZP. The proposed 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. DAFC does not support the application as the Site has potential for agricultural rehabilitation. Nonetheless, it is noted that the Site is currently hard paved and is the subject of previously approved applications for similar use. Taking into account the planning assessment below, it is considered that the approval of the application on a temporary basis for a period of three years could be tolerated.

12.2 The proposed temporary development is considered not entirely incompatible with the surrounding land uses which comprise open storage yards, active/fallow agricultural land, village houses and vacant land (**Plans A-2 and A-3**). CTP/UD&L of PlanD has no objection to the application from landscape planning perspective and considers that significant adverse landscape impact arising from the proposed development is not anticipated.

12.3 The Site falls within Category 2 areas under the TPB PG-No. 13G. 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 three 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 or if required, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

12.4 Although DEP does not support the application as there are sensitive receivers 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 CoP. While DLO/N of LandsD objects to the application due to unlawful occupation of GL, the land matters should be dealt with separately under the land regime. The applicant will be advised to follow up with DLO/N of LandsD on their concerns. Other concerned government departments, including Commissioner for Transport, Director of Fire Services, Chief Engineer/Mainland North of Drainage Services Department and Chief Engineer/Construction of Water Supplies Department have no adverse comment on or no objection to the application.

- 12.5 The Site is the subject of three previously approved applications (No. A/NE-TKL/539, 621 and 655) for similar temporary open storage use. These applications were approved by the Committee mainly on grounds that the application generally complied with the relevant Guidelines; and the concerns of relevant Government departments could be addressed through implementation of approval conditions. Also, there were four similar applications involving the same site to the immediate north of the Site falling mostly within Category 2 areas approved on similar considerations as stated in paragraph 7.2 above. The planning circumstances of approving these applications are applicable to the current one.
- 12.6 Regarding the public comments as detailed in paragraph 11 and the local objections conveyed by DO(N) of HAD in paragraph 10.3.1 above, the departmental comments and the planning assessment above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 11 and taking into account the local objections conveyed by DO(N) of HAD and public comments in paragraph 10.3.1 above, the Planning Department considers that the temporary use under application 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 **5.4.2027**. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 pm. and 9:00 am. from Mondays to Saturdays, 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 container tractor/trailer as defined in the Road Traffic Ordinance is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) the submission of a 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 **5.10.2024**;
- (e) in relation to (d) above, the implementation of the 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 **5.1.2025**;

- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) 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 17.5.2024;
- (h) the submission of a fire services installation (FSI) proposal and water supplies for fire-fighting 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 5.10.2024;
- (i) in relation to (h) above, the implementation of the FSI proposal and water supplies for fire-fighting 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 5.1.2025;
- (j) if any of the above planning condition (a), (b), (c) or (f) 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
- (k) if any of the above planning condition (d), (e), (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.

Advisory Clauses

The recommended advisory clauses are attached 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 proposed 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong 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 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 and attachments received on 29.11.2023
Appendix Ia	FI received on 15.1.2024
Appendix Ib	FI received on 8.3.2024
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13G
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comments
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos

**PLANNING DEPARTMENT
APRIL 2024**