

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/NE-TKL/751

- Applicant** : Kam Hing Realty Resources Limited represented by Goldrich Planners & Surveyors Limited
- Site** : Lot 2159 (Part) in D.D. 76 and Adjoining Government Land (GL), Wang Leng, Ping Che, New Territories
- Site Area** : About 664.4m² (including about 527.6m² of GL (about 79.4%))
- Lease** : (a) Block Government Lease (demised for agricultural use) for Lot 2159 in D.D. 76
(b) Letter of Approval (LoA) No. 4345 for erection of temporary structures for the purpose of chicken shed, watchman shed and agricultural storage
(c) Modification of Tenancy (MOT) No. 37244 for erection of temporary structures for the purpose of dwelling and shade for Lot 2159 in D.D. 76
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Open Storage” (“OS”)
- Application** : Renewal of Planning Approval for Temporary Container Vehicle Repair Yard for a Period of Three Years until 18.5.2027

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to continue using the application site (the Site) for a temporary container vehicle repair yard for a further period of three years until 18.5.2027 (**Plan A-1**). The Site falls within “OS” zone on the OZP. According to the Notes of the OZP, Container Vehicle Repair Yard is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission until 18.5.2024.
- 1.2 The Site is accessible via a local track leading to Ping Che Road (**Plan A-1**). According to the applicant, the applied use comprises three one-to-two storey structure(s) of about 5m to 6m in height for repair workshop open shed and container-converted storeroom uses with a total floor area of 394.1m². All vehicle repairing activities are carried out beneath the open shed. Four container vehicle repair spaces are provided at the Site. The operation hours are between 7:00 a.m. and 7:00 p.m. from Mondays to Saturdays and there is no operation on Sundays and public holidays. The site layout plan and section plan submitted by the applicant are shown in **Drawings A-1 to A-2** respectively.

- 1.3 The Site is, in part or in whole, the subject of seven previous applications (No. A/NE-TKL/91, 133, 165, 321, 387, 584 and 662) submitted by the same applicant as the current application for heavy vehicle/container vehicle repair workshop and warehouse uses (**Plan A-1**). Details of these previous applications are set out in paragraph 6 below. Compared with the last approved application No. A/NE-TKL/662, the layout and development parameters remain unchanged. The applicant has complied with all approval conditions under the last application.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with Attachments received on 18.3.2024 (**Appendix I**)
 - (b) Further Information (FI) received on 15.4.2024[^] (**Appendix Ia**)
 - (c) FI received on 23.4.2024 [^] (**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 at **Appendix I**, as summarized below:

- (a) the Site, in part or in whole, is the subject of previously approved applications;
- (b) the application is in line with the Town Planning Board Guidelines No. 34D in that there has been no material change in planning circumstances since the granting of previous approval and all approval conditions of the previous application No. A/NE-TKL/662 have been satisfactorily complied with; and the time period sought does not exceed the duration of the previous approval;
- (c) the Site falls within the Category 1 area under the Town Planning Board Guidelines No. 13G. Favourable consideration will normally be given to applications within the area;
- (d) there are similar approved applications in the vicinity of the Site; and
- (e) no adverse visual, landscape, environmental and traffic impact is anticipated.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection. For the GL within the Site, the “owner’s consent/notification” requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31B) is not applicable to the application.

4. Town Planning Board Guidelines

- 4.1 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 1 area under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

- 4.2 Town Planning Board Guidelines No. 34D on ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’ (TPB PG-No. 34D) are relevant to the application. Relevant extracts of the Guidelines are attached at **Appendix III**.

5. **Background**

The Site is not subject to any active planning enforcement action.

6. **Previous Applications**

- 6.1 The Site, in part or in whole, is the subject of seven previous applications (No. A/NE-TKL/91, 133, 165, 321, 387, 584 and 662) for heavy vehicle/container vehicle repairing workshop and warehouse uses submitted by the same applicant as the current application. These applications were approved by the Committee between 1998 and 2021 mainly on considerations that the uses were in line with the planning intention of “OS” zone and complied with the then TPB PG-No. 13E/13F; the developments were not incompatible with the surrounding land uses; adverse environmental, drainage and traffic impacts arising from the developments were not expected; subject of previous planning approvals; and the approval conditions had been complied with. All approval conditions imposed on the last approved application No. A/NE-TKL/662 have been complied with and the planning permission is valid until 18.5.2024.
- 6.2 Details of the previous applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

7. **Similar Application**

- 7.1 There is one similar application (No. A/NE-TKL/684) for renewal of planning approval for temporary vehicle repair workshop for lorry, coach and container vehicle with ancillary office and electricity transformer station within “OS” zone to the north in the vicinity of the Site in the Ping Che and Ta Kwu Ling area in the past five years. The application was approved by the Committee on 24.9.2021 mainly on considerations that it generally complied with the then TPB PG-No. 13F in that no major adverse departmental comments were received; the application was considered not incompatible with the surroundings; and concerns of the relevant government departments could be addressed through implementation of approval conditions.
- 7.2 Details of the similar applications are summarized at **Appendix V** and their locations are shown on **Plan A-1**.

8. **The Site and Its Surrounding Areas** (Plans A-1 and A-4b)

- 8.1 The Site is:

- (a) used for the applied use with valid planning permission;
- (b) flat, formed, fenced off;

- (c) accessible via a local track leading to Ping Che Road; and
- (d) falls within the boundary of Hung Leng site of Archaeological Interest (AM90-0424) (**Plan A-2**).

8.2 The surrounding areas are predominated by workshop, open storage yard and warehouse uses. To the immediate southwest of the Site is a workshop which is operated by the applicant within the same lot as the current application. There are tree clusters located to the west and the north of the Site; domestic structures are found to the northwest of the Site; and Ng Tung River is located to the south of the Site.

9. Planning Intention

The planning intention of the “OS” zone is primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses which cannot be accommodated in conventional godown premises.

10. Comments from Relevant Government Departments

10.1 Apart from the government department 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 VI** and **VII** respectively.

10.2 The following government departments do not support the application:

Land Administration

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

- (a) the application 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. No right of access via GL is granted to the application site;
- (b) part of the application lot is covered by a MOT No. 37244 and LoA No. 4345 for erection of agricultural structures. His office reserves the rights to take enforcement action for irregularities and cancel the MOT/LoA as appropriate;
- (c) the application site and its extensive adjoining area are already being used for the uses under the application. Applications for Short Term Waiver (STW) and Short Term Tenancy (STT) could not be processed in 2022 due to no response by the lot owner to provide the required information;
- (d) the following irregularities covered by the subject planning application have been detected by his office:

(i) Unauthorized structures within the said private lot covered by the planning application

there are unauthorized structures on the private lot. The lot owner should immediately rectify/regularize the lease breaches and this office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

(ii) Unlawful occupation of GL adjoining the said private lot with unauthorized structures covered by the planning application

80% of the application site is GL (about 527.6m² as mentioned in the application form) which has been illegally occupied with unauthorized structures without any permission. Any occupation of GL without Government's prior approval is an offence under Cap. 28. His office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

(e) the following irregularities not covered by the subject planning application have been detected by his office:

(i) Unauthorized structures within the said private lot not covered by the planning application

there are extensive unauthorized structures forming part and parcel of the “container vehicle repair yard” within majority of the said private lot area which is not covered by the subject planning application. The lot owner should immediately rectify/regularize the lease breaches and his office reserves the rights to take necessary lease enforcement action against the breaches without further notice;

(ii) Unlawful occupation of GL not covered by the planning application

the GL (about 524m²) adjoining the private lot has been fenced off and illegally occupied with unauthorized structures without any permission. The GL being illegally occupied is not included in the application. Please clarify the extent of the application site with the applicant. Any occupation of GL without Government's prior approval is an offence under Cap. 28. This office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice;

(f) his office does not agree to the statement “Concerning the STW/STT requirement of the Site and its adjoining land parcel, the Applicant submitted an STW/STT application to DLO/N on 21.8.2018. The Applicant thought that all required documents, including the layout plan and development parameters, had been already included in the planning application approved on 1.6.2018. Hence, the Applicant did not aware that he was required to submit further information to DLO/N.” mentioned in the FI (**Appendix Ib**). DLO/N emphasized that as the actual occupation area far exceeds the boundary of the planning permission, DLO/N therefore issued a letter on 10.5.2021 by fax and mail, then again by email on 2.7.2021 requesting the applicant to provide detailed

information for the STW/STT applications. Since no response was received by his office, another letter dated 27.4.2022 was issued to inform the applicant that the STW/STT applications were rejected. According to their site inspection, all the unauthorized structures erected within the lot and the illegal occupation of adjoining GL (about 1,051.6m³) are being used/occupied by the same operator. As such, DLO/N considered that all the occupation area (both private land and the GL) should be treated as a whole instead of piecemeal approach as the applicant adopted;

- (g) the lot owner shall either (i) remove the unauthorized structures and cease the illegal occupation of the GL immediately; or (ii) include the unauthorized structures and the adjoining GL being illegally occupied in the subject planning application for the further consideration by the relevant departments and, subject to the approval of the Board to the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to his office for STW and STT to permit the structures erected and the occupation of the GL. The applications for STW and STT will be considered by the Government in its capacity as a landlord and there is no guarantee that they will be approved. The STW and STT, if approved, will be subject to such terms and conditions including the payment of waiver fee/rent and administrative fee i.e. back rent/fee since first occupation as considered appropriate to be imposed by LandsD. In addition, LandsD reserves the right to take enforcement action against the lot owner for any breach of the lease conditions, including the breaches already in existence or to be detected at any point of time in future and land control action for any unlawful occupation of GL; and
- (h) unless and until the unauthorized structures and the unlawful occupation of GL are duly rectified by the lot owner or entirely included in the subject planning application, his office objects to the application and it must be brought to the attention of the Board when they consider the application.

Environment

10.2.2 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 about 20m away) (**Plan A-2**), and environmental nuisance is expected as the proposed development involves use of container vehicles;
- (b) no substantiated environmental complaint against the Site during the past three years; and
- (c) the applicant is 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”.

District Officer's Comments

10.2.5 Local views/comments conveyed by the District Officer (North), Home Affairs Department (DO(N), HAD):

- (a) a member of the North District Council (NDC) supports the application;
- (b) the Chairman, 1st Vice-chairman and Vice-chairman of Fanling District Rural Committee object to the application mainly on the grounds that the applied use would bring heavy burden to the road posing safety issue to villagers;
- (c) the Chairman of Lung Shan Area Committee and six members of the NDC have no comment; and
- (d) two Indigenous Inhabitant Representatives (IIRs), the Resident Representative (RR) of Kwan Tei and 16 members of the NDC do not reply.

11. Public Comments Received During Statutory Publication Period (Appendix VIII)

On 26.3.2024, the application was published for public inspection. During the statutory public inspection period, one public comment from a member of the NDC was received indicating no comment on the application.

12. Planning Considerations and Assessments

12.1 The application is for renewal of planning permission for temporary container vehicle repair yard for a further period of three years. The temporary container vehicle repair yard is generally in line with the planning intention of the "OS" zone which is primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses which cannot be accommodated in conventional godown premises.

12.2 The Site falls within Category 1 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:

Category 1 areas: favourable consideration will normally be given to applications within these areas, subject to no major 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 should be submitted if the proposed uses may cause significant environmental and traffic concerns.

12.3 The current proposal is the same as the previously approved scheme under application No. A/NE-TKL/662 in terms of the applied use, layout and development parameters. The applied use is considered not incompatible with the surrounding areas which are predominated by workshops, open storage yards and warehouses uses. It is also not expected to have major adverse impacts on the surrounding areas. Concerned government departments consulted, including Commissioner for Transport, Chief Highway Engineer/New Territories East of Highways Department, Chief Engineer/Mainland North of Drainage Services Department, Chief

Engineer/Construction of Water Supplies Department and Director of Fire Services have no adverse comment on/ no objection to the renewal application.

- 12.4 The Site is the subject of seven previous applications for container vehicle/heavy vehicle repairing workshop and warehouse uses submitted by the same applicant as the current application as set out in paragraph 6.1 above. In addition, there is one similar approved application No. A/NE-TKL/684 for renewal of planning approval for temporary vehicle repair workshop for lorry, coach and container vehicle with ancillary office & electricity transformer station. The planning circumstances of current application are similar to the approved one.
- 12.5 DEP does not support the application as the applied use involves the use of container vehicles and environmental nuisance to sensitive receivers (i.e. domestic structures) is expected (the nearest domestic structure being about 20m away) (**Plan A-2**). However, there was no environmental complaint against the Site in the past three years. The concerns of DEP could be addressed through imposing relevant approval conditions, same as the previous approval, as set out in paragraph 13.2 below. The applicant will be advised to follow the environmental mitigation measures as set out in the revised 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize the possible environmental impacts on the surrounding areas.
- 12.6 In response to DLO/N, LandsD's objection regarding the presence of unauthorized structures and the occupation of GL within the Site and outside the Site which are subject to land control and lease enforcement actions, the applicant advises that he will rectify the matters and settle the land issues accordingly by applying STT/STW accordingly (**Appendix Ib**). The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land regime.
- 12.7 The application generally complies with the TPB PG-No. 13G in that there are no adverse traffic impacts, and the concerns of the departments and the concerns of the local could be addressed through the implementation of approval conditions. Moreover, the application generally complies with the TPB PG-No. 34D on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' in that there has been no material change in planning circumstances since the approval of the last application; all the approval conditions for the last application have been complied with; and the approval period sought which is for the same as the last approval granted by the Board is not unreasonable.
- 12.8 Regarding the local comments conveyed by DO(N) of HAD on the application as detailed in paragraph 10.2.5, 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 taking into account the local objections conveyed by DO(N), HAD in paragraph 10.2.5, the Planning Department has no objection to the application.
- 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 **from 19.5.2024 to 18.5.2027**. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the peripheral fencing shall be maintained on Site at all times during the planning approval period;
- (d) the existing trees and landscape planting on Site shall be maintained at all times during the planning approval period;
- (e) the submission of a condition record of the existing drainage facilities implemented under planning application No. A/NE-TKL/662 on the Site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 19.8.2024;
- (f) the existing drainage facilities shall be properly maintained at all times during the planning approval period;
- (g) if any of the above planning condition (a), (b), (c), (d) 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
- (h) if the above planning condition (e) 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 VII**.

13.3 There is no strong planning reason to recommend rejection of the application.

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 18.3.2024
Appendix Ia	FI received on 15.4.2024
Appendix Ib	FI received on 23.4.2024
Appendix II	Relevant Extract of TPB Guidelines No. TPB PG-No. 13G for Application for Open Storage and Port Back-up Uses
Appendix III	Relevant Extract of TPB Guidelines No. 34D on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development
Appendix IV	Previous s.16 Applications
Appendix V	Similar s.16 Application
Appendix VI	Government Departments' General Comments
Appendix VII	Recommended Advisory Clauses
Appendix VIII	Public Comment
Drawing A-1	Site Layout Plan
Drawing A-2	Section Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2024**