

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/NE-TKL/758**

<b><u>Applicant</u></b>	: Mr. WU Kuen represented by Fotton ELA Architects Limited
<b><u>Site</u></b>	: Lots 965 RP (Part) and 966 RP in D.D. 82, Ping Che Road, Ping Che, New Territories
<b><u>Site Area</u></b>	: About 1,636.02m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: Renewal of Planning Approval for Temporary Open Storage of Recyclable Materials and Ancillary Workshop for a Period of Three Years

**1. The Proposal**

- 1.1 The applicant seeks renewal of planning permission to continue using 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 OZP. According to the covering 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 currently used for the applied use with valid planning permission until 9.7.2024.
- 1.2 The Site is accessible via Ping Che Road (**Plan A-2**). According to the applicant, the temporary use involves six temporary structures, including a canopy for temporary storage and ancillary workshop with two converted-container structures for office and storage uses and a fire pump room underneath; an electricity meter room and an unused canopy with a total floor area of about 852.44m<sup>2</sup> and a height ranging from 2.3m to 5m (one to two storeys) (**Drawing A-1**). The storage area is about 744m<sup>2</sup>. One medium goods vehicle (MGV) parking space, one private car parking space and one loading/unloading bay for MGV are provided at the Site. The operation hours of the Site are between 8:00 a.m. and 6:30 p.m. from Mondays to Saturdays with no operation on Sundays and public holidays. The existing trees within the Site will be preserved and maintained during the approval period. The layout plan submitted by the applicant is shown in **Drawing A-1**.

1.3 The Site, in part or in whole, is the subject of nine previous planning applications (No. A/NE-TKL/20, 157, 219, 241, 295, 334, 460, 564 and 671). Details of the previous applications are set out in paragraph 6 below. Compared with the last application No. A/NE-TKL/671, which was submitted by the same applicant for the same use approved by the Rural and New Town Planning Committee (the Committee) of the Board on 9.7.2021, the site layout and development parameters under the current application 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 7.5.2024 (Appendix I)
- (b) Supplementary Information (SI) received on 10.5.2024 (Appendix Ia)
- (c) Further Information (FI) received on 17.6.2024 and 18.6.2024^ (Appendix Ib)
- (d) FI received on 24.6.2024^ (Appendix Ic)

*^ accepted and exempted from publication and recounting requirements*

## **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 is the subject of a previously approved planning application (No. A/NE-TKL/671). Compared with the last application, there are no changes to the development parameters, uses, operation hours and number of vehicular trips under the current application; and
- (b) the applied use is considered part of the green industry and should be supported from environmental protection point of view.

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

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

## **4. Town Planning Board Guidelines**

- 4.1 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) promulgated on 14.4.2023 is relevant to the application. The Site falls within Category 2 area under the Guidelines. The relevant extract of the Guidelines is 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 this application. The relevant assessment criteria are attached at **Appendix III**.

## 5. **Background**

The Site is currently not subject to any active enforcement case.

## 6. **Previous Applications**

- 6.1 The Site, in part or in whole, is the subject of nine previous applications. Applications No. A/NE-TKL/157, 219, 241, 295, 334 and 460 for temporary open storage of building/construction materials and applications No. A/NE-TKL/564 and 671 submitted by the same applicant for the same use as the current application were approved by the Board on review or by the Committee between 2001 and 2021 on considerations that there were no adverse departmental comments; no major adverse impacts anticipated; similar applications approved in the vicinity; subject of previous approvals; compliance with the relevant Town Planning Board Guidelines; and granting of temporary approval would not frustrate the long-term planning and future development of the area. All approval conditions imposed on the last approved application No. A/NE-TKL/671 have been complied with and the planning permission is valid until 9.7.2024.
- 6.2 Application No. A/NE-TKL/20 for temporary plastic workshop for a period of 12 months was rejected by the Board on review on 11.10.1996, but its planning considerations are not relevant to the current application as it is of a different use.
- 6.3 Details of the previous applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

## 7. **Similar Applications**

- 7.1 There were 10 similar applications involving six sites within the same “AGR” zone in the vicinity of the Site in the Ping Che and Ta Kwu Ling area in the past five years (**Plan A-1**). Nine of them (applications No. A/NE-TKL/622, 642, 695, 707, 714, 724, 734, 745 and 746) fell within the Category 2 areas under the then TPB PG-No. 13E/13F/13G and were approved by the Committee between 2019 and 2024 mainly on the grounds that the proposed uses generally complied with the relevant TPB Guidelines; similar applications were approved in the vicinity; and there were no major adverse departmental comments or local objections.
- 7.2 Application No. A/NE-TKL/625 fell within the Category 3 areas under the then TPB PG-No. 13E was rejected by the Committee on 4.10.2019 mainly on the grounds that the application did not comply with the then TPB PG-No. 13E in that there was no previous planning approval; and the applicant failed to demonstrate that the proposed use would not cause adverse traffic impact on the surrounding areas.
- 7.3 Details of the previous 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 to A-4)

- 8.1 The Site is:
  - (a) used for the applied use with valid planning permission;

- (b) hard-paved and fenced-off; and
  - (c) accessible via Ping Che Road.
- 8.2 The surrounding areas are of rural landscape character mainly comprising open storage yards, active/fallow agricultural land and domestic structures (the nearest about 80m to the northeast). Ping Yuen River is located to the west 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 in the Recommended Advisory Clauses are provided at **Appendices VI** and **VII** 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) she objects to the application;
- (b) 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 is granted to the Site;
- (c) the Site is already being used for the similar uses under the application. The structures erected do not tally with the previously approved planning application (No. A/NE-TKL/671) nor the proposed layout plan of this application;
- (d) the following irregularities covered by the subject planning application have been detected by her office:

#### **Unauthorized structures within the said private lots covered by the planning application**

LandsD has reservation on the planning application since there are unauthorized structures on the private lots which are already subject to lease enforcement actions according to case priority. The lot owner should rectify the lease breaches as demanded by LandsD;

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

Unauthorized structures extended from the said private lots not covered by the planning application

- (i) there are unauthorized structures extended from the said private lots to adjoining lots (Lots 967 and 980 RP in D.D. 82) not covered by the subject planning application. The lot owner should immediately rectify the lease breaches and her office reserves the rights to take necessary lease enforcement action against the breaches without further notice; and
  - (ii) for unauthorized structures extended from the application lots to adjoining lots (i.e. Lots No. 967 and 980 RP in D.D. 82) not covered by the subject planning application, Short Term Waiver (STW) cannot be processed before rectification;
- (f) the lot owners/applicant shall either (i) remove the unauthorized structure not covered by the subject planning application immediately; or (ii) include the unauthorized structures in the subject planning application for the further consideration by the relevant departments and, subject to approval of the Board to the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to her office for a STW to permit the structures 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 LandsD. In addition, LandsD reserves the right to take enforcement action against the lot owners for any breach of the lease conditions, including the breaches already in existence or to be detected at any point of time in future. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered; and
- (g) the approach of first erection of unauthorized structures then regularisation should not be encouraged. Unless and until the unauthorized structures are duly rectified by the lot owners or entirely included in the subject planning application, her 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) according to the “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses” (the COP), the application should not be supported as there are residential structures in the vicinity of the Site (domestic structures about 80m to the northeast of the Site) (**Plan A-2**) and the use of heavy vehicles is involved;

- (b) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest COP, and comply with all environmental protection/ pollution control ordinances; and
- (c) no environmental complaint against the Site has been received over the past three years.

## **11. Public Comment Received During Statutory Publication Period (Appendix VIII)**

On 14.5.2024, the application was published for public inspection. During the statutory public inspection period, one comment was received from a member of the North District Council indicating no comment on the application.

## **12. Planning Considerations and Assessments**

- 12.1 The application is for renewal of planning permission for temporary open storage of recyclable materials and ancillary workshop for a period of three years at the Site zoned “AGR” on the OZP. While 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 has no strong view against the renewal application from agricultural and nature conservation perspectives. Taking into account the planning assessments below, the renewal of planning permission for the applied use on a temporary basis for three years could be tolerated.
- 12.2 The current proposal is the same as the last approved scheme under application No. A/NE-TKL/671 in terms of the applied use, layout and development parameters. The surrounding areas are of rural landscape character mainly comprising open storage yards, active/fallow agricultural land and residential structures. Chief Town Planner/Urban Design and Landscape of Planning Department has no objection to the application from landscape planning perspective and considers that further significant adverse impact on the existing landscape resources within the Site 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 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
- 12.4 The application generally complies with the TPB PG-No. 13G in that relevant departments consulted, including Commissioner for Transport, Chief Engineer/Mainland North of Drainage Services Department, Chief Engineer/Construction of Water Supplies Department and Director of Fire Services, have no objection to or no adverse comment on the renewal application. DEP does not support the application as the applied use involves the use of heavy vehicles and environmental nuisance to sensitive receivers, i.e. domestic structures, is expected. However, there was no environmental complaint against

the Site in the past three years. The applicant will be advised to follow the environmental mitigation measures as set out in the latest COP to minimize the possible environmental impacts on the surrounding areas.

- 12.5 In response to DLO/N, LandsD's objection regarding the unauthorized structures within and outside the Site which are subject to lease enforcement actions and the existing structures do not tally with the proposed layout plan of the approved scheme under previous application No. A/NE-TKL/671, the applicant advises that he will rectify the matters and settle the land issues by applying STW accordingly. The applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 12.6 Moreover, the application generally complies with the TPB PG-No. 34D in that there has been no material change in planning circumstances since the approval of the last application; all the approval conditions under the last application have been complied with; and the approval period sought which is the same as the last approval granted by the Committee is not unreasonable.
- 12.7 The Site is the subject of eight previously approved applications for various open storage uses as detailed in paragraph 6 above. The last application No. A/NE-TKL/671 for the same use submitted by the same applicant was approved by the Committee on 9.7.2021. The planning circumstances of current application are similar to the approved one. As such, approval of the current application for renewal of planning approval is in line with the Committee's previous decisions.

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12, the Planning Department considers that the temporary use could be tolerated for a further 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 and be renewed from 10.7.2024 until 9.7.2027. The following conditions of approval and advisory clauses are suggested for Members' reference:

#### Approval Conditions

- (a) the existing drainage facilities shall be maintained at all times during the planning approval period;
- (b) if the above planning condition (a) 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
- (c) upon 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 VII**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason

for rejection is suggested for Members' reference:

- the applied use is not in line with the planning intention of the "AGR" zone which is intended 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 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.

#### **Attachments**

<b>Appendix I</b>	Application Form with attachments received on 7.5.2024
<b>Appendix Ia</b>	SI received on 10.5.2024
<b>Appendix Ib</b>	FI received on 17.6.2024 and 18.6.2024
<b>Appendix Ic</b>	FI received on 24.6.2024
<b>Appendix II</b>	Relevant Extracts of TPB PG-No. 13G on Application for Open Storage and Port Back-up Uses
<b>Appendix III</b>	Relevant Extract of TPB PG-No. 34D on Renewal of Planning Approval and Extension of Time of Compliance with Planning Conditions for Temporary Use or Development
<b>Appendix IV</b>	Previous s.16 Applications
<b>Appendix V</b>	Similar S.16 Applications
<b>Appendix VI</b>	Government Departments' General Comments
<b>Appendix VII</b>	Recommended Advisory Clauses
<b>Appendix VIII</b>	Public Comment
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos