

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/763

- Applicant** : Able New Development Limited represented by R-riches Property Consultants Limited
- Site** : Lots 1151, 1152, 1161 S.B RP (Part) and 1162 (Part) in D.D. 82 , Ta Kwu Ling, New Territories
- Site Area** : About 4,970 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Construction Materials and Machinery with Ancillary Facilities for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary open storage of construction materials and machinery with ancillary facilities for a period of three years and associated filling of land at the application site (the Site). The Site falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the coving Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years and filling of land within the “AGR” zone require planning permission from the Town Planning Board (the Board). The Site is largely vacant with a temporary container structure and covered with grass and trees.
- 1.2 The Site is accessible via a local track leading to Ping Che Road and is divided into two portions (i.e. the eastern and the western portions) (**Plans A-1 and A-2**). According to the applicant, the proposed use comprises one single-storey structure (building height of about 5 m) with a total floor area of 216 m² for storage of construction materials and machinery, site office and washroom at the eastern portion. About 2,905 m² or about 58% of the Site is intended for open storage of construction materials (i.e. scaffold, bricks, tiles, column, screws, etc.) and machinery (i.e. tamping rammer, generator, elevated platform, etc.). No dangerous goods will be stored at the Site. Two parking spaces for private car, one loading/unloading (L/UL) space for light goods vehicle and one L/UL space for medium goods vehicle (MGV) will be provided at the Site. The applicant also applies for filling of land with concrete (not more than 0.2 m in depth) at the entire Site for site formation of structures and circulation purpose (**Drawing A-2**). The operation

hours are between 8:00 a.m. and 7:00 p.m. from Mondays to Saturdays with no operation on Sundays and public holidays. A 2.5 m high solid metal wall will be erected along the site boundary to minimise nuisance to the surrounding areas. Traffic management measures, including deploying staff to manage the traffic and provision of signs at the entrance/exit of the Site to ensure traffic/pedestrian safety, are proposed. The applicant also submitted a drainage proposal in support of the application. There is one existing tree at the Site which is proposed to be felled, and 12 new trees will be planted along part of the boundary of the Site (**Drawing A-3**). The proposed layout plan submitted by the applicant is shown in **Drawing A-1**.

1.3 In support of the application, the applicant has submitted the following documents:

- (a) Application Form with attachment received on 13.6.2024 **(Appendix I)**
 - (b) Further Information (FI) received on 12.8.2024[^] **(Appendix Ia)**
 - (c) FI received on 17.9.2024* **(Appendix Ib)**
- [^] *accepted but not exempted from publication and recounting requirements*
^{*} *accepted and exempted from publication and recounting requirements*

1.4 On 2.8.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to the applicant's request to defer making a decision on the application for two months 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**, as summarised below:

- (a) the applicant would like to use the Site for storage of construction materials and machinery to support construction industry in the New Territories;
- (b) the proposed use is not incompatible with the surrounding areas and there is no active agricultural use within the Site. Approval of the application on a temporary basis of three years would better utilise the deserted agricultural land and would not jeopardise the long-term planning intention of the "AGR" zone. The applicant will reinstate the Site to an amenity area after the planning approval; and
- (c) the proposed use will not create significant nuisance to the surrounding areas. The applicant will strictly comply with all environmental protection/pollution control ordinances, i.e. Water Pollution Control Ordinance, Air Pollution Control Ordinance, Noise Control Ordinance, etc. at all times during the planning approval period and follow the 'Code of Practices on Handling the Environmental Aspects of Temporary Uses and Open Storage Sties' (the COP) issued by Environmental Protection Department (EPD).

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

The applicant is not a "current land owner" but has complied with the 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) by sending notice to the Ta Kwu Ling District Rural Committee by registered post and posting site notice. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

The 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 by the Board on 14.4.2023 is relevant to the application. The Site falls within Category 2 areas under TPB PG-No. 13G. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

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

6. Previous Application

There is no previous application covering the Site.

7. Similar Applications

- 7.1 There were 15 similar applications for temporary open storage within the “AGR” zone in the vicinity of the Site in Ping Che and Ta Kwu Ling area in the past five years (**Plan A-1**).
- 7.2 12 similar applications (No. A/NE-TKL/642, 671, 695, 707, 714, 724, 734, 743, 745, 746, 758 and 762) involving eight sites falling within the Category 2 areas under the previous and current versions of TPB PG-No. 13G for various temporary open storage uses were approved with conditions by the Committee between 2020 and 2024 mainly on the considerations that the proposed uses generally complied with the relevant TPB Guidelines; there were no major adverse departmental comments and concerns of the relevant government departments could be addressed through implementation of approval conditions; and similar applications were approved in the vicinity.
- 7.3 Three applications (No. A/NE-TKL/625, 641 and 690) were rejected by the Committee between 2019 and 2022 mainly on the grounds that they were not in line with the planning intention of the “AGR” and there was no strong justification for a departure from the planning intention; the applications fell within the Category 3 areas under the then TPB PG-No. 13E/F and did not comply with TPB Guidelines in that there was no previous planning approval for open storage use; there were adverse comments from relevant government departments and local objections against the applications; and the applicants failed to demonstrate that the proposed use would not cause adverse traffic impact on the surrounding areas.
- 7.4 Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) largely vacant and covered with grass and trees. A temporary container structure is located at the eastern portion of the Site; and

(b) accessible via a local track leading to Ping Che Road.

8.2 The surrounding areas are of rural character mainly comprising warehouses, parking of vehicles, active and fallow agricultural land, domestic structures (the nearest to the immediate south of the western portion of the Site) and tree clusters. “Green Belt” (“GB”) zones are located to the southeast and further north.

9. Planning Intention

9.1 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.

9.2 According to the Explanatory Statement of the OZP, as filling of land within the “AGR” zone may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

10.1 Apart from the government departments as set out in paragraph 10.2 below, other 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 IV** and **V** respectively.

10.2 The following government departments do not support/have comments on the application:

Agriculture

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

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

Environment

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

- (a) according to the COP, the application should not be supported as there are residential structures in the vicinity of the Site (the nearest to the immediate south of the western portion of the Site) and the use of heavy vehicle is involved;
- (b) no comment on the proposed land filling;

- (c) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the COP to minimise any potentially environment nuisances; and
- (d) no environmental complaint against the Site was received in the past three years.

Landscape

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

- (a) with reference to aerial photo of 2023, the Site is located in an area of rural inland plains landscape character comprising farmlands, temporary structures, vegetated areas, clusters of tree groups, and woodland within the “GB” zones to the north and immediate southeast. There is a concern that approval of the application may alter the landscape character and degrade the landscape quality of the surrounding areas. Based on the records taken on 2.7.2024, the Site is fenced-off and mainly covered by wild grasses. Some vegetation of undesirable and common species, e.g. *Musa supp.* are observed within the Site;
- (b) having reviewed FI submitted by the applicant, one tree (i.e. *Melia azedarach*) within the Site is proposed to be felled. Significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated. It is noted that 12 new trees (i.e. *Senna surattensis*) with continuous soil trench are proposed along the western and north-western periphery boundary (**Drawing A-3**); and
- (c) approval of the application does not imply approval of tree works such as pruning, transplanting and felling. The applicant is reminded to seek approval for any proposed tree works from relevant authority prior to commencement of the works.

11. Public Comments Received During Statutory Publication Periods

On 21.6.2024 and 16.8.2024, the application was published for public inspections. During the statutory public inspection periods, seven comments were received (**Appendix VII**). Two comments from a member of the North District Council indicates no comment on the application. The remaining five comments from the Kadoorie Farm and Botanic Garden, the Conservancy Association and an individual object to the application mainly on the grounds that there is no previous application covering the Site; the proposed use is not in line with the planning intention of “AGR” zone; approval of the application would set a precedent for other similar applications within the areas; the application is suspected as a case of “destroy first, build later”; the proposed use would cause adverse environmental and drainage impacts; brownfield use should not extend to this area; and the Board should investigate if the Site is subject to ongoing enforcement case and whether the Site and its surrounding areas are still arable.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of construction materials and machinery with ancillary facilities for a period of three years and associated filling of land at the Site zoned “AGR” on the OZP. The proposed 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agricultural perspective as the Site possess potential for agricultural rehabilitation. Taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.
- 12.2 The application involves filling of land with concrete of not more than 0.2 m in depth at the entire Site for site formation of structures and circulation area. Filling of land within “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the adjacent areas. In this regard, the Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD) has no in-principle objection to the application from the public drainage viewpoint, while DEP has no comment on the filling of land from the environmental protection perspective.
- 12.3 The Site is located in an area of rural character mainly comprising warehouses, parking of vehicles, active and fallow agricultural land, domestic structures and tree clusters. The CTP/UD&L of PlanD raises a concern that approval of the application may alter the landscape character and degrade the landscape quality of the surrounding areas. Nevertheless, she considers that significant adverse impact on the existing landscape resources within the Site arising from the proposed use is not anticipated. The applicant also proposes to plant 12 new trees along part of the site boundary abutting to the local track. An approval condition requiring the reinstatement of the Site to an amenity area is recommended in paragraph 13.2 below.
- 12.4 The Site falls within the 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 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.
- 12.5 The application generally complies with the TPB PG-No. 13G in that relevant departments consulted, including the Commissioner for Transport, CE/MN of DSD, Chief Engineer/Construction of Water Supplies Department and Director of Fire Services, have no objection to or no adverse comment on the application. DEP does not support the application as the proposed use involves the use of heavy vehicles and environmental nuisance to the sensitive receivers (i.e. residential structures) in the vicinity of the Site is expected. In this regard, the applicant will be advised to follow the environmental mitigation measures set out in the COP to minimise the possible environmental impact on the surrounding areas in the Recommended Advisory Clauses at **Appendix V**.

- 12.6 There were 15 similar applications within the “AGR” zone in the vicinity of the Site in the past five years, of which 12 applications falling within the Category 2 areas were approved with conditions by the Committee between 2020 and 2024 mainly on the considerations as detailed in paragraph 7.2 above. The planning circumstances of the current application are similar to those of the approved applications. As such, approval of the current application is in line with the Committee’s previous decisions. On the other hand, the other three applications rejected by the Committee fell within the Category 3 areas and were subject to different planning considerations.
- 12.7 Regarding the public comments as detailed in paragraph 11, 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 public comments in paragraph 11 above, the Planning Department considers that the proposed use could be tolerated for a period of three years.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of three years until 4.10.2027. The following conditions of approval and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) 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 4.4.2025;
- (b) in relation to (a) above, the provision of drainage facilities 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 4.7.2025;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (d) 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 15.11.2024;
- (e) the submission of a fire service installations proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.4.2025;
- (f) in relation to (e) above, the implementation of the fire service installations proposal within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 4.7.2025;
- (g) the implementation of the traffic management measures, as proposed by the applicant, within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 4.7.2025;

- (h) if the above planning condition (c) 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;
- (i) if any of the above planning condition (a), (b), (d), (e), (f) or (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (j) 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 V**.

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

the proposed use with associated filling of land 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 the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form with Attachment received on 13.6.2024
Appendix Ia	FI received on 12.8.2024
Appendix Ib	FI received on 17.9.2024
Appendix II	Relevant Extracts of TPB PG-No. 13G
Appendix III	Similar Applications
Appendix IV	Government Departments' General Comments
Appendix V	Recommended Advisory Clauses
Appendix Va	Good Practice Guidelines for Open Storage Sites
Appendix VI	Public Comments
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Area Plan

Drawing A-3	Landscape Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3b	Aerial Photos
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2024**