

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/764

<u>Applicant</u>	: Joyceway Industrial Limited represented by R&U Planning and Development Consultants Ltd.
<u>Site</u>	: Lots 1507 S.B RP (Part), 2022 S.B RP (Part), 2036 (Part), 2037, 2038, 2039, 2040 (Part), 2041 (Part) and 2042 (Part) in D.D. 76 and Adjoining Government Land (GL), Leng Tsai, Sha Tau Kok Road, Fanling, New Territories
<u>Site Area</u>	: About 10,331m ² (including about 1,119m ² of GL, or about 10.8% of the Site)
<u>Lease</u>	: Block Government Lease (demised for agricultural use) (about 89.2%)
<u>Plan</u>	: Approved Ping Che and Ta Kwu Ling Outline Zoning Plan (OZP) No. S/NE-TKL/14
<u>Zonings</u>	: (i) "Agriculture" ("AGR") (about 93.7%) (ii) "Village Type Development" ("V") (about 6.3%) ¹
<u>Application</u>	: Renewal of Planning Approval for Temporary Open Storage of Construction Materials for a Period of Three Years until 3.8.2027

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 construction materials for a further period of three years until 3.8.2027 (**Plan A-1**). The Site falls within an area zoned "AGR" with a minor portion zoned "V" on the approved Ping Che and Ta Kwu Ling OZP No. S/NE-TKL/14. According to the covering Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission until 3.8.2024.
- 1.2 According to the applicant, the temporary use involves three single-storey temporary structures² with a total floor area of about 440m² for office, staff resting and storage purposes. The uncovered area of the Site is used for open storage of construction materials (**Drawing A-1**). The Site is abutting Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**). Two private carparking spaces and three parking and loading/unloading (L/UL)

¹ A minor portion of the Site (about 6.3% of the Site or 651m²) falls within an area zoned "V" on the OZP, which is not included in the planning assessment.

² No building height of the concerned structures is specified in the applicant's submission.

spaces for heavy goods vehicle are provided at the Site. The operation hours are from 8:30 a.m. to 6:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. Moreover, all existing trees within the Site will be preserved and maintained. The traffic management measures for the vehicular and pedestrian access will continue to be implemented. The site layout plan submitted by the applicant is shown in **Drawing A-1**.

- 1.3 The Site is the subject of nine previous planning applications for the same applied use approved by the Rural and New Town Planning Committee (the Committee) or the Board upon review between 1998 and 2021. The last previous application (No. A/NE-TKL/674) submitted by the same applicant for the same use as the current application was approved by the Committee on 23.7.2021. All the approval conditions under that application had been complied with. Compared to the last previous application, all development parameters including the site layout under the current application remain unchanged.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with Attachments received on 13.6.2024 **(Appendix I)**
 - (b) Further Information received on 18.7.2024 **(Appendix Ia)**
(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 in Part 7 of the Application Form at **Appendix I**, as summarized below:

- (a) the Site is the subject of nine previously approved planning applications for the same use. All approval conditions under the previously approved applications had been complied with. Compared to the last approved application, there has been no material change in the planning circumstances, development parameters as well as the general layout and operational characteristics of the applied use under the current application;
- (b) the applied use is compatible with the surrounding land uses and would have no adverse impact on the surrounding areas; and
- (c) the application generally complies with relevant Town Planning Board Guidelines including Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' (TPB PG-No. 13G) and 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' (TPB PG-No. 34D).

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

The applicant is the one of the "current land owner" and as complied with the requirements as set out in the Town Planning Board Guidelines on 'Owner's Consent/Notification' Requirements under Sections 12A and 16 of the Town Planning Ordinance' (TPB PG-No. 31B) by obtaining consents from the other two "current land owners". For the GL within the Site, TPB PG-No. 31B is not applicable to the application. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines (TPB PG)

- 4.1 TPB PG-No. 13G promulgated on 14.4.2023 is relevant to the application. The Site falls within Category 2 area under the Guidelines, relevant extract of which is at **Appendix II**.
- 4.2 TPB PG-No. 34D is 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 involves nine previous applications (No. A/NE-TKL/81, 130, 226, 277, 311, 377, 490, 585 and 674) for temporary open storage of construction materials since 1998, with the last six applications submitted by the same applicant as the current application. All these applications were approved by the Board on review between 1998 and 2021 mainly on the considerations that the applications generally complied with the relevant TPB PG in that there were no major impact or adverse departmental comments; there were previous planning approvals; and their approval conditions had been complied with.
- 6.2 All the approval conditions imposed on the last approved application (No. A/NE-TKL/674) had been complied with and the planning permission is valid until 3.8.2024. Compared with the last approved application, all development parameters including site layout under the current application remain unchanged.
- 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 are five similar applications involving three sites within the same “AGR” zone in the vicinity of the Site in the past five years (**Plan A-1**). Applications No. A/NE-TKL/621, 655 and 744 involving largely the same site to the immediate south of the Site and also falling within Category 2 area for proposed temporary (warehouse and) open storage of construction materials were approved by the Committee between 2020 and 2024 mainly on considerations that the applications generally complied with the relevant TPB PG in that no major adverse department comments had been received, and the technical concerns of relevant departments and local residents could be addressed through the implementation of approval conditions.
- 7.2 Applications No. A/NE-TKL/624 and 733, with their sites falling within Category 3 area, were rejected by the Committee between 2019 and 2023 respectively mainly for the reasons that the developments were not in line with the planning intention of the “AGR” zone; the applications did not comply with the relevant TPB PG in that there was no previous planning approval; there were adverse departmental comments and local objections; the applicants failed to demonstrate that the developments would not generate adverse impacts on the surrounding areas; and approval of the application would set undesirable precedents.

7.3 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-2, aerial photo on Plan A-3 and site photos on Plans A-4a and A-4b)

8.1 The Site is:

- (a) currently occupied by the applied use with valid planning permission;
- (b) mainly flat, hard paved and fenced-off; and
- (c) abutting Sha Tau Kok Road – Ma Hei Ha.

8.2 The surrounding areas are of rural landscape character comprising open storage yards, warehouses³, 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 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 in the Recommended Advisory Clauses are provided at **Appendices VI and VII** respectively.

10.2 The following government department has adverse comments on the application:

Land Administration

10.3 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 GL is granted to the Site;
- (b) the Site is already being used for the uses under the application. The structures erected do not tally the proposed layout plan of the subject application nor previous application;

³ The open storage yard and warehouse to the southwest of the Site are subject to planning enforcement action against an unauthorized development (UD) for storage use (enforcement case No. E/NE-TKL/484). Enforcement Notice was issued on 22.2.2024 requiring discontinuation of the UD. The concerned site will be monitored under established practice.

- (c) there are unauthorized structures on the private lots. The lot owners should immediately rectify the lease breaches and LandsD reserves the rights to take necessary lease enforcement action against the breaches without further notice. These unauthorized structures had already advised since 14.7.2021 in the previous application; and
- (d) the GL within the Site (about 1,119m² as mentioned in the application form) is illegally occupied with unauthorized structure without any permission. Planning Department had already been advised on the illegal occupation of GL since 14.7.2021 in the previous s.16 application. Any occupation of GL without Government's prior approval is an offence under Cap. 28. LandsD reserves the rights to take necessary land control action against the illegal occupation of GL without further notice.

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

On 21.6.2024, the application was published for public inspection. During the first three weeks of the statutory public inspection period, six public comments were received. The village representatives from Kan Tau Tsuen and the Chairman, the First Vice-chairman and Vice-chairman of Fanling District Rural Committee object to the application due to adverse traffic impacts and environmental nuisance arising from the applied use. The remaining two individuals indicate no comment on the application.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning permission for temporary open storage construction materials at the Site largely zoned "AGR" on the OZP for a further period of three years. 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, and to retain fallow arable land with good potential for rehabilitation for cultivation and other 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 and would not frustrate the long-term planning intention of the "AGR" zone.
- 12.2 The current proposal is the same as the last approved scheme under application No. A/NE-TKL/674 in terms of the applied use, layout and development parameters. The surrounding areas are of rural landscape character mainly comprising open storage yards, warehouses, active/fallow agricultural land, village houses and vacant land (**Plans A-2 and A-3**). Chief Town Planner/Urban Design and Landscape of Planning Department has no objection to the application from landscape planning perspective and advises that further landscape impact arising from the continued use of the temporary open storage 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. To minimize any possible environmental nuisance, the applicant will be advised to follow the environmental mitigation measures as set out in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. In response to DLO/N of LandsD’s adverse comments on the application due to lease breaches and illegal occupation of GL, the applicant will be advised to liaise with LandsD to address the land matters separately under the land administration regime. 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 for the last application have been complied with; and the approval period sought which is for the same as the previous approval is not unreasonable.
- 12.5 The Site is the subject of nine previous applications for the same applied use, which were all approved by the Committee or the Board on review between 1998 and 2021. The current proposal is the same as the last approved scheme under application No. A/NE-TKL/674 submitted by the same applicant in terms of the applied use, layout and development parameters. All approval conditions under the last approval had been complied with and the planning permission is valid until 3.8.2024. There has been no major change in the planning circumstances since the approval of the last previous application. As such, approval of the current application for renewal of planning approval is in line with the Committee’s previous decisions.
- 12.6 There are five similar applications involving three sites for various temporary open storage/warehouse uses within the same “AGR” zone in the vicinity of the Site. Of them, three applications (No. A/NE-TKL/621, 655 and 744) involving largely the same site to the immediate south of the Site and also falling within Category 2 area (**Plan A-1**) were approved by the Committee between 2020 and 2024 mainly on the considerations that applications generally complied with the relevant TPB PG. The planning circumstances of the current application are similar to these three approved similar applications.
- 12.7 Regarding the adverse public comments mentioned in paragraph 11 above, the government department’s comments and the planning assessment 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, 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 4.8.2024 until 3.8.2027. The following approval conditions and advisory clauses are suggested for Members’ reference:

Approval Conditions

- (a) the peripheral fencing shall be maintained at all times during the planning approval period;
- (b) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (c) the submission of a condition record of the existing drainage facilities 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 4.11.2024;
- (d) in relation to (c) above, the existing drainage facilities shall be properly maintained at all times during the planning approval period;
- (e) if any of the above planning condition (a), (b) 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; and
- (f) if the above planning condition (c) 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 not 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.

Attachments

Appendix I	Application Form with Attachments received on 13.6.2024
Appendix Ia	FI received on 18.7.2024
Appendix II	Relevant Extracts of TPB PG-No. 13G on Application for Open Storage and Port Back-up Uses

Appendix III	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
Appendix IV	Previous Applications
Appendix V	Similar Applications
Appendix VI	Government Departments' General Comments
Appendix VII	Recommended Advisory Clauses
Appendix VIII	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 and A-4b	Site Photos

PLANNING DEPARTMENT
AUGUST 2024