

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/765

<u>Applicant</u>	: Miss WU King Hung
<u>Site</u>	: Lot 1403 RP (Part) in D.D. 77, Ping Che, Ta Kwu Ling, New Territories
<u>Site Area</u>	: About 263m ²
<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>	: Renewal of Planning Approval for Temporary Open Storage of Metals and Tools and Containers (for Office and Storage of Tools) 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 metals and tools and containers (for office and storage of tools) for a further 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 7.9.2024.
- 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 involves a two-storey container structure (4.8m in height) for site office and storage of tools uses with a total floor area of about 30m². The rest of the Site is used for open storage purpose. No parking or loading/unloading space would be provided on site. The operation hours of the Site are between 9:00 a.m. and 5:00 p.m. from Mondays to Saturdays with no operation on Sundays and public holidays. Plans showing the layout with drainage, tree preservation and fire service installations (FSIs) proposals submitted by the applicant are shown in **Drawings A-1 to A-3** respectively.
- 1.3 The Site is the subject of nine previous applications for various temporary open storage uses. Details of the previous applications are set out in paragraph 6 below. The last six applications were submitted by the same applicant as the current application for the same use. Compared with the last application No. A/NE-TKL/672 which was approved with

conditions 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 18.6.2024 (Appendix I)
- (b) Further Information (FI) received on 26.6.2024[^] (Appendix Ia)
- (c) FI received on 27.7.2024 and 31.7.2024 [^] (Appendix Ib)

[^]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** and summarised below:

- (a) the Site is the subject of several previously approved applications for the same applied use. All approval conditions have been complied with, and the applicant undertakes to comply with the approval conditions to be imposed by the Board in the current renewal application;
- (b) since the metal tools stored on site can be delivered with a trolley or will not be moved out of the Site, no vehicle is required for transportation for the applied use;
- (c) the existing drainage facilities are well-functioned and no adverse drainage impact is anticipated; and
- (d) the applicant has been liaising with the Lands Department (LandsD) regarding the relevant land administrative procedure and would continue to address LandsD's comment upon approval of the application.

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 are relevant to the application. The Site falls within Category 3 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 action.

6. **Previous Applications**

- 6.1 The Site, in part or in whole, is the subject of nine previous planning applications (No. A/NE-TKL/184, 212, 243, 291, 322, 388, 515, 595 and 672) for various temporary open storage uses and renewal of planning approvals since 2002.
- 6.2 All previous applications were approved with conditions by the Committee except for application No. A/NE-TKL/184 for temporary open storage of generators for a period of three years which was rejected by the Board on review on 22.3.2002 mainly on the ground that no technical assessments/proposals were provided in the submission to demonstrate that the use under application would not generate adverse drainage, environmental and traffic impacts on the surrounding areas. Applications No. A/NE-TKL/212 and 243 for the same use as application No. A/NE-TKL/184 were subsequently approved with conditions by the Committee on 10.3.2003 and 7.11.2003 respectively mainly on considerations that relevant technical assessments had been submitted to demonstrate no adverse impacts; the technical concerns of government departments could be addressed through the imposition of relevant approval conditions; and general compliance with the relevant Town Planning Board Guidelines.
- 6.3 The remaining six applications (No. A/NE-TKL/291, 322, 388, 515, 595 and 672) for the same use submitted by the same applicant as the current application for a period of three years were approved with conditions by the Committee between December 2006 and July 2021 mainly on considerations that the applications generally complied with the relevant Town Planning Board Guidelines; and no adverse departmental comments on the applications. For the last application No. A/NE-TKL/672 approved with conditions by the Committee on 9.7.2021, all approval conditions imposed on the last approved application No. A/NE-TKL/672 have been complied with and the planning permission is valid until 7.9.2024.
- 6.4 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 no similar application in the vicinity of the Site.

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 a local track leading to Ping Che Road.

- 8.2 The surrounding areas are of rural character comprising mainly temporary structures, warehouses, open storage yards, vehicle parks, workshops, domestic structures and tree clusters.

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 V** and **VI** respectively.
- 10.2 The following government department objects to the application:

Land Administration

10.2.1 Comments of the District Lands Officer/North, LandsD (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 uses under the application. The unauthorized structures as mentioned in (d) and (e) below was stated in the last planning application (No. A/NE-TKL/672) in 2021. However, no rectification had been carried out even with repeated requests since 2021 to 2023. The applicant did not have genuine intention to apply for a Short Term Waiver (STW);
- (d) the following irregularity covered by the subject planning application has been detected by her office:

Unauthorized structure within the said private lot covered by the planning application

LandsD has reservation on the planning application since there is an unauthorized structure on the private lot which is 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 irregularity not covered by the subject planning application has been detected by her office:

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

there are unauthorized structures within the said private lot 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;

- (f) the lot owner shall (i) remove the unauthorized structures not covered by the subject planning application immediately; and (ii) include the area with unauthorized structures in the subject planning application for further consideration by the relevant departments and, subject to approval of the Board for the planning application which shall have reflected the rectification or amendment as aforesaid required, apply to her office for 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 date-back 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 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. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered; and
- (g) unless and until the unauthorized structures are duly rectified by the lot owner or are 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.

11. Public Comment Received During Statutory Publication Period (Appendix VII)

On 25.6.2024, 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 metals and tools and containers (for office and storage of tools) for a further 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 application for renewal of the planning approval. Taking into account the planning assessments below, renewal of planning permission for the applied use on a temporary basis of three years could be tolerated.
- 12.2 The current proposal is the same as the last approved scheme under application No. A/NE-TKL/672 submitted by the same applicant in terms of the applied use, layout and development parameters. The surrounding areas are of rural character comprising mainly temporary structures, warehouses, open storage yards, vehicle parks, workshops,

domestic structures and tree clusters. The 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 3 areas under the TPB PG-No. 13G. The following considerations in the Guidelines are relevant:

Category 3 areas: applications would normally not be favourably considered unless the applications are on sites with previous planning approvals (irrespective of whether the application is submitted by the applicant of previous approval or a different applicant). Sympathetic consideration may be given if genuine efforts have been demonstrated in compliance with approval conditions of the previous planning applications and/or relevant technical assessments/proposals have been included in the fresh applications, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding 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.

- 12.4 The application generally complies with TPB PG-No. 13G in that the Site is subject to eight previous approvals for open storage use granted since 2003 and all approval conditions under the last application (No. A/NE-TKL/672) submitted by the same applicant for the same use have been complied with. Relevant departments consulted, including the Commissioner for Transport, the Director of Environmental Protection, the Chief Engineer/Mainland North of Drainage Services Department and the Director of Fire Services, have no objection to or no adverse comment on the renewal application from traffic, environmental, drainage and fire safety perspectives respectively.
- 12.5 In response to DLO/N, LandsD's comments regarding the unauthorized structures on the subject lot within and outside the Site which are subject to lease enforcement actions, the applicant advises that she has been liaising with LandsD and would continue to spend effort in addressing the land issues. Should the application be approved, the applicant will be advised to liaise with LandsD to deal with the land issues separately under the land administration regime.
- 12.6 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.

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 8.9.2024 until 7.9.2027**. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) 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 8.12.2024;
- (b) no vehicles entering and exiting the Site, as proposed by the applicant, is allowed during the planning approval period;
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) if any of the above planning condition (b) or (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;
- (e) if the above planning condition (a) 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
- (f) 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 VI**.

- 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 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.

Attachments

Appendix I	Application Form with attachments received on 18.6.2024
Appendix Ia	FI received on 26.6.2024
Appendix Ib	FI received on 27.7.2024 and 31.7.2024
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	Government Departments' General Comments
Appendix VI	Recommended Advisory Clauses
Appendix VII	Public Comment
Drawing A-1	Drainage Plan
Drawing A-2	Tree Preservation Plan
Drawing A-3	Fire Services Installations Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2024**