

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/768

<u>Applicant</u>	: Mr. LAI Kwok Leung represented by Aikon Development Consultancy Limited
<u>Site</u>	: Lots 172 and 174 RP (Part) in D.D. 84 and Adjoining Government Land (GL), Ping Che, Ta Kwu Ling, New Territories
<u>Site Area</u>	: About 871m ² (including GL of about 172m ² or 19.7% of the Site)
<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>	: Temporary Warehouse for Storage of Metal and Construction Materials for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary warehouse for storage of metal and construction materials for a period of three years and associated filling of land at the application site (the Site) which falls within an area zoned “AGR” on the OZP (**Plan A-1**). According to the covering 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 currently fenced-off, hard-paved and used for the applied use without valid planning permission.
- 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 five single-storey structures of not more than 6m in height with a total floor area of about 378m² for warehouse, porches, site offices and storeroom. Metal and construction materials to be stored within the Site are non-polluting and non-dangerous in nature and will remain stagnant. One private car parking space and one loading/unloading (L/UL) bay for medium goods vehicle will be provided within the Site. 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. The layout plan submitted by the applicant is shown in **Drawing A-1**.
- 1.3 The applicant also applies for regularisation of filling of land of the entire Site with concrete of about 0.15m in depth (**Drawing A-2**). The applicant proposes traffic

management measures such as deployment of traffic regulator near the access of the Site and requiring advance reservation for L/UL activities. Road signs are also proposed to alert drivers and pedestrians at the access of the Site.

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

- (a) Application Form with attachments received on 25.7.2024 (Appendix I)
- (b) Further Information (FI) received on 20.11.2024[^] (Appendix Ia)

[^]accepted and exempted from publication and recounting requirements

1.5 On 20.9.2024, 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.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Application Form and FI at **Appendices I and Ia**, as summarised below:

- (a) the applied use will serve as a secure storage facility for metal components and construction metals for on-going and future mass transit railway projects. It enables reliable access to the required construction and repair materials in support of railway projects;
- (b) the applied use is considered compatible with the surrounding land uses predominantly occupied by open storage yards and warehouses. The planning intention of "AGR" zone may hardly be materialised in short term. As the applied use is temporary in nature, it will not jeopardise the long-term planning intention of the "AGR" zone;
- (c) there are similar approvals on the same OZP. Approval of the current application will not set an undesirable precedent;
- (d) the applicant will apply to the Lands Department (LandsD) for Short Term Tenancy (STT) and modification of Short Term Waiver (STW) for occupying the GL and permitting the structures to be erected or to regularise any irregularities on site once the current application is approved; and
- (e) no adverse traffic, landscape, environmental, and drainage impacts arising from the applied use are anticipated. The applicant will strictly follow the mitigation measures and requirements in the revised "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" (COP).

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

The applicant is one of the "current land owners" of the Site and 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 notifying another "current land owner". Detailed information would be deposited at the meeting for Members' inspection. For the GL portion, the "Owner's Consent/Notification" requirements are not applicable.

4. Background

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

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There were six similar applications involving four sites (No. A/NE-TKL/695, 721, 737, 757, 762 and 779) for temporary warehouse and/or open storage uses within the same “AGR” zone in the vicinity of the Site in the past five years. All of them were approved with conditions by the Committee between 2022 and 2024 mainly on the considerations that no major adverse departmental comments were received on the application or the concerns of the relevant government departments could be addressed through imposition of approval conditions; complied with the relevant Town Planning Board Guidelines; and policy support was given to facilitate the relocation of the applicant’s business affected by government project (for applications No. A/NE-TKL/721 and 779 only).
- 6.2 Details of the similar applications are summarised at **Appendix II** and their locations are shown on **Plan A-1**.

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

- 7.1 The Site is:
 - (a) fenced-off, hard-paved and used for the applied use without valid planning permission; and
 - (b) accessible via a local track leading to Ping Che Road.
- 7.2 The surrounding areas are of rural character comprising mainly warehouses, open storage yards, workshops, car repairing workshops, domestic structures (the nearest one about 5m to the southwest) and vacant land. “Green Belt” zones are located to the further southwest, southeast and northeast of the Site.

8. Planning Intention

- 8.1 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.
- 8.2 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.

9. Comments from Relevant Government Departments

9.1 Apart from the government departments as set out in paragraph 9.2 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 III** and **IV** respectively.

9.2 The following government departments object to/do not support the application:

Land Administration

9.2.1 Comments of the District Lands Officer/North, LandsD (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 substantial structures erected do not tally with the proposed layout plan of the application;
- (c) the following irregularities covered by the planning application have been detected by her office:

- (i) unauthorised structures within the said private lots covered by the planning application

LandsD has reservation on the planning application since there are unauthorised 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;

- (ii) unlawful occupation of GL adjoining the said private lots with unauthorised structures covered by the planning application

the GL within the Site (about 172m² as mentioned in the Application Form) has been fenced-off and illegally occupied with unauthorised structure without any permission. Any occupation of GL without Government's prior approval is an offence under Cap. 28. LandsD objects to the planning application since there is illegal occupation of GL which regularisation would not be considered according to the prevailing land policy. The lot owners should immediately cease the illegal occupation of GL and remove the unauthorised structure as demanded by LandsD. Her office reserves the rights to take necessary land control action against the illegal occupation of GL without further notice. Illegal occupation of GL is not restricted to erection of structures but includes occupation;

- (d) the following irregularity not covered by the planning application has been detected by her office:

unauthorised structures within the said private lots not covered by the

planning application

there is unauthorised structure extended from the said private lots to Lot 171 in D.D. 84 not covered by the 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;

- (e) erection of unauthorised structures first and then applied for regularisation should not be encouraged. The STW (if applied after obtaining the planning approval) will be considered for the lots (i.e. on whole lot basis). Besides, the unauthorised structure extended from the subject lots to Lot 171 in D.D. 84 (which is not covered by the planning application) should be removed;
- (f) the lot owners shall remove the unauthorised structures not covered by the planning application and cease the illegal occupation of the GL immediately and, subject to approval of the Board to the planning application which shall have reflected the rectification as aforesaid required, apply to her office for STW by all owners of the lots and STT to permit the structures erected/to be 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 date-back waiver fee from the first date the unauthorised structures were erected/rent 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 and land control action for any unlawful occupation of GL. Besides, given the applied use is temporary in nature, only erection of temporary structures will be considered; and
- (g) unless and until the unauthorised structures not covered by the application and the unlawful occupation of GL are duly rectified by the lot owners, her office objects to the application which must be brought to the attention of the Board when they consider the application.

Agriculture

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

- (a) the application is not supported from agricultural perspective; and
- (b) the Site falls within the “AGR” zone and is generally occupied by some structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are 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

9.2.3 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 (nearest about 5m to the southwest) (**Plan A-2**) and the use of heavy vehicles is involved;
- (b) should the application be approved, the applicants are advised to follow the relevant mitigation measures and requirements in the COP to minimise any potential environmental nuisances;
- (c) no objection to the filling of land from environmental perspective; and
- (d) no environmental complaint against the Site was received in the past three years.

10. Public Comments Received During Statutory Publication Period

On 2.8.2024, the application was published for public inspection. During the statutory public inspection period, two comments were received (**Appendix V**). One comment from an individual objects to the application mainly on the grounds that there was no previous approval; and approval of the application would encourage the penetration of brownfield into the area. Another comment from a member of the North District Council indicates no comment on the application.

11. Planning Considerations and Assessments

- 11.1. The application is for temporary warehouse for storage of metal and construction materials for a period of three years and associated filling of land at the Site zoned “AGR” on the OZP. 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 does not support the application from the agricultural perspective as the Site possess potential for agricultural rehabilitation. Nonetheless, taking into account the planning assessments below, the applied use on a temporary basis of three years could be tolerated.
- 11.2. The application involves regularisation of filling of land at the whole Site with concrete of about 0.15m in depth. Filling of land within the “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 has no objection to the application from public drainage viewpoint, while DEP has no objection to the filling of land from environmental perspective. An approval condition requiring the reinstatement of the Site to an amenity area is recommended in paragraph 12.2 below should the Committee decide to approve the application.
- 11.3. The Site is situated in an area of rural character comprising mainly warehouses, open storage yards, workshops, car repairing workshops, domestic structures and vacant land. The Chief Town Planner/Urban Design & Landscape of Planning Department has no

objection to the application from landscape planning perspective and considers that the applied use is not incompatible with its surrounding environment.

- 11.4. While DEP considers that the application should not be supported as the applied use involves the use of heavy vehicles and environmental nuisance on the sensitive receivers (i.e. residential structures) in the vicinity of the Site is expected, no environmental complaint at the Site was received in the past three years. The applicant will be advised to follow the environmental mitigation measures as set out in the COP. Other relevant departments consulted, including the Commissioner for Transport, Chief Engineer/Construction of Water Supplies Department and Director of Fire Services have no objection to or no adverse comment on the application. To address the technical requirements of concerned departments, relevant approval conditions are recommended in paragraph 12.2 below. Regarding DLO/N, LandsD's concern on the unauthorised structures erected within and outside the Site and the illegal occupation of GL, the applicant will be advised to liaise with LandsD on these land administration matters should the Committee approve the application.
- 11.5. There were six similar applications within the same "AGR" zone in the vicinity of the Site in the past five years, all of them were approved with conditions by the Committee as mentioned in paragraph 6.1 above. The planning circumstances of the current application are similar to these approved applications. As such, approval of the current application is in line with the Committee's previous decisions.
- 11.6. Regarding the public comments as detailed in paragraph 10 above, government departments' comments and planning assessments above are relevant.

12. Planning Department's Views

- 12.1. Based on the assessments made in paragraph 11 and having taken into account the public comments in paragraph 10 above, the Planning Department considers that the applied use could be tolerated for a period of three years.
- 12.2. 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 10.1.2028. 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 10.7.2025;
- (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 10.10.2025;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (d) 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 10.7.2025;

- (e) in relation to (d) 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 10.10.2025;
- (f) 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;
- (g) if any of the above planning condition (a), (b), (d) or (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; and
- (h) 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 IV**.

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

the applied use with associated filling of land 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. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

13. Decision Sought

- 13.1. The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2. 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.
- 13.3. 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.

14. Attachments

Appendix I	Application Form with Attachments received on 25.7.2024
Appendix Ia	FI received on 20.11.2024
Appendix II	Similar Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendix V	Public Comments

Drawing A-1	Layout Plan
Drawing A-2	Land Filling Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2025**