

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TKL/783

<u>Applicant</u>	: New Wai Holdings Limited
<u>Site</u>	: Lot 1993 RP in D.D. 76, Leng Tsai Village, Shau Tau Kok, New Territories
<u>Site Area</u>	: About 969.1m 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>	: Temporary Warehouse (Excluding Dangerous Goods Godown) for a Period of Three Years and Associated Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary warehouse (excluding dangerous goods godown) 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 fenced-off, partly hard-paved and partly grassed with temporary structure for storage use without valid planning permission.
- 1.2 The Site is accessible via a local track to its south leading to Sha Tau Kok Road – Ma Mei Ha (**Plan A-1**). According to the applicant, the applied use comprises three single-storey container structures of not more than 2.6m in height with a total floor area of about 43.92m² for warehouse use. The applied warehouse is intended for storage of tools and materials for the applicant’s business. A private car parking space cum taxi pick-up/drop-off space will be provided at the Site. No heavy vehicles will be used within the Site. The applicant also applies for filling of land at part of the Site (about 345m²) with concrete of about 0.1m in depth, and will reinstate the Site upon expiry of the planning permission. The operation hours of the applied use are 24 hours daily including public holidays. The layout plan and land filling plan submitted by the applicant are shown in **Drawings A-1** and **A-2**.

- 1.3 In support of the application, the applicant submitted the Application Form with attachments which were received on 12.11.2024 (**Appendix I**).

2. Justifications from the Applicant

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

- (a) the warehouse is temporary in nature and would not jeopardise the long-term planning intention of the “AGR” zone;
- (b) the applied use is not incompatible with the surrounding environment; and
- (c) the applicant intends to utilise the Site to meet the strong demand for storage of tools and materials for his business.

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

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

4. Background

The Site is subject to an active enforcement case (No. E/NE-TKL/503) regarding unauthorized storage use (**Plan A-2**). Enforcement Notice (EN) was issued on 12.11.2024 requiring discontinuation of the unauthorized development (UD). The EN will expire on 12.1.2025 and the Site will be monitored according to the established procedures.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Applications

- 6.1 There were two similar applications (No. A/NE-TKL/655 and 744) involving the same site for temporary warehouse and open storage of construction materials within the same “AGR” zone in the vicinity of the Site in the past five years. The applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 28.5.2021 and 5.4.2024 respectively mainly on the considerations that the applications generally complied with the 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. 13F/G) in that the application sites fell within the Category 2 areas and there was no major adverse departmental comment or their concerns could be addressed by relevant approval conditions; and the proposed use was not incompatible with the surrounding areas.
- 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;
- (b) partly hard-paved and partly grassed with temporary structure for storage use without valid planning permission; and
- (c) accessible via a local track to its south leading to Sha Tau Kok Road – Ma Mei Ha.

7.2 The surrounding areas are of rural character comprising mainly village houses, parking of vehicles and fallow agricultural land. The village cluster of Leng Tsai is located to the south. To the north and further north of the Site are Ng Tung River and a piece of woodland zoned “Green Belt” (“GB”) respectively. Wang Shan Keuk San Tsuen is located to the further 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 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 do not support/ have adverse comment/ reservation/ concern on the application:

Land Administration

9.2.1 Comments of the District Lands Officer/North, Lands Department (DLO/N, LandsD):

- (a) she has adverse comment on the application;
- (b) the Site comprises Old Schedule Agricultural Lot 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 (GL) is granted to the Site;

- (c) the following irregularity has been detected by her office:

unauthorised structures within the said private lot covered by the planning application

there are unauthorised structures on the private lot. 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

- (d) if the planning application is approved, the lot owner shall apply to her office for a Short Term Waiver (STW) to permit the structures erected or to be erected within the said private lot. 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 on whole lot basis and subject to such terms and conditions including the payment of backdated waiver fee from the first date of when the unauthorised structure were erected as well as administrative fee as considered appropriate by LandsD. Besides, given the proposed use is temporary in nature, only erection of temporary structures will be considered.

Agriculture and Nature Conservation

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

Agricultural Perspective

- (a) as the Site processes potential for agricultural rehabilitation, the applied use is not supported from agricultural perspective;
- (b) the Site falls within the “AGR” zone and is generally vacant;
- (c) 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.; and

Nature Conservation Perspective

- (d) the Site is largely vacant with a watercourse located close to the Site. While he has no comment on the application from nature conservation perspective, the applicant should avoid adverse impact on the watercourse nearby should the application be approved.

Traffic

9.2.3 Comments of the Commissioner for Transport (C for T):

- (a) he has reservation about the application as the applicant has not yet provided responses to his following comments:

- (i) the applicant should advise and substantiate the traffic generation and attraction from and to the Site and the traffic impact on the nearby road links and junctions;
- (ii) the applicant should advise the dimensions of the parking space and the dimensions of the driveway in the Site;
- (iii) the applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site from/to Sha Tau Kok Road, manoeuvring within the Site and into/out of the parking spaces, preferably using the swept path analysis;
- (iv) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (v) the vehicular access between the Site and Sha Tau Kok Road is not managed by the Transport Department. The applicant should seek comment from the responsible party.

Landscape

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

- (a) according to the aerial photos of February 2023, the Site is hard-paved with some temporary structures. No significant sensitive landscape resources is observed within the Site;
- (b) with reference to the aerial photos of 2023, the Site is located in an area of rural inland plains landscape character comprising farmlands, small houses, scattered tree groups, vegetated areas and woodlands within the “GB” zone to the north. There is a concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone; and
- (c) the applicant should be advised that the approval of the application does not imply approval of tree works such as pruning, transplanting, felling and compensatory/ new tree planting. The applicant is reminded to seek approval for any proposed tree works from relevant departments prior to commencement of the works.

10. Public Comments Received During Statutory Publication Period

On 19.11.2024, the application was published for public inspection. During the statutory public inspection period, nine comments were received (**Appendix V**). Eight comments from Kadoorie Farm & Botanic Garden Corporation (KFBG), Designing Hong Kong Limited, The Conservancy Association and five individuals object to the application mainly on the grounds that the applied use is not in line with the planning intention of the “AGR” zone; adverse ecological, environmental, drainage and traffic safety impacts; being a “destroy-to-built” application; and approval of the application could set an undesirable precedent. KFBG also suggests the Board to take into account the current site status and whether the Site is involved in any unauthorised activities. The remaining comment from the Chairman of the Lung Shan Area Committee

indicates no comment on the application.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary warehouse (excluding dangerous goods godown) 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 possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.
- 11.2 The application involves filling of land at part of the Site (about 345m²) by concrete of about 0.1m. 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 and the Director of Environmental Protection have no objection to the application from drainage and environmental perspectives respectively. An approval condition requiring the reinstatement of the Site to an amenity area is recommended should the Committee decide to approve the application.
- 11.3 The Site is situated in an area of rural character comprising mainly village houses, parking of vehicles and fallow agricultural land. The village cluster of Leng Tsai is located to the south of the Site and to the north is a piece of woodland zoned “GB”. The applied use involving 24-hour operation of the warehouse activities, which may induce nuisance to the adjacent village cluster, is considered not entirely compatible with the surroundings areas. CTP/UD&L, PlanD raises concern that approval of the application may further alter the landscape character and degrade the landscape quality of the “AGR” zone.
- 11.4 The Site is accessible via a local track leading to Sha Tau Kok Road – Ma Mei Ha. While C for T requested information on traffic aspect of the applied use as detailed in paragraph 9.2.3 above, the applicant has not provided any response to address C for T’s concerns. In this regard, C for T has reservation about the application. DLO/N, LandsD also has adverse comments on the application as there are unauthorised structures on the private lot within the Site. Other relevant departments consulted have no objection to/ no adverse comment on the application.
- 11.5 There are two similar applications (No. A/NE-TKL/655 and 744) covering the same site for proposed temporary warehouse and open storage of construction materials in the same “AGR” zone. The applications were approved with conditions by the Committee in 2021 and 2024 respectively mainly on the considerations that they generally complied with TPB PG-No. 13F/G, which is not applicable to the subject application for warehouse use, and there were no major adverse departmental comment on the applications. As such, the planning circumstances of the similar applications are different from the current application.
- 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 mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) 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; and
- (b) the applicant fails to demonstrate that the applied use will not cause adverse traffic impact on the surrounding areas.

12.2 Alternatively, 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**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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. Attachments

Appendix I	Application Form with Attachment received on 12.11.2024
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**