

TPB Paper No.10777
for Consideration by
the Town Planning Board on 8.10.2021

REVIEW OF APPLICATION NO. A/KTN/74
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Open Storage of Metal Scaffold with Ancillary Rest Room and Tool
Room for a Period of 3 Years in “Green Belt” and “Government, Institution
or Community” zones and area shown as ‘Road’,
Lot 4 (Part) in D.D. 95, Kwu Tung North, New Territories**

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Lot 4 (Part) in D.D. 95, Kwu Tung North, New Territories**

1. Background

- 1.1 On 5.2.2021, the applicant, Mr. Hui Man Wei, submitted the subject application under the s.16 of the Town Planning Ordinance (the Ordinance) to seek planning permission to use the application site (the Site) for temporary open storage of metal scaffold with ancillary rest room and tool room for a period of 3 years. The Site falls mainly within an area shown as 'Road' (97.4% of the Site). The remaining 2.6% of the Site falls within "Green Belt" and "Government, Institution or Community" zones on the approved Kwu Tung North OZP No. S/KTN/2 (**Plan R-1**). The Site is currently used for the applied use without valid planning permission.
- 1.2 On 9.7.2021, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
 - (a) the applied use was not in line with the planning intention of the area reserved for 'Road' which was primarily intended for road use. No strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the applied open storage use did not comply with the Town Planning Board Guidelines No.13F for Application for Open Storage and Port Back-up Uses in that there was no previous approval for open storage granted for the Site; and
 - (c) the applicant failed to demonstrate in the submission that the applied use would not result in adverse traffic impact.
- 1.3 The Site is accessible from Ho Sheung Heung Road via a local road (**Plan R-1**). The Site is subject to an active planning enforcement action (No. E/NE-KTN/183) (**Plan R-2**) against unauthorised development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued on 28.9.2020 to the concerned notice recipients requiring discontinuation of the UD by 28.11.2020. Since the UD has not been discontinued upon expiry of the notice, prosecution action is being taken.

1.4 For Members' reference, the following documents are attached:

- | | | |
|-----|--|-----------|
| (a) | RNTPC Paper No. A/KTN/74A | (Annex A) |
| (b) | Extract of minutes of the RNTPC Meeting held on 9.7.2021 | (Annex B) |
| (c) | Secretary of the Board's letter dated 23.7.2021 | (Annex C) |

2. **Application for Review**

On 30.7.2021, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review application.

3. **The Section 16 Application**

The Site and its Surrounding Area (Plans R-1 to R-4)

- 3.1 The situation of the Site and its surrounding area at the time of the consideration of the s.16 application by the RNTPC were described in paragraph 8 of **Annex A**. There has been no material change of the situations since then.
- 3.2 The Sites is:
- (a) partly fenced off and mainly occupied by metal scaffolds and two containers for applied use; and
 - (b) accessible by a local road leading to Ho Sheung Heung Road.
- 3.3 The surrounding area is rural in nature with some open storage and domestic structures:
- (a) to its immediate west is fallow agricultural land; to its immediate southwest are domestic structures; to its further west and southwest are mainly hill slope covered with vegetation;
 - (b) to its north and northwest are open storage yard, domestic structures and area covered by vegetation;
 - (c) to its northeast and east are recyclable collection centre, vehicle repair workshop, domestic structures and area covered by vegetation; and
 - (d) to its south are warehouse, refuse collection and parking of refuse collection vehicles, and to its southeast is a hill slope with vegetation.

Planning Intention

- 3.4 The area shown as 'Road' is intended for road use.

Town Planning Guideline

- 3.5 On 27.3.2020, the Board promulgated the revised Town Planning Board (TPB) Guidelines for Application for Open Storage (OS) and Port back-up Uses (PBU) (TPB PG-No. 13F). The Site falls within Kwu Tung North New Development Area (KTN NDA) which is covered by the revised Guidelines. Relevant extracts of the Guidelines are attached at **Appendix II** of **Annex A**.

Previous Application

- 3.6 There is no previous application at the Site.

Similar Application

- 3.7 There is no similar application within the same 'Road' area.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraph 10 of **Annex A**.
- 4.2 For the review application, the following Government departments have been further consulted and their comments are summarised as follows:

District Officer's Comments

- 4.2.1 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

He has consulted the locals. The North District Council (NDC) member of the subject constituency, The Chairman of Sheung Shui District Rural Committee and the Chairman of Fung Shui Area Committee have no comment. The Resident Representative (RR) of Kwu Tung (North) objects to the application mainly on the grounds of adverse traffic impact.

- 4.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application in paragraph 10 of **Annex A**, which are recapitulated as follows:

Land Administration

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

- (a) The Lot is an Old Schedule Agricultural Lot held under the Block Government Lease without any guarantee of right of access.
- (b) It is noted that the existing occupation boundary is different to the proposed site boundary under application. Also, unauthorized

occupation of Government Land was found on both eastern side and northern side of the Lot and two unauthorized structures for the purpose of ancillary rest room and tool room were erected on the Lot and government Land respectively. Since the existing structure on the Lot is unacceptable under lease, his department reserves the right to take lease enforcement actions against the irregularities found. For the unauthorized occupation and erection of another existing structure on the Government Land, his department will also consider taking appropriate land control actions against the irregularities concerned.

- (c) If the planning application is granted, the owner of the Lot/occupier shall apply to his office for Short Term Wavier and Short Term Tenancy to cover the captioned temporary structures and the Government Land being occupied. Such application will be considered by his department acting in the capacity as landlord at its sole discretion and there is no guarantee that such application will be approved. If such application are approved, they will be subject to such terms and conditions, including but not limited to payment to fees and premium, to be imposed by his department.

Future Development

4.3.2 Comments of the Project Manager/North, Civil Engineering and Development Department (PM/N, CEDD):

The Site falls within the Remaining Phase of KTN NDA project. According to the latest implementation programme of the project, the construction works for the Remaining Phase is scheduled for commencement in 2024.

Traffic

4.3.3 Comments of the Commissioner for Transport (C for T)'s:

- (a) He is unable to conclude if the application is acceptable as the applicant has not addressed his following comments.
- (b) The applicant shall justify the adequacy of the parking spaces and loading/unloading spaces so provided by relating to the number of vehicles visiting the Site.
- (c) The applicant shall advise the width of the vehicular access.
- (d) The vehicular access should be no less than 7.3m wide.
- (e) The applicant shall demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site, manoeuvring within the Site and into/out of the parking and loading/unloading spaces, preferably using the swept path analysis.

- (f) The applicant shall advise the management/control measures to be implemented to ensure no queuing of vehicles outside the Site.
- (g) The applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety.
- (h) The vehicular access between the Site and Ho Sheung Heung Road is not managed by Transport Department. The applicant should seek comment from the responsible party.

4.4 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of **Annex A**. Their advisory comments, if any, are in **Appendix IV** of **Annex A** and recapped in **Annex F**.

- (a) Director of Environmental Protection (DEP)
- (b) Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)
- (c) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)
- (d) Director of Fire Services (D of FS)
- (e) Director of Agriculture, Fishers and Conservation

4.5 The following Government departments maintain their previous views of having no adverse comment/no objection on the review application. Their advisory comments, if any, are in **Appendix IV** of **Annex A** and recapped in **Annex F**.

- (a) Chief Building Surveyor/ New Territories West, Buildings Department
- (b) Chief Estate Surveyor/Acquisition, LandsD
- (c) Head of the Geotechnical Engineering Office, CEDD
- (d) Commissioner of Police
- (e) Chief Highways Engineer/ New Territories East, Highways Department
- (f) Chief Engineer/ Construction, Water Supplies Department
- (g) Director of Electrical and Mechanical Services

5. Public Comments on the Review Application Received During Statutory Publication Period

5.1 On 13.8.2021, the review application was published for public inspection. During the statutory public inspection period, one comment from an individual was received (**Annex E**) indicating no comment.

5.2 At the stage of s.16 application, three public comments were received and two objected to the application as set out in paragraph 11 of **Annex A**.

6. Planning Considerations and Assessments

- 6.1 The subject s.16 application for temporary open storage of metal scaffold with ancillary rest room and tool room for a period of 3 years mainly within an area shown as 'Road' was rejected by the RNTPC on 9.7.2021 mainly on the grounds that the applied use was not in line with the planning intention for road use; did not comply with the TPB Guideline No.13F for Open Storage and Port Back-up Uses in that there was no previous approval for open storage granted for the Site and the applicant failed to demonstrate that the applied use would not result in adverse traffic impact. The applicant has not submitted any written representation in support of the review application. There has been no material change in planning circumstances for the Sites since the rejection of the application by the RNTPC. The previous planning considerations and assessments as set out in paragraph 12 of **Annex A** remain valid, which are recapped in the ensuing paragraphs.
- 6.2 The Site (about 820m²) falls mainly within an area shown as 'Road' on the approved KTN OZP No. S/KTN/2 (**Plan R-1**). The applied use is not in line with the planning intention of the 'Road' designation. According to PM/N, CEDD, the Site falls within the Remaining Phase of KTN NDA project. PM/N, CEDD advised that the construction works for the Remaining Phase is scheduled for commencement in 2024 tentatively. Construction works of the First Phase of the Project commenced in 2019.
- 6.3 The applied use for open storage of metal scaffold is considered not entirely compatible with the surrounding rural land uses, which are mainly with domestic structures, some open storage yards and areas with vegetation.
- 6.4 The Site falls within the KTN NDA. For application in NDAs, the following considerations under the TPB PG-No. 13F are relevant:

For existing open storage and port back-up uses with previous planning approval(s) and/or permitted under the previous OZPs, sympathetic consideration may be given to the application until the concerned site is required for implementation of NDA development, provided that the relevant approval conditions, if any, have been complied with. Technical assessments, where appropriate, should be submitted to demonstrate that the continued operation of the current uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas and the concerns of the departments and local residents, if any, can be addressed through the implementation of the approval conditions.

In view of the impending implementation of NDAs, new open storage and port back-up uses are generally not encouraged to infiltrate into the NDAs. There is a general presumption against such uses at greenfield areas and/or at sites with land use compatibility issue, e.g. in close proximity to existing residential dwellings which may be subject to environmental nuisances caused by the open storage and port back-up uses. Application will normally be rejected unless under exceptional circumstances.

- 6.5 There is no previous planning permission covering the Site. The current application is for a new open storage use. In view of above, the applied use is not in line with TPB PG-No. 13F in that implementation of the KTN NDA Project has commenced and the applied use is not covered by any previous planning approval. Thus, new open storage use is not encouraged to infiltrate into the NDA.
- 6.6 C for T comments that he is not able to conclude that the application is acceptable as the applicant has not addressed his comments on the application. Other relevant departments, including DEP, CE/MN, DSD and D of FS have no adverse comment on the application.
- 6.7 There is no similar application in the vicinity of the Site. The nearby open storage/brownfield uses are operating without planning approval. Approval of the application, even on a temporary basis, would set an undesirable precedent for similar application.
- 6.8 There is one public comment on the review application which indicates no comment as stated in paragraph 5.1.

7. Planning Department's Views

- 7.1 Based on the assessment made in paragraph 6, and having taken into account the public comment mentioned in paragraphs 5, and given that there is no change in the planning circumstances since the consideration of the subject application by RNTPC on 9.7.2021, Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the applied use is not in line with the planning intention of the area reserved for 'Road' which is primarily intended for road use. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the applied open storage use does not comply with the Town Planning Board Guidelines No.13F for Application for Open Storage and Port Back-up Uses in that there is no previous approval for open storage granted for the Site; and
 - (c) the applicant fails to demonstrate in the submission that the applied use would not result in adverse traffic impact.
- 7.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 8.10.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 5:00 p.m. to 8:00 a.m., as proposed by the applicant,

is allowed on the Site during the planning approval period;

- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicles of 5.5 tonnes or above as defined in the Road Traffic Ordinance are allowed to enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the submission of swept path analysis for the Site within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.4.2022;
- (f) the provision of vehicular access within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.4.2022;
- (g) the submission of a proposal on traffic improvement measures to enhance pedestrian safety within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.4.2022;
- (h) in relation to (g) above, the implementation of the proposal on traffic improvement measures within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 8.7.2022;
- (i) the provision of fire extinguisher(s) and a valid fire certificate (FS251) 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 19.11.2021;
- (j) the submission of fire services 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 8.4.2022;
- (k) in relation to (j) above, the provision of fire service installations 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 8.7.2022;
- (l) the submission of drainage proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.4.2022;
- (m) in relation to (l) above, the implementation of drainage proposal within 9 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.7.2022;

- (n) if any of the above planning condition (a), (b), (c) or (d) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked without further notice; and
- (o) if any of the above planning condition (e), (f), (g), (h), (i), (j), (k), (l) or (m) 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 **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 8.3 Alternatively, should the Board decide to approve the review 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.

9. Attachments

Annex A	RNTPC Paper No. A/KTN/74A
Annex B	Extract of minutes of the RNTPC Meeting held on 9.7.2021
Annex C	Secretary of the Town Planning Board's Letters dated 23.7.2021
Annex D	Applicant's Letter dated 30.7.2021 Applying for Review
Annex E	Public Comment on the review application
Annex F	Advisory Clauses
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plan R-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2021**