

REVIEW OF APPLICATION NO. A/KTN/78
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Open Storage of Construction Material and Machine for a Period of 3 Years in
“Residential (Group A)2”, “Residential (Group A)3” zones and area shown as ‘Road’,
Lots 249, 252(Part), 253, 276 and 280 in D.D. 95,
Kwu Tung North, Sheung Shui, New Territories**

1. Background

- 1.1 On 15.6.2021, the applicant, Mr. TO Ho Sun Eddy represented by Mr. WONG Sun Wo William, 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 construction material and machine for a period of 3 years. The Site falls within “Residential (Group A)2” (“R(A)2”) (about 47% of the Site), “Residential (Group A)3” (“R(A)3”) (about 11% of the Site) zones, and area shown as ‘Road’ (about 42% of the Site) 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 13.8.2021, 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 intentions of the “R(A)” zone which was primarily for high-density residential development and 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 intentions, 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 new open storage use was not encouraged to infiltrate into the New Development Area; and
 - (c) the applicant failed to demonstrate in the submission that the applied use would not result in adverse environmental impacts on the nearby residents.
- 1.3 The Site is not subject to any active planning enforcement action. The current use found on-site may constitute an Unauthorised Development (UD) under the Town Planning Ordinance. Should there be sufficient evidence to prove an UD on site, enforcement action would be instigated.
- 1.4 For Members’ reference, the following documents are attached:

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| (a) RNTPC Paper No. A/KTN/78 | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 13.8.2021 | (Annex B) |
| (c) Secretary of the Board's letter dated 27.8.2021 | (Annex C) |

2. Application for Review

On 30.8.2021, 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:

- (a) comprises 3 separated areas. Areas A and C are currently hard-paved and used for the applied use without valid planning permission while Area B is covered by vegetation; and
- (b) is accessible from Ma Tso Lung Road via a local track.

3.3 The surrounding areas are predominantly rural in nature with the following characteristics:

- (a) to its north are domestic structures, unused/vacant land and pig shed;
- (b) to its east and northeast are mainly active and fallow agricultural land and domestic structures;
- (c) to its immediate south are domestic structures and parking of vehicles & trailers; to its further south are domestic structures and metal workshops; and
- (d) to its west and northwest are domestic structures, vehicle repair workshop and vehicle workshop.

Planning Intention

3.4 The planning intention of the "R(A)" zone is primarily for high-density residential development. Commercial uses are always permitted on the lowest two floors of a building excluding basements, or in a free-standing purpose-designed non-domestic building up to five storeys.

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

Town Planning Board Guidelines

- 3.6 On 27.3.2020, the Board promulgated the revised Town Planning Board 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

- 3.7 The Site involves a previous application No. A/KTN/54 (**Plan R-1**) submitted by Civil Engineering and Development Department (CEDD) for proposed minor relaxation of maximum plot ratio and/or building height restrictions of 8 public housing sites in Fanling North and KTN NDA, which was approved by the RNTPC on 16.11.2018. As the previous application concerns about the future permanent housing development in NDA and is not relevant to the current application for temporary use, its details are therefore not covered in the paper.

Similar Application

- 3.8 There is a similar application No. A/KTN/35 within the same “R(A)2” zone for temporary recycle collection centre (metals), open storage of scrap metal and goods vehicle assembly with ancillary storage of tools for a period of 3 years. Details of the application are summarized at **Appendix III of Annex A** and its location is shown on **Plan R-1**.
- 3.9 The application was rejected by the RNTPC in 2017 mainly on the grounds that temporary use under application was not in line with the planning intentions of the “Open Space” (“O”) and “R(A)2” zone; the applicant failed to demonstrate that the proposed development would not cause adverse traffic and environmental impacts on the residents nearby and the surrounding areas; and the approval of the application would set an undesirable precedent. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- 3.10 There is another application No. A/KTN/74 for a temporary open storage of metal scaffold mainly in a ‘Road’ area in KTN (**Plan R-1**). It was rejected by the Board on 8.10.2021 on review mainly for the reasons that the applied use was not in line with the planning intention of the area reserved for ‘Road’ and no strong planning justification was given in the submission for a departure from the planning intention, even on a temporary basis; it did not comply with the TPB PG-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 new open storage use was not encouraged to infiltrate into the KTN NDA, and the applicant failed to demonstrate in the submission that the applied use would not result in adverse traffic impact.

4. Comments from Relevant Government Departments

- 4.1 For the review application, the following Government departments have been further consulted and their comments are summarised as follows:

District Officer's Comments

4.1.1 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 and Chairman of Fung Shui Area Committee had no comment. The Chairman of Sheung Shui District Rural Committee and the Resident Representatives (RR) of Kwu Tung (North) and Kwu Tung (South) objected to the application mainly on the grounds of adverse traffic impact.

4.2 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

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

- (a) The lots are Old Schedule Agricultural Lots held under the Block Government Lease (demised for agricultural use) without any guarantee of right of access. The applicant should make his own arrangement for acquiring access to the Site, and there is no guarantee that any adjoining Government land will be allowed for the vehicular access to the Site for the applied use.
- (b) The existing structures erected on the application lots without prior approval from his office are not acceptable under lease concerned. His office reserves the right to take necessary lease enforcement actions against the aforesaid structures.
- (c) North-western portion of the Site is in close proximity to a proposed Simplified Temporary Land Allocation (STLA) No. GLA-TDN to CEDD.
- (d) If the planning application is granted, the owner of the lot concerned shall apply to his office for Short Term Wavier (STW) covering all the actual occupation area and the structures concerned. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

Future Development

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

The Site falls within the KTN NDA Remaining Phase. According to the latest implementation programme of the project, CEDD aims to commence the construction works for the Remaining Phase of KTN NDA in 2024. As such the period of the Site should be ended on or before end 2023.

Traffic

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

- (a) He has no objection to the proposal from traffic engineering point of view.
- (b) The vehicular access between the Site and Ma Tso Lung Road is not managed by his department. The applicant should seek comment from the responsible party.

Environment

4.2.4 Comments of the Director of Environmental Protection (DEP):

- (a) He does not support the application since there are sensitive receivers in the vicinity (some residential dwellings are just next to the Site) and the applied use involves the use of heavy vehicles and environmental nuisance is expected (**Plan R-2**).
- (b) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the 'Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses' issued by DEP to minimise any potential environmental nuisances.
- (c) There are eight environmental complaint cases received in the past 3 years concerning muddy water discharged, odour issue, landfilling and noise nuisances from the Site. All of them were found unsubstantiated.

4.3 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) Chief Town Planner/Urban Design & Landscape, Planning Department (CTP/UD&L, PlanD)
- (b) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD)
- (c) Chief Highway Engineer/New Territories East, Highways Department
- (d) Director of Fire Services (D of FS)

- 4.4 The following Government departments have no adverse comment on/ no objection to the application. Their advisory comments, if any, are in **Appendix V** of **Annex A** and recapped in **Annex F**:

- (a) Chief Building Surveyor/ New Territories West, Buildings Department
- (b) Chief Estate Surveyor/Acquisition Section, LandsD
- (c) Head of the Geotechnical Engineering Office, CEDD
- (d) Commissioner of Police
- (e) Chief Engineer/ Construction, Water Supplies Department

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

- 5.1 On 10.9.2021, the review application was published for public inspection. During the statutory public inspection period, three comments submitted by individual (**Annex E**) were received. Two comments object the application mainly on the grounds that the proposal would bring about adverse impact on traffic, environment, safety and living quality as well as increasing fire risk. The remaining comment indicates no comment. (**Annex E**)
- 5.2 At the stage of s.16 application, six public comments were received. Three supported and two objected to the application. The remaining one indicated no comment. Details of the comments are 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 construction material and machine for a period of 3 years within “R(A)1”, “R(A)2” zones and area shown as ‘Road’ was rejected by the RNTPC on 13.8.2021 mainly on the grounds that the applied use was not in line with the planning intentions of the “R(A)” zone and area reserved for ‘Road’; did not comply with the TPB Guideline No. 13F Application for Open Storage and Port Back-up Uses in that there was no previous approval for open storage granted for the Site and new open storage use was not encouraged to infiltrate into the New Development Area; and the applicant failed to demonstrate that the applied use would not result in adverse environmental impacts on the nearby residents. 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 RNTPC. The previous planning considerations and assessments as set out in paragraph 12 of **Annex A** remains valid, which are recapped in the ensuing paragraphs.
- 6.2 The Site (8,110 m²) partly falls within “R(A)2” and “R(A)3” zones (total 58% of the Site) and partly within an area shown as ‘Road’ (42%). The applied use is not in line with the planning intention of the “R(A)” zone and ‘Road’ designation. According to PM/N, CEDD, the Site falls within the KTN NDA Remaining Phase. Implementation of the KTN NDA First Phase has commenced in 2019. CEDD aims to commence the construction works for the Remaining Phase in 2024.

6.3 The applied use for open storage of construction material and machine is considered not compatible with the surrounding land uses, which are mainly with domestic structures, active and fallow agricultural land with some vehicle parks and workshops. Some domestic structures are just next to the Site.

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. Applications will normally be rejected unless under exceptional circumstances.

6.5 There is no planning permission given to open storage or similar uses on 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 DEP does not support the application as there are sensitive receivers next to the Site and the applied use involves the use of heavy vehicles, and environmental nuisance is expected. Other Relevant Government departments consulted, including C for T, CE/MN, DSD, D of FS and CTP/UD&L, PlanD have no adverse comment on the application.

6.7 There is a similar application in the same “R(A)” zone, i.e. No. A/KTN/35 for temporary recycle collection centre, open storage and goods vehicle assembly which was rejected by the RNTPC in 2017 as stated in paragraphs 3.8 and 3.9. Besides, there is another application No. A/KTN/74 for temporary open storage of metal scaffold mainly in a ‘Road’ area rejected by the Board on review on 8.10.2021, as stated in paragraph 3.10. The considerations for the rejected applications are generally similar to those of the subject application.

6.8 There are three public comments on the review application and two of them object to the application as stated in paragraph 5. In this regards, the relevant departmental comments as well as planning considerations and assessments above are relevant.

7. Planning Department's Views

- 7.1 Based on the assessments made in paragraph 6, and having taken into account the public comments mentioned in paragraph 5, and given that there is no change in the planning circumstances since the consideration of the subject application by the RNTPC on 13.8.2021, the 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 intentions of the “R(A)” zone which is primarily for high-density residential development and 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 intentions, even on a temporary basis;
 - (b) the applied open storage use does not comply with the TPB 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 new open storage use is not encouraged to infiltrate into the New Development Area; and
 - (c) the applicant fails to demonstrate in the submission that the applied use would not result in adverse environmental impacts to the nearby residents.
- 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 19.11.2024. The following approval conditions 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) the provision of fire extinguisher(s) 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 31.12.2021;
- (d) 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 19.5.2022;
- (e) in relation to (d) 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 19.8.2022;
- (f) 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 19.5.2022;

- (g) in relation to (f) 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 19.8.2022;
- (h) if any of the above planning condition (a) or (b) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (i) if any of the above planning condition (c), (d), (e), (f) or (g) 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/78
Annex B	Extract of minutes of the RNTPC Meeting held on 13.8.2021
Annex C	Secretary of the Town Planning Board's Letters dated 27.8.2021
Annex D	Applicant's Letter dated 29.8.2021 Applying for Review
Annex E	Public Comments on the review application
Annex F	Advisory Clauses
Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a & 4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2021**