

TOWN PLANNING BOARD

TPB Paper No. 10925

For Consideration by
the Town Planning Board on 15.9.2023

REVIEW OF APPLICATION NO. A/NE-KLH/615
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Temporary Warehouse for a Period of Three Years
in “Green Belt” Zone

Lot 477 RP in D.D. 9, Nam Wa Po, Tai Po

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1. Background

- 1.1 On 24.8.2022, the applicant, Man Tsz Ting Tso (Managers are Messrs. MAN Wai Lok Joe, MAN Kin Hung and MAN Ka Cheong Eddy) represented by Mr. HUI Kwan Yee, sought planning permission for temporary warehouse for a period of three years at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within “Green Belt” (“GB”) zone on the approved Kau Lung Hang Outline Zoning Plan (OZP) No. S/NE-KLH/11 (**Plan R-1**).
- 1.2 On 9.6.2023, the Rural and New Town Planning Committee (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 “GB” zone, which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong planning justification provided in the submission to justify a departure from the planning intention; and
 - (b) the development did not comply with the Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under Section 16 of the Town Planning Ordinance’ in that there was insufficient information in the submission to demonstrate that the development had complied with the development controls and restrictions of areas designated as Water Gathering Ground (WGG).
- 1.3 For Members’ reference, the following documents are attached:
 - (a) RNTPC Paper No. A/NE-KLH/615B (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 9.6.2023 (Annex B)
 - (c) Secretary of the Board’s letter dated 23.6.2023 (Annex C)

2. **Application for Review**

On 4.7.2023, the applicant applied under section 17(1) of the Ordinance for a review of 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 Areas (Plans R-1 to R-4)

- 3.1 The situation of the Site and the surrounding areas at the time of consideration of the s.16 application by RNTPC are described in paragraphs 8.1 and 8.2 of **Annex A**. There has been no material change in the situation of the Site and the surrounding areas since then.
- 3.2 The Site is:
- (a) hard paved and largely occupied by temporary structures;
 - (b) located within the upper indirect WGG; and
 - (c) accessible via a local track connecting to Tai Wo Service Road West.
- 3.3 The surrounding areas are predominantly rural in character comprising temporary structures, a plant nursery and tree clusters. About 100m to the south are warehouses subject to planning approval and the "Open Storage" ("OS") zone. To the west of the Site across a nullah is the village proper of Nam Wa Po (**Plans R-2 and R-3**).

Planning Intention

- 3.4 There has been no change in the planning intention of the subject "GB" zone as mentioned in paragraph 9 of **Annex A**, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

Assessment Criteria

- 3.5 The Town Planning Board Guidelines for 'Application for Development within "GB" zone under Section 16 of the Town Planning Ordinance' (TPB PG-No. 10) is relevant to the application. The relevant assessment criteria are detailed at Appendix II of **Annex A**.

Background

- 3.6 The Site is not subject of any past/active planning enforcement action. Should there be sufficient evidence to form an opinion of unauthorized development under the Town Planning Ordinance, planning enforcement action would be instigated as appropriate.

Previous Application

- 3.7 The Site is not the subject of any previous application.

Similar Applications

- 3.8 When the s.16 application was considered by RNTPC on 9.6.2023, there were three similar applications for temporary warehouse within the same “GB” zone in the vicinity of the Site (**Plans R-1 and R-2**). All of them were approved. Since then, there has been no further similar application for temporary warehouse.
- 3.9 Applications No. A/NE-KLH/525, 584 and 605 were approved by the RNTPC on 7.4.2017, 1.9.2020 and 6.5.2022 respectively mainly on considerations that there were previous planning approvals and warehouse uses were located in close proximity to the “OS” zone; there were no adverse departmental comments; and they would unlikely cause adverse environmental and water quality impacts on the surrounding areas. Applications No. A/NE-KLH/525 and 584 were revoked on 7.7.2019 and 1.2.2023 respectively for non-compliance with approval conditions.
- 3.10 Details of the similar applications are summarized in **Annex E** and their locations are shown on **Plans R-1 and R-2**.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant government departments are detailed in paragraph 10 and Appendix IV of **Annex A**. Their advisory comments, if any, are at Appendix V of **Annex A** and recapped at **Annex G**.
- 4.2 For the review application, Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) maintains its previous adverse views on the s.16 application in paragraph 10.2 of **Annex A**, as recapitulated below:

Water Supply

4.2.1 Comments of CE/C, WSD:

- (a) object to the application since part of the Site together with some temporary structures encroach into Waterworks Reserves (WWR) for Tau Pass Culvert;
- (b) the Site is within upper indirect WGG;
- (c) the applicant’s submissions are considered insufficient to prove and demonstrate that there would be no material increase in pollution effect on the WGG resulting from the applied use. As such, there are risks of contamination to the WGG due to

operation and maintenance of the warehouses, as well as sewage discharge from staff working in warehouses and office; and

- (d) there will be vehicle loading/unloading activities of storage materials at the Site, which may pose risk of oil contamination to WGG. However, there are no particulars in the applicant's submissions to address the concern of oil leakage and spillage which are not allowed within WGG at all time.

4.3 All other relevant government departments maintain their previous views on the s.16 application and most of them have no further comments on the review application. Comments from District Lands Officer/Tai Po of Lands Department (DLO/TP, LandsD) are updated in view of the review application:

Land Administration

4.3.1 Comments of DLO/TP, LandsD:

- (a) previous comments are still valid. A recent inspection revealed that some temporary structures were erected on the Site. They are close to the lot boundaries and their configurations and dimensions are slightly different from the applicant's submission in the s.16 application stage; and
- (b) the project "Liantang/Heung Yuen Wai BCP Associated Connecting Works" undertaken by Civil Engineering and Development Department was completed and the works site concerned (i.e. resumption limit and Short Term Land Allocation No. TP1346) had been handed back to DLO/TP.

5. Public Comment Received During Statutory Publication Period

5.1 On 14.7.2023, the review application was published for public inspection. During the statutory public inspection period, one objecting public comment from an individual was received (**Annex F**) mainly on the ground that the application is objected by WSD for reasons stated in paragraph 4.2 above.

5.2 Two public comments raising objection to the application were received at the s.16 application stage which are set out in paragraph 11 of **Annex A**.

6. Planning Considerations and Assessment

6.1 The subject s.16 application was rejected by RNTPC on 9.6.2023 mainly on the grounds that the applied use was not in line with the planning intention of the "GB" zone; and not complying with TPB-PG No. 10 in that there was insufficient information in the submission to demonstrate that the development had complied with the development controls and restrictions of areas designated as WGG. The applicant has not submitted any written representation in support of the review application. Since the consideration of the s.16 application by

the RNTPC, there has been no material change in planning circumstances. The planning considerations and assessment as set out in paragraph 12 of **Annex A** remain valid as recapitulated below.

- 6.2 This application is for temporary warehouse for storage of packed food for a period of three years at the Site zoned “GB” on the OZP (**Plan R-1**). The applied use is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. Although Director of Agriculture, Fisheries and Conservation (DAFC) has no strong view on the application from nature conservation point of view as the Site is already occupied by existing temporary structures, there is insufficient information in the submission to justify exceptional circumstance for warehouse use within the “GB” zone, where there is a general presumption against development within this zone. There is no strong justification in the submission for a departure from the planning intention of “GB” zone, even on a temporary basis.
- 6.3 The Site falls within the upper indirect WGG, and CE/C of WSD objects to the application since part of the Site together with some temporary structures encroach onto the WWR for Tau Pass Culvert. Furthermore, the applicant failed to demonstrate that there would be no material increase in the pollution effect on the WGG arising from daily operation and maintenance of the warehouse, such as sewage discharge from staff working in the warehouses and oil leakage and spillage from loading/unloading vehicles. CE/C of WSD considers that there are risks of contamination to the WGG. In this regard, the application does not comply with the TPB PG-No. 10.
- 6.4 The Site is hard-paved and largely occupied by temporary structures. It is located in an area characterized by temporary structures, a plant nursery and tree clusters. Chief Town Planner/Urban Design and Landscape, Planning Department has no objection to the application from landscape planning perspective.
- 6.5 Other government departments concerned including Commissioner for Transport, Chief Engineer/Mainland North of Drainage Services Department, and Director of Fire Services have no objection to or no adverse comment on the application.
- 6.6 There were three similar applications covering two sites for temporary warehouse use within the same “GB” zone to the south of the Site approved by RNTPC, mainly on consideration that there were previous planning approvals and the warehouse uses were located in close proximity to the “OS” zone; no adverse departmental comments; and would unlikely cause adverse environmental and water quality impacts on the surrounding areas. For the current application, the Site is located about 100m away from the “OS” zone and it is not subject to any previous approval for warehouse use. Also, CE/C of WSD objects to the application for reasons mentioned in paragraph 4.2 above. The planning circumstances of the approved similar applications are not applicable to the current one.

- 6.7 Regarding the public comment objecting to the review application on the ground as summarised in paragraph 5 above, the planning considerations and assessment in paragraphs 6.1 to 6.6 above are relevant.

7. Planning Department's Views

- 7.1 Based on the assessment made in paragraph 6, having taken into account the public comment mentioned in paragraph 5 and given that there has been no material change in the planning circumstances since the consideration of the subject application by the RNTPC on 9.6.2023, Planning Department maintains its previous views of not supporting the review application for the following reasons:
- (a) the applied use is not in line with the planning intention of “Green Belt” (“GB”) zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification provided in the submission to justify a departure from the planning intention; and
 - (b) the development does not comply with the Town Planning Board Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “GB” zone under Section 16 of the Town Planning Ordinance’ in that there is insufficient information in the submission to demonstrate that the development has complied with the development controls and restrictions of areas designated as Water Gathering Ground (WGG).
- 7.2 Alternatively, should the Board 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 15.9.2026. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) the submission of 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 15.3.2024;
- (b) in relation to condition (a) above, the implementation of drainage proposal 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 15.6.2024;
- (c) in relation to condition (b) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the submission of proposal for fire service installations and water supplies for fire-fighting 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 15.3.2024;

- (e) in relation to condition (d) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 15.6.2024;
- (f) the submission of risk assessment report/proposal of preventive measures against water pollution within the upper indirect water gathering grounds within **6** months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 15.3.2024;
- (g) in relation to condition (f) above, the implementation of mitigation measures identified therein within **9** months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 15.6.2024;
- (h) 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;
- (i) if any of the above planning conditions (a), (b), (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; and
- (j) upon the expiry of the planning permission, the reinstatement of the application 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 attached at **Annex G**.

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

Plan R-1	Location Plan
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plan R-4	Site Photos
Annex A	RNTPC Paper No. A/NE-KLH/615B
Annex B	Extract of Minutes of the RNTPC Meeting held on 9.6.2023
Annex C	Secretary of Town Planning Board's Letter Dated 23.6.2023
Annex D	Letter received by Town Planning Board on 4.7.2023 from the Applicant's Representative Applying for a Review of the RNTPC's Decision
Annex E	Similar Applications
Annex F	Public Comment
Annex G	Recommended Advisory Clauses

**PLANNING DEPARTMENT
SEPTEMBER 2023**