

RNTPC Paper No. A/YL-NTM/394
For Consideration by
the Rural and New Town
Planning Committee
on 6.3.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NTM/394

Applicant : Best Creation Development Limited represented by New Create (D&E) Limited

Site : Lot 852 in D.D. 105, Ngau Tam Mei, Yuen Long

Site Area : About 879m²

Lease : Block Government Lease (demised for agricultural use)

Plan : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12

Zoning : “Green Belt” (“GB”)

Application : Temporary Open Storage (Logistics) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site), zoned “GB”, for temporary open storage (logistics) for a period of 3 years for storage of construction materials (steel), large-scale construction machinery parts and metal products. The applied use is neither a Column 1 nor Column 2 use within the “GB” zone. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is paved, partly fenced off, partly occupied by temporary structures and construction wastes without planning permission.
- 1.2 As shown on **Plans A-1** and **A-2**, the Site is accessible by Shek Wu Wai Road via a local access road through the proposed ingress/egress at the northwestern corner of the Site. Two parking spaces and two loading/unloading (L/UL) bays for heavy goods vehicles (HGV) are proposed within the Site (**Drawing A-2**). The operation hours are 9:00 a.m. to 6:00 p.m. from Mondays to Fridays, 10:00 a.m. to 6:00 p.m. on Saturdays and no operation on Sundays and public holidays.

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

- (a) Application form received on 9.1.2020 (Appendix I)
- (b) Letter received on 20.1.2020 (Appendix Ia)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form and the letter at **Appendices I** and **Ia** respectively. They can be summarized as follows:

- (a) The temporary open storage at the Site could avoid wastage of land resources.
- (b) The proposal could reasonably improve land use efficiency.

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. Town Planning Board Guidelines

Town Planning Board Guidelines for Application for Development within “GB” Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)

4.1 TPB PG-No. 10 is relevant to this application and the relevant assessment criteria are summarized as below:

- (a) There is a general presumption against development (other than redevelopment) in “GB” zone.
- (b) An application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.
- (c) The design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.
- (d) The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area.

- (e) The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.

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. 13E)

- 4.2 According to TPB PG-No. 13E, the Site falls within Category 4 areas under the guidelines. The following criteria are relevant:

Category 4 areas: applications for open storage and port back-up uses in Category 4 areas would normally be rejected except under exceptional circumstances. For applications on sites with previous planning approvals, and subject to no adverse departmental comments and local objections, sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. The intention is however to encourage the phasing out of such non-conforming uses as early as possible. Since the planning intention of Category 4 areas is to phase out the open storage and port back-up uses, a maximum period of 2 years may be allowed upon renewal of planning permission for an applicant to identify suitable sites for relocation. No further renewal of approval will be given unless under very exceptional circumstances and each application for renewal of approval will be assessed on its individual merits.

5. Background

Part of the Site is subject to planning enforcement actions against unauthorized developments (UD) (**Plan A-2**). Reinstatement Notice (RN) was issued on 12.9.2019 requiring removal of the leftovers, debris and fill materials (including hard paving) on part of the Site and grassing the area. As the area has not been reinstated upon expiry of the RN, prosecution action may be followed.

6. Previous Application

The Site is not the subject of any previous application.

7. Similar Applications

- 7.1 Since the promulgation of TPB PG-No. 13E in 2008, there are 5 similar applications for similar temporary open storage uses within “GB” zone on the NTM OZP with 3 approved and 2 rejected.

- 7.2 3 applications on the same site were approved by the Rural and New Town Planning Committee (the Committee) of the Board between 2009 and 2014, all for renewal of the same temporary open storage of landscaping materials use previously approved. The applications were approved mainly for the reasons that the landscaping materials stored on the site could blend in with the surrounding natural landscape and such open storage use which could make good use of fallow farmland could help maintain the functions of the “GB” zone, there was no adverse departmental comment or local objection received and all approval conditions had been complied with. The last renewal application No. A/YL-NTM/309 was approved by the Committee on 31.10.2014 for a period of 3 years until 6.11.2017.
- 7.3 2 applications for temporary open storage of agricultural machinery and repairing/ construction materials and machinery respectively were rejected by the RNTPC in 2014 and 2015 respectively mainly for reasons of being not in line with the planning intention of “GB” zone, incompatible with surrounding land uses, not in line with TPB PG No.13E, and that approval of the application would set undesirable precedent resulting in general degradation of the environment of the area.
- 7.4 Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.
- 7.5 Two similar applications, one for temporary open storage (logistic) (No. A/YL-NTM/395) and another for temporary logistic warehouse (No. A/YL-NTM/396), to the south of the Site, will be considered at this meeting (**Plan A-2**). These two applications together with the subject application are submitted by the same applicant.

8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plan A-4)

- 8.1 The Site is:
- (a) accessible via a local access road leading to Shek Wu Wai Road;
 - (b) paved and partly fenced off; and
 - (c) currently partly occupied by temporary structures and construction wastes without planning permission.
- 8.2 The surrounding areas are predominantly open storages, storage yards, unused land and vacant land with scattered domestic structures. Some open storages and storage yards are suspected UDs subject to enforcement action by Planning Authority:
- (a) to its immediate north is a storage. To its further north and northwest are storage, open storage yards of construction materials and landscaping materials, vacant and unused land;

- (b) to its immediate east is vacated structures;
- (c) to its immediate south is land with vacated structures. To its further southeast are residential dwellings, an open storage yard of construction machinery and vacant land; and
- (d) to its west and southwest are vacant temporary structures, vacant land, a warehouse, residential dwellings (about 39m from the boundary of the Site) and a grave.

9. Planning Intention

The “GB” zone is intended 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.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises an 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.
- (b) The Site is accessible from Shek Wu Wai Road through both Government land (GL) and private land. This office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (c) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to this office to permit the structures to be erected or regularize any irregularity on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application

will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) The Site is connected to the public road network via a section of local access which is not managed by Transport Department (TD). The land status of the local access road should be clarified with LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) As there is no information about the vehicular access at the private lot(s) to the Site, he presumes the applicant should arrange by themselves if necessary, and should seek the relevant land owner(s) on the right of using the vehicular access.
- (c) The applicant should indicate the clear width of the vehicular access and demonstrate sufficient space for manoeuvring of vehicles within the Site.
- (d) The details of trip generation should be provided if applicable.
- (e) No vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.
- (f) Should the application be approved, the following condition should be incorporated:

no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) Part of Shek Wu Wai Road is maintained by his office.
- (b) The access arrangement from Shek Wu Wai Road should be commented by TD.
- (c) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and the part of Shek Wu Wai Road maintained by HyD. Presumably, the relevant departments will provide their comments, if any.

- (d) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

As the Site falls outside any administrative route protection boundary, gazetted railway scheme boundary or existing railway protection boundary of any railway systems, he has no comment on the application from railway development point of view.

Environment

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

According to the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” (COP), he does not support the application as the Site is within 100m from the nearest sensitive uses (i.e. the nearest residential dwelling is located at about 39m southwest of the Site) and environmental nuisance is expected.

Nature Conservation

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

The Site falls within the “GB” zone on the Ngau Tam Mei OZP. According to the aerial photo available in the Geospatial Information Hub of LandsD, the Site is primarily disturbed in nature. Having said that, the planning intention of the “GB” zone states that “the planning intention of this zone 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”. He trusts the Board will consider whether the proposed development would be in line with the planning intention of the “GB” zone.

Landscape

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

- (a) He has reservation on the application from landscape planning perspective.
- (b) The Site, located to southwest of Shek Wu Wai San Tsuen and northeast of Tam Mei Barracks, falls within an area zoned “GB” on the Ngau Tam Mei OZP. The Site is not covered by any previous planning application.

- (c) With reference to the aerial photo of 2018, the Site is situated in an area of rural landscape character. The surrounding area is comprised of temporary structures, storages and scattered tree groups in the immediate surrounding with mature woodland to its further south and west. While the proposed use is considered not entirely incompatible with the existing landscape setting in proximity, the existing open storage/warehouse uses in the vicinity within the same “GB” zone were suspected UD.
- (d) Based on the aerial photo taken in 2018, no significant vegetation was found within the Site. With reference to the aerial photo taken in 2010 and 2015, it is observed that vegetation clearance had been carried out since 2010. Though further significant adverse landscape impact arising from the development is not anticipated, there is concern that approval of the application would set an undesirable precedent for other similar site modification in the neighbourhood prior to planning permission, and further degrade the landscape quality of the “GB” zone.

Fire Services

10.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the application subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) Considering the nature of the open storage use, should the application be approved, conditions should be imposed to require the applicant to provide fire extinguisher(s) and a valid fire certificate (FS 251) within 6 weeks from the date of planning approval to his Department for approval.
- (c) His advisory comments are at **Appendix IV**.

Building Matters

10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) As there is no record of approval granted by the Building Authority for the existing structures at the Site, he is not in the position to offer comments on their suitability for the use proposed in the application.
- (b) His advisory comments are at **Appendix IV**.

Drainage

10.1.10 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection to the application from drainage operation and maintenance point of view.
- (b) The applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to the Site. The drainage submission should include a drainage plan showing the details of the existing drains and the proposed drains together with adequate supporting design calculations. Approval of the drainage proposal must be sought prior to the implementation of drainage works on site.
- (c) After completion of the drainage works, the applicant shall provide DSD for reference a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan. DSD will inspect the completed drainage works jointly with the applicant with reference to the set of photographs.
- (d) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (e) No public sewerage maintained by his office is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (f) The applicant is reminded that the drainage works as well as the site boundary should not cause encroachment upon areas outside his jurisdiction.
- (g) The applicant should consult DLO/YL regarding all the drainage works outside the site boundary in order to ensure the unobstructed discharge from the Site.

District Officer's Comments

10.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

His office has no comment on the application and the local comments shall be submitted to the Board directly, if any

10.2 The following Government departments have no comment on or no objection to the application:

- (a) Commissioner of Police (C of P);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Director of Leisure and Cultural Services (DLCS);
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD); and
- (f) Project Manager (West) (PM(W)), CEDD.

11. Public Comment Received During Statutory Publication Period

On 21.1.2020, the application was published for public inspection. During the first three weeks of the statutory publication period, four public comments were received from San Tin Rural Committee, World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited and a member of the public, all objecting to the application for the reasons that the proposed use was not in line with the planning intention of the “GB” zone and would cause adverse traffic impacts on the local roads, approval of the application would legitimize suspected UD, set undesirable precedent and encourage similar UD in the “GB” zone, and the rural character of the “GB” zone should be preserved (**Appendix III**).

12. Planning Considerations and Assessments

- 12.1 The application is for temporary open storage (logistics) for storage of construction materials (steel), large-scale construction machinery parts and metal products for a period of 3 years. The Site falls within 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. There is a general presumption against development within this zone. According to TPB PG-No. 10, development in the “GB” zone should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape, adversely affect drainage or aggravate flooding and slope stability in the area. It is considered that the applied use at the Site is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10. In this respect, the applicant has not provided strong planning justifications to merit a departure from the said planning intention, even on a temporary basis.
- 12.2 The Site is amid a large “GB” zone with dense vegetation to the further south and west of the Site. The surrounding areas are mainly storage yards, open storage yards, vacant land and scattered residential dwellings intermixed with some trees. The open storage yards and storage areas are suspected unauthorized developments subject to enforcement action by the Planning Authority.
- 12.3 As mentioned in paragraph 4.2, the Site falls within Category 4 areas under TPB PG-No. 13E in which applications for open storage and port back-up uses in

Category 4 areas would normally be rejected except under exceptional circumstances. The application is not in line with TPB PG-No. 13E in that no previous approval for open storage use has been granted for the Site, there are adverse departmental comments on traffic, environmental and landscape aspects, and local objections. C for T pointed out that the applicant has neither provided information on the clear width of the vehicular access and details of trip generation nor demonstrated that there is sufficient space for manoeuvring of vehicles within the Site. DEP does not support the application as there are sensitive uses in the vicinity of the Site (i.e. nearest residential dwelling at about 39m to its southwest) and environmental nuisance is expected (**Plan A-2**). CTP/UD&L of PlanD has reservation on the application as it is observed that vegetation clearance had been carried out since 2010 and approval of the application would set an undesirable precedent for other similar site modification before obtaining planning approval, and further degrade the landscape quality of the “GB” zone. Approval of the application would set an undesirable precedent and encourage other applications for similar developments in the area. The cumulative effect of approving the application would result in a general degradation of the environment of the area.

- 12.4 The Site is subject to planning enforcement actions (**Plan A-2**), and the concerned RN has not been complied with. Approval of the application may encourage similar UD in the area.
- 12.5 Since 2008, the Committee has rejected 2 similar applications for open storage uses within “GB” zone on the OZP on similar considerations that the proposed open storage uses were not in line with planning intention of “GB” zone, were incompatible with surrounding land uses, not in line with TPB PG No.13E and approval of the application would set undesirable precedent resulting in general degradation of the environment of the area. Although the Committee has also approved 3 similar applications, their circumstances are different from the current application in that these 3 applications were all on same site with previous approvals as mentioned in paragraph 7.2. Rejection of the current application is in line with the previous decisions of the Committee.
- 12.6 There are four public comments received during the statutory publication period raising objection to the application as detailed in paragraph 11 above. The planning assessments and departmental comments above are of relevance.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
 - (a) the application is not in line with the planning intention of the “GB” zone and the TPB PG-No. 10 for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;

- (b) The proposed development is not in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that there are adverse departmental comments on the traffic, environmental and landscape aspects and local objections; and
- (c) the approval of the application would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such similar applications would result in general degradation of the environment of the area.

13.2 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 2 years until 6.3.2022, instead of 3 years sought. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) no operation between 9:00 a.m. to 10:00 a.m. on Saturdays, as proposed by the applicant, is allowed on the site during the planning approval period;
- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the site during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.
- (e) the provision of fire extinguisher(s) and a valid fire certificate (FS 251) within 6 weeks to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.4.2020;
- (f) the submission of fire service installations proposals within 6 months to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.9.2020;
- (g) in relation to (f) above, the provision of fire service installations within 9 months to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.12.2020;
- (h) the provision of boundary fencing on the site within 6 months to the satisfaction of the Director of Planning or of the Town Planning Board by 6.9.2020;
- (i) the submission of a drainage proposal within 6 months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.9.2020;

- (j) in relation to (i) above, the implementation of the drainage proposal within **9** months to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **6.12.2020**;
- (k) if any of the above planning conditions (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 immediately without further notice; and
- (l) if any of the above planning conditions (e), (f), (g), (h), (i) or (j) 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.
- (m) upon 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 **Appendix IV**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 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.

15. Attachments

Appendix I	Application Form received on 9.1.2020
Appendix Ia	Letter received on 20.1.2020
Appendix II	Similar Applications
Appendix III	Public Comment received during the Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawings A-1 to A-3	Layout Plans
Plan A-1	Location Plan

Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2020**