

RNTPC Paper No. A/YL-KTS/872
For Consideration by
the Rural and New Town
Planning Committee
on 5.2.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/872

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| <u>Applicant</u> | : Mr. Cheng Lam Hung |
| <u>Site</u> | : Lots 447 RP (Part) and 448 (Part) in D.D. 106, Kam Sheung Road, Kam Tin, Yuen Long |
| <u>Site Area</u> | : About 412m ² |
| <u>Lease</u> | : Block Government Lease (demised for agricultural use) |
| <u>Plan</u> | : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15 |
| <u>Zoning</u> | : “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) [Maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)] |
| <u>Application</u> | : Temporary Open Storage of Construction Machinery, Construction Material, Vehicle and Vehicle Parts with Ancillary Office for a Period of 3 Years |

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for temporary open storage of construction machinery, construction material, vehicle and vehicle parts with ancillary office for a period of 3 years. The Site is zoned “OU(RU)” on the Kam Tin South OZP and the applied use is neither a Column 1 nor Column 2 use. According to the covering Notes of the OZP, temporary use or development not exceeding a period of three 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 currently used for the applied use without planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is the subject of 11 previous applications for various temporary open storage uses covering the whole or part of the Site. The latest one was application No. A/YL-KTS/757 which overlapped with a small portion on the current application for the same applied use (without ancillary office), was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2017 and the planning permission lapsed in 2020.

- 1.3 According to the applicant, one structure with a building height of about 5.2m (2 storeys) and a total floor area of about 59.6m² are erected at the Site for site office. The operation hours are between 9 a.m. to 6 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. 1 private car parking space and 1 loading / unloading bay for light goods vehicles are provided within the Site. The Site is accessible by Kam Sheung Road via a local track. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with plans received on 8.12.2020 (Appendix I)
 - (b) Further Information (FI) received on 28.1.2021 in response to departmental comments (exempted from publication requirement) (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 in **Appendix I**. They can be summarized as follows:

- (a) The Site and the adjoining sites are subject to previous planning approvals for open storage or similar uses. The development is a temporary use and would not jeopardize the long-term development. It is compatible with the surrounding environment. The applied use together with the similar uses in the area has locational advantage and can bring more benefit together. It can also better utilize land resource.
- (b) As the Site is small and similar to the nearby developments, no significant adverse impact is anticipated. The applicant is willing to comply with the Government's requirements to improve the environment.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by sending notification to the current land owner. Detailed information would be deposited at the meeting for Member's inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines on ‘Application for Open Storage and Port Back-up Uses’ (TPB PG-No.13F) promulgated by the Board on 27.3.2020 are relevant to this application. The Site falls within Category 3 areas under TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.
- 4.2 Town Planning Board Guidelines for “Designation of “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) Zone and Application For Development Within “OU(RU)”) Zone under Section 16 of the Town Planning Ordinance” (TPB PG-No. 38) is relevant to the application. The relevant assessment criteria are summarized as follows:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

5. Background

The Site is currently not subject to any active planning enforcement action. Site inspections revealed that the Site was occupied with storage use which may constitute an unauthorised development. Should there be sufficient evidence to prove that the current operation on the Site constitutes an unauthorized development under Town Planning Ordinance, enforcement action will be taken.

6. Previous Applications

- 6.1 The Site is the subject of eleven previous applications for various temporary open storage uses, which were all approved with conditions by the Committee between 1998 and 2017 for a period of 1 to 3 years. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1b**.
- 6.2 Applications No. A/YL-KTS/136, 204 and 220 for temporary open storage of vehicles/spare parts, construction machinery and/or bamboo and container trailer park generally covering the whole Site were approved by the Committee for 2 to 3 years in 1998 and 2000. Application no. A/YL-KTS/136 was approved mainly on the considerations that the application was in line with the then Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” in that the development was compatible with the surrounding open storage uses; significant adverse environmental impact was not expected; and temporary approval was an interim arrangement to alleviate the acute shortage of open

storage land in the area. Applications No. A/YL-KTS/204 and 220 were approved on the grounds that there was previous approval granted; no change in planning circumstances and no adverse departmental comments. However, planning permission of application No. A/YL-KTS/204 was revoked due to non-compliance with approval conditions.

- 6.3 Applications No. A/YL-KTS/298, 333, 371, 427, 503, 586, 653 and 757 for temporary open storage of vehicle/spare parts, construction machinery, construction materials, container trailers and/or workshop covering the northern/western part of the Site were approved by the Committee between 2003 and 2017 for a period of 1 to 3 years for similar reasons that the development was not incompatible with the surrounding land uses; the application was in line with the then Town Planning Board Guidelines on “Application for Open Storage and Port Back-up Uses” as previous approvals for open storage at the site were granted; there was no adverse comment from the relevant departments in general; and the environmental concern could be addressed by approval conditions. However, planning permission of applications No. A/YL-KTS/503 and 586 were revoked due to non-compliance with approval conditions. For the last application (No. A/YL-KTS/757) which overlapped with a small portion on the Site and submitted by a different applicant, all approval conditions have been complied with and the planning permission lapsed in 2020.

7. Similar Applications

- 7.1 There are 36 similar applications for various temporary open storage uses within the same “OU(RU)” zone since the promulgation of the then TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1a**.
- 7.2 31 similar applications were approved with conditions by the Committee or by the Board on review between 2008 and 2020 for similar reasons that the applications complied with TPB-PG No. 13E in that previous approvals for open storage were granted at the sites and the approval conditions had been complied with; the proposed uses were not incompatible with the surrounding land uses; there were no adverse comments from relevant departments in general; and the departmental concerns could be addressed by approval conditions. However, planning permissions of 12 applications were revoked due to non-compliance with approval conditions.
- 7.3 Five similar applications were rejected by the Committee or the Board on review between 2011 and 2015. The applications were rejected mainly on the grounds that the developments were incompatible with surrounding land uses; the applications did not comply with the TPB PG-No. 13E in that no previous approval for open storage had been granted at the sites; there were adverse departmental comments; and/or there were insufficient information to demonstrate that the developments would not cause adverse environment, drainage, traffic and landscape impacts.

8. The Site and Its Surrounding Areas (Plans A-2 to A-4b)

8.1 The Site is:

- (a) currently paved and used for the applied use without planning permission; and
- (b) accessible via a local track from Kam Sheung Road.

8.2 The surrounding areas are rural in character intermixed with open storage / storage yards, warehouses, residential structures / dwellings, fallow agricultural land, graves and vacant / unused land:

- (a) to its north, south and east are open storage / storage yards, service depot for drainage and sewerage works, warehouses, residential structures / dwellings (the nearest about 10m to the east), fallow agricultural land and vacant / unused land; and
- (b) to the immediate west is an open storage yard. To the further west across a nullah are residential structures / dwellings and unused land.

9. Planning Intention

The planning intention of the “OU(RU)” zone is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities.

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 Old Schedule Agricultural Lots 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) Within the Site, the private lots (Lot Nos. 447RP and 448) are covered by Short Term Waiver (STW) No. 4162 for temporary open storage of construction machinery, construction material, vehicle and vehicle parts.
- (c) Should planning approval be given to the planning application, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.

Traffic

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

- (a) He has no comment on the application from the traffic engineering point of view.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

There was no environmental complaint concerning the Site received in the past three years. The applicant is advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' issued by DEP.

Landscape

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

- (a) She has no objection to the application from landscape planning perspective.
- (b) Based on the aerial photo dated 18.2.2020, the Site is situated in an area of rural landscape character comprising scattered tree groups, temporary structures and open storages. The development is not incompatible with the landscape character of the area.
- (c) Referring to the site visit dated 9.10.2020, most of the Site is paved and in operation as an open storage. No existing tree is found within the Site. Significant adverse impact on landscape resources within the Site is not anticipated.

Nature Conservation

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

Considering that the Site has been paved and used for open storage purposes for some years, he has no in-principle objection to the application from nature conservation perspective.

Drainage

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

- (a) He has no in-principle objection to the development.

- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal and implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning permission.

Fire Safety

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

- (a) He has no in-principle objection to the proposal subject Fire Service Installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design / nature of the proposal, FSIs are anticipated to be required. Therefore the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans. The good practice guidelines for open storage in **Appendix V** should be adhered to.
- (c) Moreover, having considered the nature of the open storage, approval condition on provision of fire extinguisher(s) with 6 weeks from the date of planning approval is recommended to be added. To address this condition, the applicant should submit a valid fire certificate (FS251) to his department for approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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 (BA) for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.)

are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (c) His detailed comments on UBW, provision of access, temporary or licenced structures are at **Appendix VII**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

District Officer's Comments

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

He has not received any comment from the locals upon close of consultation and he has no particular comment on the application.

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

- (a) Chief Engineer / Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department;
- (c) Director of Electrical and Mechanical Services; and
- (d) Commissioner of Police.

11. Public Comment Received During Statutory Publication Period

On 18.12.2020, the application was published for public inspection. During the three-week statutory publication period, one public comment was received from an individual (**Appendix VI**), objecting to the application mainly on the grounds that activities causing adverse environmental impact and affecting appearance of the district should not be tolerated; and the current operating condition should be taken into account when considering the application.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of construction machinery, construction material, vehicle and vehicle parts with ancillary office for a period of 3 years at "OU(RU)" zone. The planning intention of the "OU(RU)" zone is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board,

with a view to upgrading or improving the area or providing support to the local communities. The applied use is not in line with the planning intention of the “OU(RU)” zone. Nevertheless, there is no known programme for long-term development at the Site. Hence, it is considered that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “OU(RU)” zone.

- 12.2 The development is considered not incompatible with the surrounding land uses, which are rural in character intermixed mainly with residential structures / dwellings, fallow agricultural land and vacant / unused land.

- 12.3 According to TPB PG-No. 13F, the Site falls within Category 3 areas. The following guidelines are relevant:

Category 3 areas: within these areas, “existing” and approved open storage and port back-up uses are to be contained and further proliferation of such uses is not acceptable. Applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. 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 fresh 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. Subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions, planning permission could be granted a temporary basis up to a maximum period of 3 years.

- 12.4 The application is generally in line with the TPB PG-No. 13F in that previous approvals for similar / the same open storage use at the whole or part of the Site was granted since 1998 and all the approval conditions in the last approved application (No. A/YL-KTS/757) have been complied with. Also, relevant departments consulted, including C for T, CE/MN of DSD, D of FS, DEP and CTP/UD&L of PlanD have no adverse comment on the application. As previous approvals have been granted and there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.

- 12.5 To minimize the possible environmental nuisance, approval conditions restricting the operation hours, vehicle type and workshop-related activity are recommended in paragraph 13.2(a) to (d). The applicant will also be advised to adopt the latest ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2(e) to (k) below.

- 12.6 Besides the previous approved applications at the Site, there are also 31 similar approved applications within the same “OU(RU)” zone as detailed in paragraph 7

above. The five rejected similar applications are subject to different circumstance as they did not comply with the then TPB PG-No. 13E.

- 12.7 One public comment was received during the statutory inspection period, objecting to the application as stated in paragraph 11 above. In this regard, relevant Government departments' comments as well as planning assessments and considerations as stated above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment in paragraph 11, the Planning Department considers that the temporary open storage of construction machinery, construction material, vehicle and vehicle parts with ancillary office could be tolerated for a period of 3 years.
- 13.2 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 3 years until 5.2.2024. 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 on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (d) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) 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 5.8.2021;
- (g) in relation to (f) 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 5.11.2021;

- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) 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 19.3.2021;
- (j) the submission of 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 5.8.2021;
- (k) in relation to (j) above, the implementation of 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 5.11.2021;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) 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
- (m) if any of the above planning conditions (f), (g), (i), (j) or (k) 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 attached at **Appendix VII**.

- 13.3 Alternative, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development is not in line with the planning intention of the "OU(RU)" zone, which is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

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

15. Attachments

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| Appendix I | Application form with plans received on 8.12.2020 |
| Appendix Ia | FI received on 28.1.2021 |
| Appendix II | Extract of TPB PG-No. 13F |
| Appendix III | Previous s.16 applications covering the Site |
| Appendix IV | Similar applications within the same “OU(RU)” zone on the approved Kam Tin South OZP |
| Appendix V | Good Practice Guidelines for open storage |
| Appendix VI | Public comment received during the statutory publication period |
| Appendix VII | Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Plan A-1a | Location Plan with Similar Applications |
| Plan A-1b | Previous Application Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4a to 4b | Site Photos |