

RNTPC Paper No. A/YL-PH/778
For Consideration by
the Rural and New Town
Planning Committee on 4.5.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/778

<u>Applicant</u>	: 黃何武先生 represented by Mr. CHENG Ka Cheung and Mr. CHONG Kim Wah
<u>Site</u>	: Lots 1956 S.A RP (Part) and 1956 S.B RP (Part) in D.D. 111 and Adjoining Government Land, Pat Heung, Yuen Long
<u>Site Area</u>	: About 548m ² (including Government Land of about 50m ²)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Proposed Temporary Open Storage of Construction Material and Construction Equipment 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 material and construction equipment for a period of three years. The Site was involved a previous planning application No. A/YL-PH/258 for temporary open storage of lorries prior for sale which was rejected by the Rural and New Town Planning Committee (the Committee) on 2.5.1999. The Site is currently fenced, partly vacant and partly paved and occupied by some construction materials without valid planning permission (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the Site will be used for open storage of construction material and construction machinery. No dismantling, maintenance, repairing, cleansing or other workshop activities will be carried out on Site. One loading/unloading space for light goods vehicle will be provided at the Site. The development does not involve the use of vehicles exceeding 5.5 tonnes. The operation hours are from 9:00 a.m. to 6:00 p.m. Mondays to Saturdays. There will be no operation on Sundays and public holidays. The Site is accessible via a local

track branching off from Kam Tin Road. The site layout plan and vehicular access plan as submitted by the applicant are shown in **Drawings A-1** and **A-2**.

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

- (a) Application Form with plans received on 6.3.2018 **(Appendix I)**
- (b) Supplementary Information (SI) received on 12.3.2018 clarifying the site area **(Appendix Ia)**
- (c) Further Information (FI) received on 11.4.2018 in responses to departmental comments and clarifying the width of ingress/egress, manoeuvring space and trip generation of the Site **(Appendix Ib)**
(accepted and exempted from publication and recounting requirements)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form and the planning statement in **Appendix I**. They can be summarized as follows:

- (a) The proposed use is temporary in nature which will not set undesirable precedent and will not jeopardized the planning intention of the “V” zone.
- (b) The layout of the proposed use is in accordance with the requirements under Town Planning Board Guidelines No. 13E for ‘Application for Open Storage and Port Back-up Uses’(TPB PG-No.13E). The Site is located near Kam Tin Road with an existing access. No additional vehicular access is needed.
- (c) If the application be approved, the applicant will make effort to comply all the approval conditions which required by concerned government departments.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not the “current land owner”. However, the applicant 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. 31) by posting site notices and sending registered post to Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Site falls within Category 4 areas under the Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E) promulgated by the Town Planning Board (the Board) on 17.10.2008. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

- 5.1 The Site is not the subject of any active enforcement cases and there is currently no enforcement action against it.
- 5.2 The Site is the subject of a previous planning enforcement action (No. E/YL-PH/760) alleging for storage use with Enforcement Notice issued to the responsible persons on 22.6.2017. Upon the discontinuance of the unauthorized development, Compliance Notice was issued to the responsible persons on 10.1.2018. The use of the Site for storage use without a valid planning permission constitutes an unauthorized development under the Town Planning Ordinance. Should there be sufficient evidence to prove that the use on site is an unauthorized development under the Ordinance, appropriate enforcement action will be taken.

6. Previous Application

The Site is covered by a previous planning application No. A/YL-PH/258 for temporary open storage of lorries prior to sale for 12 months which was rejected by the Committee on 5.2.1999 mainly on the grounds that the development was not in line with the planning intention of the “V” zone; the proposed development did not comply with Town Planning Guidelines for ‘Application for Open Storage and Port Back-up Uses’ in that it was not compatible with the surrounding village settlements; no information to demonstrate as to why a suitable site within the “Open Storage” zone could not be identified for the use under the application; and approval of the application would set an undesirable precedent for other similar application and cumulative effect would result in a general degradation of the environment of the area. Details of the application are summarized in **Appendix III** and the location of the site is shown on **Plan A-1**.

7. Similar Applications

- 7.1 There are five similar applications (No. A/YL-PH/582, 599, 688, 698 and 775) for temporary open storage of private cars and light/medium goods vehicles prior to sale and open storage of construction materials and/or containers in the same “V” zone (No. A/YL-PH/698 straddling “Agricultural” (AGR) zone) on the Pat Heung OZP since the promulgation of the TPB PG-No. 13E on 17.10.2008. All the applications were rejected by the Committee or Town Planning Board (the

Board) on review. Details of the applications are summarized in **Appendix IV** and the locations of the sites are shown on **Plan A-1**.

- 7.2 Applications No. A/YL-PH/582, 599, 688, 698 and 775 for temporary open storage of private cars and light/medium goods vehicles prior to sale and open storage of construction materials and/ or containers for a period of one to three years were rejected by the Committee / the Board on review on 5.6.2009, 30.4.2010, 13.6.2014, 9.1.2015 and 20.4.2018 respectively mainly on the grounds that the temporary open storage use was not in line with the planning intention; the applications did not comply with the Town Planning Board PG-No. 13E in that there was no exceptional circumstance that warrant sympathetic consideration/ allow continuation of the applied use on-site/ there were adverse departmental comments; the development was considered not compatible with the surrounding areas; the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and/or drainage impacts on the surrounding areas; and the approval of the application, even on a temporary basis, would set an undesirable precedent.

8. The Site and Its Surrounding Areas (Plans A-1 to A-4)

- 8.1 The Site is:
- (a) fenced, partly vacant, partly paved and occupied by some construction materials without valid planning permission; and
 - (b) accessible via a local track branching off from Kam Tin Road.
- 8.2 The surrounding areas are rural in character, mixed with residential structures/dwellings, small houses under construction, open storage/storage yards and vacant/unused land. The open storage / storage yards are suspected UD subject to enforcement action by the Planning Authority (**Plan A-2**):
- (a) to its north and northwest are residential dwellings/structures (the nearest about 5m away) and vacant/unused land;
 - (b) to its east are residential dwellings/structures and open storage/ storage yards;
 - (c) to its south are residential dwellings/structures, open storage yards and vacant/unused land; and
 - (d) to its west are residential dwellings/structures and vacant/unused land.

9. **Planning Intention**

The planning intention of the “V” is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

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) No permission is given for occupation of Government Land (GL) (about 50m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government’s prior approval is not allowed.
- (c) The Site is accessible to Kam Tin Road via GL and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.
- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a formal approval prior to the actual occupation of the GL portion. Such application(s) will be considered by LandsD acting in the

capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) 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.

- (f) There is no small house application approved and under processing within the Site.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (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 incorporated.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by TD. The land status of the local access road should be checked with 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 is not/shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Kam Tin 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):

- (a) No substantiated environmental complaint was received in the past three years.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” (the COP), he does not support the application as there are

sensitive receivers nearby (the nearest is about 5m on the north) (**Plan A-2**) and in the vicinity of the Site, and environmental nuisance is expected.

- (c) Should the application be approved, 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.

Nature Conservation

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

As the Site is located within “V” zone and is disturbed, he has no comment on the application from nature conservation perspective.

Drainage

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

- (a) He has no in-principle objection to the application.
- (b) Should the application be approved, approval conditions requiring the submission of drainage proposal and implementation and maintenance of the drainage proposal for the development should be included in the planning permission.

Fire Safety

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

- (a) He has no in-principle objection to the application subject to 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 FSIs to be installed should be clearly marked on the layout plans. The good practice guidelines for open storage site in **Appendix V** should be adhered to.

- (c) Having considered the nature of the open storage use, the condition on the provision of fire extinguisher(s) within 6 weeks from the date of the planning approval should be included in the planning permission. 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.

Water Supplies

10.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) The existing 10m waterworks reserve will be affected (**Plan A-2**). No structure shall be erected over this waterworks reserve and such area shall not be used for storage purposes. The Water Authority and his officers and contractors, his or their workmen shall have free access at all times to the said area with necessary plant and vehicles for the purpose of laying, repairing and maintenance of water mains. All other services across, through or under the waterworks reserve are required to seek authorization from the Water Authority. Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

District Officer's Comments

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

His office has not received any comments from locals upon close of consultation and has no particular comment on the application.

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

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);

- (c) Project Manager(West), Civil Engineering and Development Department (PM(W), CEDD); and
- (d) Commissioner of Police (C of P).

11. Public Comment Received During Statutory Publication Period

- 11.1 On 16.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.4.2018, one comment from a general public was received (**Appendix VI**).
- 11.2 The commenter objected the application on the reasons that the application appears to legitimized an ongoing brownfield operation; open storage is incompatible with the “V” zone; construction materials can leach into the ground and cause environmental degradation and endanger the health of future residents; storage should be accommodated in purpose built parks; and approval of the application would encourage further substandard and inappropriate land uses.

12. Planning Considerations and Assessments

- 12.1 The Site falls within Category 4 areas under the TPB PG-No. 13E. The following considerations in the Guidelines are relevant.

Category 4 areas: these are areas with ponds or wetland or with extensive vegetation or close to environmentally or ecologically sensitive areas, areas which are mostly used for residential purpose or proposed for such purposes, areas near existing major village settlements or areas subject to extremely high flooding risk. 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.

- 12.2 The proposed temporary open storage of construction material and construction machinery for a period of 3 years is not in line with the planning intention of the “V” zone which is to reflect existing recognized and other villages, and to provide

land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. According to DLO/YL of LandsD, there is no Small House application approved or under processing at the Site. Nevertheless, no strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

- 12.3 The development is not compatible with the surrounding land uses which are predominated by residential dwellings/structures (**Plan A-2**). There is no information in the submission to demonstrate that the proposed use is compatible with the neighbourhood and would not create adverse impacts on the surrounding environment. DEP does not support the application as there are residential dwellings/structures in the vicinity (i.e. the nearest one is about 5m on the north) (**Plan A-2**), and environmental nuisance is expected. Although there are open storage/storage yards in the vicinity, they are suspected unauthorized developments subject to enforcement action by the Planning Authority.
- 12.4 The development is not in line with the TPB PG-No. 13E in that applications for open storage and port back-up use in Category 4 areas would normally be rejected except under exceptional circumstances. In this regard, there is no exceptional circumstances in the current application that warrant sympathetic consideration in the Category 4 area. Besides, no previous approval for open storage use had been granted at the Site; and there is adverse departmental comment (i.e. EPD) on the application. In this connection, the applicant fails to demonstrate that the development would not generate adverse environmental impacts on the surrounding areas.
- 12.5 The Site is subject to a previous rejected application No. A/YL-PH/258 for temporary open storage of lorries prior to sale for 12 months and all similar applications (No. A/YL-PH/582, 599, 688, 698 and 775) for temporary open storage uses in the same “V” zone were rejected by the Committee or the Board on review (paragraphs 6 and 7 above). Approval of the current application, even on a temporary basis, would set an undesirable precedent for similar applications within the “V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 12.6 A public comment objecting to the application was received during the statutory publication period as mentioned in paragraph 11.2 above. In this regard, the planning considerations and assessments above are relevant.

13. **Planning Department’s Views**

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) the development is not in line with the planning intention of the “V” zone which is intended to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within the “V” zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the TPB PG-No. 13E in that the development is not compatible with the surrounding land uses which are predominated by residential structures/dwellings. There is also no previous approval granted at the Site and there is adverse departmental comment against the development;
- (c) the applicant fails to demonstrate that the development would not generate environmental nuisance on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications to proliferate into this part of the V” zone. The cumulative effect of approving such applications would result in a general degradation of the rural 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, instead of 3 years period sought, until 4.5.2020 to monitor the situation on the Site. 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 or 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, as proposed by the applicant, shall be carried out on the Site at any time during the planning approval period;
- (d) no 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) the maintenance of the existing boundary fencing on the Site at all times during the planning approval period;

- (f) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (g) 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 4.11.2018;
- (h) in relation to (g) above, the implementation of the 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 4.2.2019;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) the provision of fire extinguisher(s) within **6** weeks with a valid fire certificate (FS 251) from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.6.2018;
- (k) 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 4.11.2018;
- (l) in relation to (k) above, the implementation of fire services 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 4.2.2019;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (i) 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;
- (n) if any of the above planning conditions (g), (h), (j), (k) or (l) 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
- (o) upon expiry of the planning permission, the reinstatement of the 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 VII**.

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

Appendix I	Application Form with plans received on 6.3.2018
Appendix Ia	SI received on 12.3.2018
Appendix Ib	FI received on 11.4.2018
Appendix II	Relevant extract of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E)
Appendix III	Previous s.16 application covering the application site
Appendix IV	Similar applications within the same “V” zone on the approved Pat Heung OZP
Appendix V	Good Practice Guidelines for Open Storage Sites
Appendix VI	Public comment received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo

Plans A-4a and Site Photos
A-4b

PLANNING DEPARTMENT
MAY 2018