

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/685

- Applicant** : Mr. SAN-TO Wang Tin represented by Ms. LAU Fun Kwan
- Site** : Lot 1242 RP in D.D. 76, Tan Chuk Hang, Fanling, New Territories
- Site Area** : About 497.6 m²
- Leases** : Block Government lease (demised for agricultural use)
- Plan** : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/17
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Wooden Materials, Metal and Miscellaneous Objects for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary open storage of wooden materials, metal and miscellaneous objects for a period of three years at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “AGR” on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years within “AGR” zone requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is currently vacant.
- 1.2 According to the information submitted by the applicant, the Site will be used by the applicant for open storage of wooden materials, metal and miscellaneous objects. No structure will be erected on Site. The Site is accessible via a local track to Sha Tau Kok Road (**Plan A-2**). The operation time of the Site is between 9:00 a.m. and 5:00 p.m. on Mondays to Saturdays excluding Sundays and public holiday. The ingress/egress is located at the southeastern part of the Site and there will be no formal car parking space provided in the Site. A layout plan is shown on **Drawing A-1**.
- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with Attachment received on 10.12.2018 (**Appendix I**)
 - (b) Supplementary Information received on 12.12.2018 (**Appendix Ia**)
 - (c) Further Information received on 28.1.2019 (**Appendix Ib**)

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 further information at **Appendices I to Ib** respectively. They can be summarized as follows:

- (a) the applicant needs the Site for storage of wooden materials, metal and miscellaneous objects and the Site will only be used by the applicant;
- (b) the Site will be used by the applicant between 9:00 a.m. to 5:00 p.m. on Mondays to Saturdays excluding public holiday and the Site will be accessed twice a month by the applicant;
- (c) whilst no formal car parking space will be provided within the Site, light goods vehicles will enter the Site for loading/unloading activities. As such, the proposed development would not block the traffic of the adjoining access road; and
- (d) the Site will not be used for storage of chemicals and no filling of land is required.

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

The applicant is the “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Chief Town Planner/Central Enforcement and Prosecution, Planning Department (CTP/CEP, PlanD) states that part of the Site is subject to planning enforcement action against unauthorized open storage use. Enforcement Notice was issued on 12.6.2018. Upon expiry of the compliance period, site inspections revealed that the unauthorized development has been discontinued and the site was covered with vegetation.

5. Town Planning Board Guidelines

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) is relevant to the application. The Site falls entirely within Category 3 area under TPB PG-No. 13E promulgated on 17.10.2008. Relevant extract of the Guidelines is attached in **Appendix II**.

6. Previous Application

There is no previous application for the Site.

7. Similar Application

- 7.1 There is one similar application for temporary open storage use within or partly within the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area.

- 7.2 The application No. A/NE-LYT/392 for proposed public vehicle park for private cars and lorries and open storage of building materials was rejected by the Rural and New Town Planning Committee (the Committee) in June 2009 mainly on the considerations that the development was not in line with the planning intentions of the “GB” and “AGR” zones; the development did not comply with the relevant Town Planning Board Guidelines No. 13E on ‘Application for Open Storage and Port Back-up Uses’ in that there was no previous planning approval granted to the Site and there were adverse departmental comments / local objections against the application; the proposed use would generate adverse environmental and landscape impacts on the surrounding areas; the approval of the application would set an undesirable precedent for other similar applications within “GB” and “AGR” zones and the cumulative impact of approving such similar applications would result in adverse environmental and landscape impacts on the area.
- 7.3 Details of the similar application is summarised at **Appendix III** and its location is shown on **Plan A-1**.

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) covered with grass and fenced off (**Plan A-4**); and
- (b) accessible via a local road to Sha Tau Kok Road (**Plan A-1**).

8.2 The surrounding areas have the following characteristics:

- (a) mainly a mixed rural landscape character dominated by temporary structures for storage use, village houses, farmland and clustered tree groups (**Plan A-3**);
- (b) to the immediate northwest is site of storage use and to the further north are sites of active/fallow agricultural land, vehicle parking and open storage uses;
- (c) to the northeast across the local road are temporary domestic structures and to the further east are plant nursey and warehouse;
- (d) to the immediate south are active/fallow agriculture land; and
- (e) to the further south are village houses in “Village Type Development” (“V”) zone .

9. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) the Site comprises private Lot 1242 RP in D.D. 76, which is an Old Schedule Lot held under the Block Government Lease (demised for agriculture use) without any guaranteed right of access. The applicant should make his own arrangement for acquiring access. The Government shall accept no responsibility in such arrangement;
- (b) the occupation area is much larger than that of the application area. The existing structure on the Site was erected without approval from his office. The aforesaid structure is not acceptable under the Leases concerned. His office reserves the right to take enforcement actions against the aforesaid structure; and
- (c) if the planning application is approved, the owner of the lot concerned shall apply to his office for a Short Term Waiver (STW) to regularize the illegal structure erected on the Site. The application for STW will be considered by Government in its landlord's capacity and there is no guarantee that it will be approved. If the STW is approved, its commencement date would be backdated to the first date of occupation and it will be subject to such terms and conditions to be imposed including payment of waiver fee and administrative fee as considered appropriate by his office.

Traffic

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

- (a) unless the applicant could satisfactorily address her following comments, she cannot render support to the application from the traffic engineering perspective:
 - (i) the applicant should advise the estimated traffic flow of the application with justification;
 - (ii) the applicant should demonstrate the satisfactory manoeuvring of vehicles entering to and exiting from the Site and manoeuvring within the Site, preferably, using swept path analysis;
 - (iii) the applicant shall advise the number of car parking spaces and loading/unloading spaces to be provided and justify the adequacy of the parking spaces so provided by relating to the number of vehicles visiting the Site;
 - (iv) the proposed vehicular ingress/egress should be of no less than 7.3 m

in width;

- (v) the applicant shall advise the management /control measures to be implemented to ensure no queuing of vehicles outside the Site; and
 - (vi) the applicant shall advise the provision and management of pedestrian facilities to ensure pedestrian safety; and
- (b) the vehicular access between Sha Tau Kok Road and the Site is not managed by Transport Department. The applicant shall sought agreement/comment from the responsible party for the management and maintenance measures to be implemented for the vehicular access.

Environment

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

- (a) no objection to the application;
- (b) there was no environmental complaint against the Site during the past three years; and
- (c) should the application be approved, an approval condition to prohibit medium and heavy goods vehicles parked/stored on or enter/exit the Site is required. Moreover, the applicant is advised to implement relevant mitigation measures and requirements in the latest “Code of Practice on Handling Environmental Aspects of Open Storage and Temporary Uses”.

Landscape Aspect

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

- (a) no objection to the application from the landscape planning perspective;
- (b) based on the aerial photo of 2017, the Site is situated in an area of rural landscape character surrounded by temporary structure, village houses, farmland and clustered tree groups. According to her site record, the Site is fenced off by hoardings and the majority of the Site is covered by wild grass with only one tree of common species found in the eastern corner of the Site (**Plan A-4**). Significant adverse impact arising from the temporary use under the application on existing landscape resources is not anticipated; and
- (c) should the application be approved, the applicant should be advised of the following:
 - (i) the approval of application does not imply approval of tree works such as pruning, transplanting and felling under lease. Tree removal applications should be submitted direct to DLO/N, LandsD for approval; and
 - (ii) useful information published by the Greening, Landscape & Tree

Management Section, Development Bureau on general tree maintenance and tree risk management is available for reference on its website.

Drainage

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

- (a) no objection in-principle to the application from the public drainage viewpoint;
- (b) should the application be approved, a condition should be included to request the applicant to submit and implement a drainage proposal for the Site to ensure that the proposed development will not cause adverse impact to the adjacent area; and
- (c) the Site is in an area where no public sewerage connection is available.

Fire Safety

10.1.6 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) and water supplies for firefighting being provided to satisfaction of his department;
- (b) having considered the nature of the use, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval is recommended for inclusion in the planning permission. To address this condition, the applicant should submit certificate(s) under Regulation 9(1) of the Fire Service (Installations and Equipment) Regulations (Chapter 95B) to his department for compliance of condition;
- (c) if covered structures (e.g. container-converted office, temporary warehouse and temporary shed used as workshop) are erected within the Site, FSIs will need to be installed;
- (d) in such circumstances, except where building plan will be circulated to his department via the Centralized Processing System of the Buildings Department, the applicant is required to send the relevant layout plans to his department incorporated with the proposed FSIs for approval. In preparing the submission, the applicant is advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the locations of the proposed FSIs to be installed and the access for emergency vehicles should be clearly indicated on the layout plans; and
- (e) detailed fire safety requirements will be formulated upon receipt of formal submission of the aforesaid plans. The applicant will need to subsequently provide such FSIs according to the approved proposal.

Water Supply

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

- (a) no objection to the application; and
- (b) for provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

Agriculture

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

the agricultural activities are active in its vicinity and agricultural infrastructures such as footpath and water source are available. As the Site possesses potential for agricultural rehabilitation, he does not support the application from the agricultural point of view.

Project Interface

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

- (a) the Site is located very close to Lung Shan Tunnel structures; and
- (b) to protect the structures, the applicant is advised on the following points:
 - (i) no drill holes and no wells shall be sunk within the Site;
 - (ii) no piling works shall be carried out within the Site; and
 - (iii) no undue loadings shall be imposed on the Lung Shan Tunnel structures.

District Officer's Comments

10.1.10 Comments of the District Officer (North), Home Affairs Department (DO(N), HAD):

he has consulted the locals regarding the application. The Chairman of Fanling District Rural Committee has no comment on the application, whereas incumbent NDC member of Queen's Hill Constituency cum the Indigenous Inhabitant Representative (IIR) of Lung Yeuk Tau, the IIR and the Resident Representative of Tan Chuk Hang object to the application mainly on the grounds that the current local tracks are not suitable for heavy goods vehicles and the access road of the Site is the only access road in the area; the heavy traffic generated by the proposed use may worsen the traffic congestion problem and threaten the safety of local residents; the proposed use is incompatible with

the peaceful rural environmental setting of the area; the proposed use would worsen the flooding problem and cause environmental pollutions; and the proposed use is an example of “destroy first, develop later” and would convert agricultural land to brownfield.

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

- (a) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD); and
- (b) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD).

11. Public Comments Received During Statutory Publication Period

On 18.12.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 33 public comments were received (**Appendix IV**). Chairman of Sheung Shui District Rural Committee indicates no comment on the application. The Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society, Sze Tau Leng Village Representative and 29 individuals object to the application mainly on the grounds that the proposed development is not in line with the planning intention of “AGR” zone and Town Planning Board Guidelines No. 13E; the application would have adverse traffic, environmental, ecological, drainage and landscape impacts on the surrounding areas; the heavy traffic generated by the proposed development would cause traffic congestion and threaten the safety of local residents; the proposed development is incompatible with surrounding rural character; the approval of the application will encourage “destroy first, develop later” activities; and the approval of the application will set an undesirable precedent for other similar applications in the surrounding area.

12. Planning Considerations and Assessments

12.1 The Site falls entirely within Category 3 area under the TPB PG-No. 13E promulgated by the Board on 17.10.2008. The following considerations in the Guidelines are relevant:

Category 3 areas: applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. In that connection, 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 on a temporary basis up to a maximum period of 3 years.

12.2 The Site falls entirely within the “AGR” zone on the approved Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/17 (**Plan A-1**). The proposed open storage of wooden materials, metal and miscellaneous objects at the Site is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good

potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application as the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

- 12.3 The Site is situated in an area of rural landscape character comprising open storages, warehouses, village houses, farmland and clustered tree groups (**Plan A-3**). It is the subject of enforcement action by the Planning Authority for open storage use. Enforcement notice was issued against the open storage development in June 2018. Upon expiry, site inspections revealed that the unauthorised development has been discontinued. The Site is currently subject to monitoring by the Planning Authority. Since the Site is currently fenced off by hoardings, significant adverse landscape impact arising from the proposed development is not anticipated. In this regard, CTP/UD&L, PlanD has no objection from landscape planning perspective.
- 12.4 Even though the applicant claimed that the proposed development would be used by himself and not renting out, there is no information in the submission to demonstrate the development would not generate adverse traffic impact on the surrounding area. C for T does not support the application from the traffic engineering viewpoint. The applicant should advise the estimated traffic flow of the application with justification, provide relevant information to demonstrate the satisfactory manoeuvring of vehicles entering and exiting the Site and manoeuvring within the Site, advise and justify the adequacy of car parking spaces provided in the Site, and provide traffic management/control measures and pedestrian facilities to ensure no queuing of vehicles outside the Site and pedestrian safety. Approval of the application would thus result in adverse traffic impact on the surrounding area. Other Government departments consulted, including DEP, D of FS, CE/C of WSD and CE/MN of DSD, have no objection to or no adverse comment on the application.
- 12.5 The proposed temporary development is not in line with the TPB PG-No.13E (**Appendix II**) in that the Site falls entirely within Category 3 area, where applications would normally not be favourably considered unless the applications are on sites with previous planning approval. The Site is not the subject of any previous planning approval for similar open storage use. There is no special circumstance in the application that justifies sympathetic consideration; there are adverse departmental comments and local objections to the application; and the applicant has failed to demonstrate that the development would not cause adverse traffic impact on the surrounding areas. Approval of the application would set an undesirable precedent for similar applications in the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
- 12.6 There is one similar application (No. A/NE-LYT/392) for temporary public vehicle park for private cars and lorries and open storage of building materials. The application was rejected by the Committee in June 2009 mainly on the grounds that the temporary use was not in line with the planning intentions of “AGR” and “GB” zones; the development did not comply with the relevant Town Planning Board Guidelines No. 13E on ‘Application for Open Storage and Port Back-up Uses’ in that there was no previous planning approval to the Site and there were adverse departmental comments and local objections against the application; the approval of the application would set an undesirable precedent for other similar applications within “GB” and “AGR” zones. The circumstances of the current application are similar to the rejected application.
- 12.7 There are adverse public comments and local objections conveyed by DO(N), HAD mainly on the temporary open storage use generates nuisances to the local villagers and

the proposed use would bring adverse traffic and environmental impacts to the area. In this regard, Government departments' comments and planning assessments 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 comments mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) the proposed development is not in line with the planning intention of the "AGR" zone for the Lung Yeuk Tau and Kwan Tei South area, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the Town Planning Board Guidelines for 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' in that no previous approval has been granted at the Site and there are adverse departmental comments and local objections on the application;
- (c) there is no information in the submission to demonstrate that the development would not cause adverse traffic impact on the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative effect of approving such similar 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 3 years until 1.2.2022. The following conditions of approval and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 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 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;
- (d) no car washing, vehicle repair, dismantling, paint spraying or other workshop activities is allowed on the Site at any time during the planning approval period;

- (e) the provision of boundary fencing on the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 1.8.2019;
- (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 1.8.2019;
- (g) in relation to (f) above, the provision of drainage facilities 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 1.11.2019;
- (h) 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 15.3.2019;
- (i) the submission of proposals for fire service installations and water supplies for firefighting 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 1.8.2019;
- (j) in relation to (i) above, the implementation of proposals for fire service installations and water supplies for firefighting 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 1.11.2019;
- (k) the submission of traffic management measures within 6 months from the date of planning approval to the satisfaction of the Commissioner for transport or of the Town Planning Board by 1.8.2019;
- (l) in relation to (k) above, the implementation of traffic management measures identified therein within 9 months from the date of planning approval to the satisfaction of the Commissioner for transport or of the Town Planning Board by 1.11.2019;
- (m) 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;
- (n) if any of the above planning conditions (e), (f), (g), (h), (i), (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 Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix V**.

14. Decision Sought

14.1 The Committee is invited to consider the application and decide whether to grant or refuse

to grant the 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 Attachment received on 10.12.2018
Appendix Ia	Supplementary Information received on 12.12.2018
Appendix Ib	Further Information received on 28.1.2019
Appendix II	Relevant Extract of TPB PG-No. 13E for Application for Open Storage and Port Back-up Uses
Appendix III	Similar s.16 Applications within or partly within the “AGR” zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei South area
Appendix IV	Public Comments
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
FEBRUARY 2019**