

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/136

- Applicant** : Mr. Wong Ka Shing represented by R-riches Property Consultants Limited
- Site** : Lots 1095 (Part), 1096 (Part) and 1097 (Part) in D.D. 124 and adjoining Government Land, Hung Shui Kiu, Yuen Long, New Territories
- Site Area** : About 2,406 m² (including government land of about 82 m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Hung Shui Kiu and Ha Tsuen (HSK & HT) Outline Zoning Plan (OZP) No. S/HSK/2
- Zoning** : “Village Type Development” (“V”) [Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Domestic Goods) for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services use (domestic goods) for a period of 5 years (**Plan A-1**). The Site is currently occupied by part of a logistics centre without valid planning permission.
- 1.2 The Site falls within an area zoned “V” on the approved HSK & HT OZP No. S/HSK/2. According to the Notes for the “V” zone of the OZP, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 5 years.
- 1.3 The Site is the subject of two previous applications (Nos. A/YL-PS/541 and A/HSK/84) for temporary cargo handling and forwarding facility with ancillary warehouses and car parking facilities for a period of 3 years but was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 13.10.2017 and 3.8.2018 respectively. Application No. A/HSK/84 was also rejected by the Board upon review on 25.1.2019. Details of the previous applications are summarised in paragraph 5 below and at **Appendix II**.

- 1.4 The major development parameters of the current application are summarised as follows:

Site Area	About 2,406m ² (including Government Land of about 82m ²)
Applied Use	Proposed Temporary Shop and Services (Domestic Goods) for a Period of 5 Years
Total Floor Area	About 964m ²
No. of Structures	1 single-storey (8m) structure for shop and services (domestic goods) use (the eastern portion of the structure falls outside the Site but under Application No. A/HSK/142 for temporary wholesale trade with ancillary shop and services (furniture) for a period of 3 years, which is submitted by the same applicant and will be considered by the Committee at this meeting.) (Plan A-2)
No. of Parking Spaces	5 for private cars (2.5m x 5m each)
No. of Loading/Unloading Spaces	1 for light goods vehicles (3.5m x 7m) 1 for medium/heavy good vehicles (3.5m x 11m)
Operation Hours	10:00 a.m. to 5:00 p.m. daily.

- 1.5 The Site is accessible via a local track leading from Hung Chi Road and the ingress/egress point is located at the eastern part of the Site (**Plan A-2 and Drawing A-1**). Manoeuvring space is provided at the western portion of the Site. According to the applicant, there will be no filling/excavation of land at the Site. No vehicle cleansing, repairing or other workshop activity will be carried out at the Site. The operation hours of the proposed development are from 10:00 a.m. to 5:00 p.m. daily, including Sundays and public holidays. The proposed vehicular access plan and proposed layout plan submitted by the applicant are at **Drawings A-1 and A-2**.

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

- (a) Application form received on 18.2.2019 **(Appendix I)**
- (b) Supplementary planning statement with proposed vehicular access and proposed layout plan received on 18.2.2019 **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement at **Appendix Ia**. They are summarised as follows:

- (a) The proposed use is a Column 2 use of “V” zone and the granting of a temporary planning permission would not frustrate the long term planning intention of the “V” zone.

- (b) The proposed use is compatible with the surrounding land use.
- (c) The proposed use does not have adverse environmental (noise and air) and traffic impacts.
- (d) The proposed development aims to serve the local community including Hung Fuk Estate.

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 posting site notice and sending a notice to the Ha Tsuen Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to on-going planning enforcement action against an unauthorised development (UD) involving storage use. An Enforcement Notice (EN) was issued on 17.1.2018 requiring the discontinuation of the UD by 17.3.2017. As the UD was not discontinued as required by the EN, prosecution action was taken. The defendant(s) were convicted and fined \$125,000 on 29.3.2018. Subsequent site inspections revealed that the UD has not been discontinued. Second round prosecution action is being taken.

5. Previous Applications

- 5.1 The Site is the subject of two previous applications No. A/YL-PS/541 and A/HSK/84. Details of the previous applications are summarised at **Appendix II** and the locations are shown on **Plan A-1**.
- 5.2 Applications No. A/YL-PS/541 and A/HSK/84 both for temporary cargo handling and forwarding facility with ancillary warehouses and car parking facilities for a period of 3 years were rejected by the Committee on 13.10.2017 and 3.8.2018 respectively on grounds of no strong planning justification had been given to deviate from the planning intentions of the zones; the applied use was not compatible with the surrounding land uses which are predominantly residential in nature; the application did not comply with the TPB PG-No.13E; and approval of the application would set an undesirable precedent. Application No. A/HSK/84 was also rejected by the Board upon review on 25.1.2019 on the same grounds.

6. Similar Application

- 6.1 There is no similar application within the same “V” zone on the OZP.

- 6.2 Application No. A/HSK/142 for proposed temporary wholesale trade with ancillary shop and services (furniture) for a period of 3 years at the adjoining site, zoned “Government, Institution or Community” (“G/IC”) on the OZP, which is submitted by the same applicant, will be considered by the Committee at the same meeting (**Plan A-1**).

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

7.1 The Site is:

- (a) currently occupied by part of a logistics centre;
- (b) fenced and hard-paved with one covered structure (eastern portion of the structure falls under Application No. A/HSK/142¹) (**Plan A-2**); and
- (c) accessible by a local track leading from Hung Chi Road.

7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) to the immediate northwest is a food factory. Another food factory, an area for parking of vehicles, open storage of construction material and machinery and a logistic centre to the north and further northwest of the Site.
- (b) to the immediate northeast is part of a logistics centre subject to another planning application No. A/HSK/142 (**Plans A-1 and A-2**). To the further northeast is a real estate agency under a valid planning permission No. A/HSK/87. To the east are car services and storage uses, a refuse collection point and a residential dwelling at Hung Shui Kiu Main Street.
- (c) to the southeast are an area for parking of vehicles, village clusters of San Lee Uk Tsuen and residential dwellings including Bellevue Court (**Plans A-2 and A-3**); and
- (d) to the immediate southwest are a shrine and residential dwellings. To the further west are residential dwellings, some village houses under construction, cultivated land and vacant land.

8. Planning Intentions

- 8.1 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses (SH) by indigenous villagers. It is also intended to concentrate village type development

¹ Application No. A/HSK/142 for proposed temporary wholesale trade with ancillary shop and services (furniture) for a period of 3 years, which is submitted by the same applicant, will be considered by the Committee at the same meeting.

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 the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

8.2 The Site also falls within an area zoned “V” on the adopted HSK & HT Outline Development Plan (ODP) No. D/HSK/1.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 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 82m² subject to verification) included in the Site (**Plan A-2**). The act of occupation of GL without Government’s prior approval is not allowed.
- (c) The Site is accessible to Hung Shui Kiu Main Street through GL and private lot(s). His office provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The private lots which are covered by Short Term Waivers (STW) are listed below:

Lot No(s). in DD 124	STW	Purposes
1095	1314	Food Factory

- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) According to his record, there is no lease modification/land exchange application or building plan submission in relation to commercial development at the application site approved/under processing.
- (g) According to his record, there are 12 SH applications under

processing and 11 SH applications approved in the vicinity of the Site (**Plan A-2**).

- (h) Should planning approval be given to the subject planning application, the STW holders will need to apply to his office for modification of the STW conditions if there are any irregularities on site and the lot owner(s) of the lot(s) without STW will need to apply to his office for permit the structures to be erected or regularise any irregularities on site. Besides, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application(s) will be considered by the 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 premium or fee, as may be imposed by the LandsD.

Building Matters

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

- (a) As there is no record of approval 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) If the existing structures (not being a NTEH) are erected on leased land without approval of the BD, they are unauthorised building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorised Person (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.

- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Traffic

9.1.3 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space should be provided within the Site. No vehicles are allowed to queue back to public roads or reverse back onto/from public roads.
- (c) The local track leading to the Site is not under TD's purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) His department shall not be responsible for the maintenance of any access connecting the Site and Hung Shui Kiu Main Street.

Environment

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

- (a) Should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling Environment Aspects of Temporary Uses and Open Storage Sites".
- (b) There was no substantiated environmental complaint pertaining to the Site received in the past 3 years.

Drainage

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

He has no objection in principle to the proposed application from the drainage point of view. Should the Board consider that the application is acceptable from the planning point of view, conditions should be stipulated requiring the applicant to submit a drainage proposal and to implement and maintain the drainage facilities to the satisfaction of his Division.

Fire Safety

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

- (a) He has no objection to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the structures, 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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are to be installed should be clearly marked on the layout plans.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscape

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

- (a) With reference to the site records and aerial photos of 2018, the Site is hard paved with some existing large trees adjoining the west of the application. One small tree is observed at the southern portion of the Site. The applied use appears to be already in operation. Significant change to the landscape character arising from the application is not envisaged.
- (b) The applicant is advised that approval of the s.16 application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority/government department(s) direct to obtain the necessary approval on tree works.

Others

9.1.9 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

He has no objection to the proposed temporary use for 5 years, which should be considered in accordance with the provisions of the existing OZP and infrastructure capacities. However, the Site falls within the boundary of Hung Shui Kiu New Development Area (HSK NDA). According to the Planning and Engineering Study (P&E Study) for the HSK NDA, to ensure timely and orderly implementation, the development of HSK NDA and relevant site formation and infrastructure works would be implemented in five stages, viz. Advance Works and Stage 1 to Stage 4. The lot(s) concerned falls within “V” zone and the proposed access road falls under Stage 3 Works stage. While the detailed implementation programme for the project is still being formulated, based on the P&E Study, it is envisaged that clearance of the Site, involving the proposed access road in question, will not be arranged before the first population intake of the HSK NDA expected in 2024.

District Officer’s Comments

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

His Office has not received any comment from the locals on the application.

9.2 The following government departments have no comment on the application:

- (a) Commissioner of Police (C of P);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Food and Environmental Hygiene (DFEH);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (e) Director of Electrical and Mechanical Services (DEMS)

10. Public Comment Received During Statutory Publication Period

On 26.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 19.3.2019, 1 public comment was received from a private individual. The commenter objects to the application mainly on grounds that it is subject to on-going enforcement actions against a UD by Planning Department and LandsD, the applied use is not in line with the planning intention of the zone, and it is not compatible with the surrounding land uses (**Appendix III**).

11. Planning Considerations and Assessments

11.1 The subject application is for proposed temporary shop and services use (domestic goods) at the Site which is zoned “V” on the OZP. The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. The proposed ‘Shop and Services’ use is not entirely in line with the planning intention of the “V” zone.

According to DLO/YL, there are 12 SH applications under processing and 11 SH applications approved in the vicinity of the Site (**Plan A-2**). There is no strong planning justification given in the submission to support a departure from the planning intention, even on a temporary basis.

- 11.2 The proposed development occupies an area of about 2,406m² with a total floor area of about 964m² which accounts for about half of the GFA of the existing structure on the site currently used for cargo handling and forwarding facility use (logistics centre). The remaining half of the GFA of the structure is proposed for temporary wholesale trade with ancillary shop and services use (furniture) for a period of 3 years under Application No. A/HSK/142 submitted by the same applicant. This structure, with a combined GFA of 1,919m² is akin to a warehouse/logistics centre. Such scale of development is considered excessive and not compatible with the surrounding environment which is predominated by residential dwellings to its immediate south (**Plans A-2 and A-3**). The nearest domestic use is located about 6m from the site boundary. The open storage yards, warehouses, workshops and factory uses in the vicinity of the Site are mostly suspected unauthorised development subject to enforcement action taken by the Planning Authority.
- 11.3 The Site is the subject of two previous applications (No. A/YL-PS/541 and A/HSK/84) for the temporary cargo handling and forwarding facility with ancillary warehouses and car parking facilities for a period of 3 years. They were rejected by the Committee on 13.10.2017 and 3.8.2018 respectively on grounds of no strong planning justification to support deviation from the planning intention, incompatible land uses, not comply with TPB guidelines 13E and setting of undesirable precedent. Although the application is for proposed domestic goods retail shop use, it is currently used as a logistics centre without valid planning permission instead of being vacant as claimed by the applicant. There is no indication that the applicant would discontinue the existing cargo handling and forwarding facility with warehouse use (i.e logistics centre) at the Site for the proposed development.
- 11.4 On the other hand, other relevant departments consulted, including C for T, CE/MN of DSD, CTP/UD&L of PlanD and DEP have no adverse comment on / no objection to the application.
- 11.5 There is 1 public comment received objecting to the application on grounds of land use planning as summarised in paragraph 10 above. The planning considerations and assessments above are also relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 above and having taken into account the public comment mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
 - (a) The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of

Small Houses by indigenous villagers. The applied use is not in line with the planning intention of the zone. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis; and

- (b) the scale of the applied use is considered excessive and not compatible with the surrounding land uses which are predominantly residential in nature.

12.2 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 5 years until **12.4.2024**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no repairing, recycling, cleansing, dismantling work and workshop activities, as proposed by the applicant, is allowed on the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing trees and landscape planting shall be maintained at all times during the planning approval period;
- (e) the submission of a 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 **12.10.2019**;
- (f) in relation to (e) 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 **12.1.2020**;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of a 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 **12.10.2019**;
- (i) in relation to (h) above, the implementation of the 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 **12.1.2020**;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) is not

complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and

- (k) if any of the above planning conditions (e), (f), (h) or (i) is not complied with by the above 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 at **Appendix IV**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 13.3 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.

14. Attachments

Appendix I	Application Form
Appendix Ia	Supplementary Planning Statement
Appendix II	Previous Applications
Appendix III	Public Comment received
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4c	Site Photos