RNTPC Paper No. A/HSK/89 For Consideration by the Rural and New Town Planning Committee on 17.8.2018

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/HSK/89

Applicant : Mr. TANG Kong Chung

Site : Lot 256 (Part) in D.D. 125, San Wai, Ha Tsuen, Yuen Long

Site Area : $2,450 \text{ m}^2$

Lease : Block Government Lease (demised for agricultural use)

Plan : Draft Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan

(OZP) No. S/HSK/1

Zoning : "Government, Institution or Community" ("G/IC") (69%)

[Restricted to maximum building height (BH) of 8 storeys];

and an area shown as 'Road' (31%)

Application: Proposed Pond Filling for Temporary Open Storage of Construction

Materials and Recycled Materials Collection Centre for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed pond filling for temporary open storage of construction materials and recycled materials collection centre for a period of 3 years (**Plan A-1**). The Site straddles over "G/IC" zone (69%) and an area shown as 'Road' (31%) on the draft HSK and HT OZP. According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years within the zones 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. In any area shown as 'Road' on the draft HSK and HT OZP, all uses or developments require planning permission from the Board.
- 1.2 The Site is related to one previous application (No. A/YL-HT/949) submitted by a different applicant for open storage of containers for a period of one year which was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 23.10.2009.
- 1.3 The Site is accessible from Kai Pak Ling Road via a local track (**Plans A-1, A-2** and **Drawing A-1**). According to the layout plan at **Drawing A-3**, ingress/egress point is located at the northern boundary of the Site. As shown at **Drawing A-2**,

part of the Site (1,280m²) is proposed to have pond filling works of 1.2m in depth. No structure is proposed. A loading/unloading area is designated in the northern portion of the Site. According to the applicant, the operation hours are restricted to 8:00a.m. to 6:00p.m. from Mondays to Saturdays. No operation will be held on Sundays and public holidays. The proposed landscape plan, proposed drainage plan and Fire Service Installations (FSIs) proposal are shown at **Drawings A-4** to **A-6** respectively.

- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 25.6.2018 with vehicular access plan, layout plan, proposed landscape plan, proposed drainage plan and FSIs proposal
 - (b) Letter from the applicant on 10.8.2018 in respond to (Appendix Ia) Transport Department's comments

2. Justifications from the Applicant

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

- (a) The applied use is not incompatible with the surrounding uses, which are dominated by open storage and port back-up uses with similar applications approved with conditions by the Board.
- (b) The applicant claims that the fish pond within the Site is low-valued and has been abandoned.

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

The applicant is one of the "current land owners" and 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 notice on 3 newspapers and sending notice to the Ha Tsuen Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

On 17.10.2008, the Board promulgated the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E). The site entirely falls within Category 4 area under the Guidelines. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is currently not a subject of any active planning enforcement case. Should a material change of use be identified on Site, which constitutes an unauthorized

development under the Town Planning Ordinance, enforcement action would be instigated subject to sufficient evidence collected.

6. Previous Application

- 6.1 The Site is related to 1 previous application No. A/YL-HT/949. Details of this application are summarized at **Appendix III** and its location is shown on **Plan A-1**.
- 6.2 The last planning application No. A/YL-HT/949 for proposed filling of pond (by 1m) for permitted agricultural use was rejected by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 3.7.2015 and upon review on 30.10.2015 on the grounds of failure to demonstrate the proposed development not having adverse ecological and landscape impacts on the surrounding area and undesirable precedent.
- 6.3 Compared with the last Planning Application No. A/YL-HT/949, the current application is submitted by a different applicant for different use within different land use zones.

7. Similar Applications

There are 7 similar applications (Nos. A/YL-HT/590, 595, 665, 826, 981 and 1000, and A/HSK/4) for various open storage uses within the same "G/IC" zone since the promulgation of the TPB PG-No. 13E on 17.10.2008. All these similar applications were approved with conditions by the Committee between 2009 and 2017. Among these applications, 2 of them (Nos. A/YL-HT/595 and 981) were revoked due to non-compliance with the approval conditions. Details of these applications are summarized at **Appendix IV** and their locations are shown on **Plan A-1**.

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

- 8.1 The Site is:
 - (a) accessible from Kai Pak Ling Road via a local track; and
 - (b) currently being partly unused, partly an open storage yard and partly a pond.
- 8.2 The surrounding areas have the following characteristics:
 - (a) predominately open storage/storage yards, warehouses, residential structures, fallow agricultural lands, vacant lands and unused lands;
 - (b) there are open storage/storage yards and warehouses in the vicinity of the Site, which are mostly suspected Unauthorized Developments (UDs); However, two of the open storage yards of containers and construction materials are operating under valid the planning permissions Nos. A/YL-HT/1000 and A/HSK/4 respectively (Plan A-2);
 - (c) some residential structures are found in the surrounding area (with the nearest residential structure 38m to its south)

9. Planning Intention

The Site falls within "G/IC" zone and an area shown as 'Road' on the draft HSK&HT OZP. The "G/IC" zone is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. It is also intended to provide land for uses directly related to or in support of the work of the Government, organisations providing social services to meet community needs, and other institutional establishments.

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 Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
 - (b) The Site is accessible to Kai Pak Ling Road through Government Land (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.
 - (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
 - (d) 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. Such application(s) will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(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.

Traffic

- 10.1.2 Comments of the Assistant Commissioner for Transport/NT, Transport Department (AC for T/NT, TD):
 - (a) He has no adverse comment on the application from traffic engineering view point.
 - (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse 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.
- 10.1.3 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 to prevent surface water flowing from the Site to nearby public roads/drains.
 - (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Fung Kong Tsuen Road.

Environment

- 10.1.4 Comment of the Director of Environmental Protection (DEP):
 - (a) He does not support the application as there are sensitive receivers of residential use in the vicinity (with the nearest one about 38m to its south) (**Plan A-2**), and environmental nuisance is expected.
 - (b) There was no substantiated environmental complaint concerning the Site received in the past 3 years.
 - (c) Should the planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites".

Landscape

- 10.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
 - (a) The Site, located to the north west of San Wai, lies in mainly in an area of "G/IC" zone and partly in an area indicated as 'Road'. The current application seeks planning permission for temporary open storage of construction materials and recycled materials collection centre use.
 - (b) With reference to the aerial photo of 2018, the Site appears to be a vegetated dry pond with some trees adjoining to along the western boundary. The Site is situated in an area of rural landscape character disturbed by open storage yards. In view of approved Application No. A/HSK/57 to the further west of the Site (**Plan A-2**), significant change to the landscape character arising from the application is not envisaged. Hence his office has no objection to the application from the landscape planning perspective.
 - (c) Should the application be approved, in view of the above, he would recommend the following approval condition to be included in the permission:

- The submission and implementation of a landscape proposal to the satisfaction of the D of Planning or of the TPB.
- (d) 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. Application for tree works should be submitted direct to DLO for approval.
- (e) In consideration of the temporary nature of the site and its constraints, the Applicant may propose tree species of short life span habit or with less vigorous roots in lieu of the proposed *Ficus microcarpa*.
- (f) In compliance with the "Technical Note on the Submission and Implementation of Landscape Proposals for Compliance with Conditions for Approved Applications for Open Storage and Port Back-up Uses" published by PlanD, all new tree planting should have a minimum height of 2.75m, and minimum soil provision of 1m (W) x 1m (L) x 1.2m (D).
- (g) Useful information on general tree maintenance is available for reference in 護養樹木的簡易圖解 (http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial Guide for Tree Main tenance.pdf) and the Handbook of Tree Management (Chinese Version: https://www.greening.gov.hk/tc/tree_care/Handbook on Tree_Management.html) published by the GLTM Section, DEVB.

Drainage

- 10.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) He has no objection in principle to the proposed development from a drainage point of view. He provides comments on the submitted drainage proposal at **Appendix VII**.
 - (b) Should the application be approved, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed flood mitigation measures/drainage facilities to the satisfaction of his Division.
 - (c) No pond/land filling on Site should be allowed until the flood mitigation measures are implemented to the satisfaction of the Director of Drainage Services or the Board. An advisory clause should also be added to the planning permission to advise the Applicant that proposed flood mitigation measures should be implemented prior to any pond/land filling activities around the periphery of the site. In the drainage submission, the flood mitigation measures should be clearly indicated and delineated from the internal drainage system of the development.

Nature Conservation and Fisheries

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

He noted that the Site falls within "GIC" zones and an area shown as 'Road'. His office's site inspection revealed that the Site mainly comprises an abandoned fishpond overgrown with emergent vegetation and surrounded by disturbed land uses. The pond may provide potential roosting/foraging habitats for some wetland-associated fauna groups/species which are less sensitive to disturbance but are unlikely to be ecologically important taking into account its size, location and isolated nature.

Fire Safety

- 10.1.8 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. In addition, the applicant should also be advised on the following points:
 - (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. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans. Attached good practice guidelines for open storage should be adhered to (**Appendix V**).
 - (d) Having considered the nature of the open storage, the following approval condition shall be added:
 - "The provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS."
 - (e) The applicant is advised to submit a valid fire certificate (FS 251) to his Department for approval.
 - (f) 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.

Long Term Development

- 10.1.9 Comments of Project Manager (New Territories West), CEDD (PM/NTW, CEDD):
 - (a) He has no objection to the application for temporary use for 3 years, which should be considered in accordance with the provisions of the existing OZP and infrastructure capacities.
 - (b) 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 a site under Stages 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 in question will not be arranged before the first population intake of the HSK NDA expected in 2024.

District Officer's Comments

10.1.10 Comment 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.

- 10.2 The following Government departments have no comment on the application:
 - (a) Commissioner of Police (C of P);
 - (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
 - (c) Chief Engineer/Sewerage Projects, Drainage Services Department (CE/SP, DSD);
 - (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
 - (e) Director of Electrical and Mechanical Services (DEMS)

11. Public Comments Received During Statutory Publication Period

- 11.1 On 3.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 24.7.2018, 2 public comments were received.
- 11.2 The 2 comments from a district council member (**Appendix VIa**) and an individual (**Appendix VIb**) object to the application mainly on grounds of not in line with the planning intentions of the "G/IC" zone and environmental impacts.

12. Planning Considerations and Assessments

12.1 The Site straddles over "G/IC" (69%) zone and an area shown as 'Road' (31%) on

the draft HSK and HT OZP. The planning intention of the "G/IC" zone which is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. Whilst the proposed development is not in line with the planning intention of the "G/IC" zone and falls within an area shown as 'Road', the implementation programme for this part of NDA is still being formulated and PM/NTW of CEDD has no objection to the proposed temporary use for 3 years on the Site. In this regard, approval of the application on a temporary basis of 3 years would not jeopardize the long-term development of the Site. However, should the application be approved, it is suggested to include an advisory clause stating that the Site may be resumed by the Government at any time during the planning approval period for implementation of government projects.

- 12.2 The applied use is not incompatible with the surrounding uses which are predominantly occupied for warehouse and open storage uses.
- 12.3 The Site falls within Category 4 areas under the TPB PG-No. 13E. The following considerations in the Guidelines are relevant:

Category 4 areas: applications 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 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. 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 merit.

- 12.4 The proposed development is generally not in line with the TPB PG-No. 13E in that the Site falls within Category 4 areas which is intended to be rejected except under exceptional circumstances as mentioned in paragraph 12.3 above. Whilst the Site falls within Category 4 areas, it should be noted that the planning circumstances of the area has been changed. The Site was rezoned from "GB" to "G/IC" and an area shown as 'Road' in the latest OZP gazetted on 26.5.2017 and similar application was approved adjacent to the Site within the same "G/IC" zone. Taking into account the specific circumstances pertaining to the case, sympathetic consideration may be given to the current application.
- 12.5 The Site is situated in an area of rural landscape character disturbed by open storage yards. In view of approved Application No. A/HSK/57 to the further west of the Site (**Plan A-2**), significant change to the landscape character arising from the application is not envisaged. Hence CTP/UD&L, PlanD has no objection to the application from the landscape planning perspective. Moreover, DAFC has no adverse comment that the Site mainly comprises an abandoned fishpond and is unlikely to be ecologically important taking into account its size, location and isolated nature.

- 12.6 There is no objection or adverse comment on the application from other concerned Government departments, except DEP. DEP does not support the application as there are sensitive uses in vicinity (with the nearest residential dwelling is about 38m to the south of the Site (Plan A-2)), and environmental nuisance is expected. However, there has been no substantial environmental complaint concerning the Site received in the past 3 years. To address the concerns on environmental aspect and the technical requirements of other concerned government departments, relevant approval conditions are recommended in paragraph 13.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will also be advised to follow the relevant mitigation measures and requirements in the "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" in order to minimize any potential environmental impact, and to keep the Site clean and tidy at all times.
- 12.7 The Committee has approved 7 similar applications within the same "G/IC" zone since the promulgation of TPB PG-No. 13E on 17.10.2008. Approval of the subject application is in line with the Committee's previous decisions.
- 12.8 Two public comments were received objecting to the application mainly on grounds as summarized in paragraph 11.2. The planning considerations and assessments in the above paragraphs 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 above, the Planning Department considers that the proposed pond filling for temporary open storage of construction materials and recycled materials collection centre <u>could be tolerated</u> 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 17.8.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no part of the pond shall be filled to a depth exceeding 1.2m, as proposed by the applicant;
- (b) no operation between 6:00 p.m. and 8:00 a.m. on Mondays to Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (e) no pond/land filling on Site should be allowed until the flood mitigation

- measures are implemented to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (f) the submission of a revised drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **17.2.2019**;
- (g) in relations to (f) above, the implementation of the revised drainage proposal and the proposed flood mitigation measures within **9** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **17.5.2019**;
- (h) in relations to (g) above, the implemented drainage facilities on Site shall be maintained at all times during the planning approval period;
- (i) the submission of a landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **17.2.2019**;
- (j) in relations to (i) above, the implementation of the landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **17.5.2019**;
- (k) the provision of fire extinguisher(s) and the submission of a valid fire certificate (FS 251) 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 **28.9.2018**;
- (l) the submission of a fire service installations proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **17.2.2019**;
- (m) in relation to (l) above, the implementation of the fire service installations proposal within **9** months from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **17.5.2019**;
- (n) the provision of fencing within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **17.2.2019**;
- (o) if any of the above planning conditions (a), (b), (c), (d), (e) or (h) 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;
- (p) if any of the above planning conditions (f), (g), (i), (j), (k), (l), (m) or (n) 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; and
- (q) 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 VIII**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:
 - (a) the applied use is not in line with the planning intentions of the "G/IC" zone, which is intended primarily for the provision of Government, institution or community facilities serving the needs of the local residents and/or a wider district, region or the territory. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis; and
 - (b) the applicant fails to demonstrate that the applied development would not have adverse environmental impact on the surrounding areas.

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 reasons for rejection should be given to the applicant.

15. Attachments

Drawing A-4

Application Form received on 25.6.2018 with vehicular access
plan, layout plan, proposed landscape plan, proposed drainage plan
and FSIs proposal
Letter from the application dated on 10.8.2018 in respond to
Transport Department's comments
Relevant extracts of Town Planning Board Guidelines for
6
Application for Open Storage and Port Back-up Uses (TPB PG-No.
13E)
Previous Application covering the application site
Similar Applications within the subject "G/IC" zone on the draft
Hung Shui Kiu and Ha Tsuen Outline Zoning Plan since the
promulgation of TPB PG-No. 13E on 17.10.2008
Good Practice Guidelines for Open Storage issued by the Director
of Fire Services
Public Comments received during statutory publication period
Detailed Comments from concerned Government Department
•
Advisory clauses
Vehicular Access Plan
Pond filling Plan
Layout Plan

Proposed Landscape Plan

Drawing A-5 Proposed Drainage Plan

Drawing A-6 Fire Service Installations Proposal

Plan A-1 Location Plan Plan A-2 Site Plan Plan A-3 Aerial Photo Plans A-4a to 4b Site Photos

PLANNING DEPARTMENT AUGUST 2018