

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/326

- Applicant** : Mr. WONG Sun Kwong represented by Metro Planning and Development Company Limited
- Site** : Lots 1739 S.A (Part), 1739 S.B, 1739 S.C, 1743, 1744, 1745 and 1746 S.A RP (Part) in D.D. 129, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : 2,870 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan No. S/YL-LFS/8
- Zonings** : “Recreation” (“REC”)
- Application** : Proposed Temporary Open Storage of Construction Machinery for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary open storage of construction machinery for a period of 3 years (**Plan A-1**). 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.
- 1.2 The Site is not related to any previous application and is accessible from Deep Bay Road. There is one ingress/egress point located at the southeastern side of the Site connecting to Deep Bay Road via a local track (**Plan A-2** and **Drawing A-1**). According to the site layout at **Drawing A-2**, the proposed temporary open storage will provide 1 loading/unloading space for light goods vehicles (not exceeding 5.5 tonnes). The open area at the northern portion of the Site is intended for open storage of construction machinery. 3 single-storey (3m) temporary structures with a total floor area of about 50m² are proposed (including two electricity meter rooms with floor area of 20m² and of 10m² and a toilet with floor area of 20m²). There is a circulation area at the southern portion of the Site. According to the applicant, there will be no operation on-site from 7:00 p.m. to 9:00 a.m. and on Sunday and public holidays. The proposed landscape plan and proposed drainage plan is shown at **Drawings A-3 and A-4** respectively.

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

- (a) Application Form with a location plan, proposed vehicular access plan, proposed layout plan, proposed landscape plan, proposed drainage plan and estimated traffic generation received on 1.8.2018 **(Appendix I)**
- (b) Letter from the applicant dated 31.8.2018 in response to Transport Department's comments **(Appendix Ia)**

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 at **Appendix I**. They can be summarized as follows:

- (a) There is a strong demand for the rental of construction machinery in the area. The proposed location allows the quick delivery of construction machinery to the construction site.
- (b) The proposed development is temporary and would not jeopardize the long term planning intention of the "Recreation" zone.
- (c) There is no recreational use in the vicinity of the Site. Temporary conversion of the Site to another use would be a prudent use of scarce land.
- (d) Similar precedence was noted within the same zone in Lau Fau Shan.
- (e) The applicant submitted a landscape proposal and drainage proposal to support his application. In view of the nature, scale and form of the proposed development, it would not generate significant impact to surrounding environment.

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

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31) by posting site notice and sending notification letter to the Ping Shan Heung Rural Committee. 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 falls within Category 3 areas under the Guidelines. Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is subject of active enforcement case (No. E/YL-LFS/469). The alleged UD is storage use. Central Enforcement and Prosecution of Planning Department's (CEP of PlanD) recent site inspection revealed the UD discontinued. They will keep the site under monitoring. If the UD reactivates without planning permission, CEP will instigate planning enforcement action against it subject to sufficient evidence collected.

6. Previous Application

The Site is not related to any previous application.

7. Similar Applications

There are 7 similar applications (Nos. A/YL-LFS/182, 250, 255, 260, 272, 283 and 293) for temporary open storage uses covering 3 sites within the same "REC" zone on the OZP since the promulgation of TPB PG-No. 13E on 17.10.2008. 6 of these applications covering 2 sites were approved with conditions by the Rural and New Town Planning Committee (the Committee) with the considerations that the applied uses were subject to previous planning approvals, not incompatible with the surrounding uses and were generally in line with the TPB PG-No. 13E. One application (No. A/YL-LFS/182) was rejected mainly on the grounds that the applied uses were not in line with the planning intention of the "Residential (Group E)" and "REC" zones and the TPB-PG No. 13E; the development was not compatible with the nearby residential dwellings and the undesirable precedent effect in the part of the "REC" zone. Particulars of these applications and the decisions of the Board are summarized at **Appendix III**. The locations of these application sites are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) currently vacant; and
- (b) accessible via a local track connecting to Deep Bay Road.

8.2 The surrounding areas have the following characteristics:

- (a) predominately fallow/active agricultural land, vacant land, open storage yards, and some residential structures (the nearest one is 31m away from the Site); and
- (b) in the vicinity are open storage yards and logistic centre which are suspected unauthorized development (UD) and logistic centre under the Application No. A/YL-LFS/297.

9. Planning Intention

The planning intention of the “REC” zone is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

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 from Deep Bay Road through both Government Land (GL) and private land. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the application, the lot owners will need to apply to her office to permit the structures to be erected or regularize any irregularity on Site. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above 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 will be approved. If such application 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 /New Territories, Transport Department (AC for T/NT, TD):

- (a) Although the Applicant claims that the applied development would only involve traffic flow of light goods vehicles, TD considers that the applied use of “Proposed Temporary Open Storage of

Construction Machinery” would generate traffic flow of medium goods vehicles / heavy goods vehicles.

- (b) Given that the Site is proposed to be accessed through Deep Bay Road which is a single track road with passing bays, additional traffic flow of medium goods vehicles / heavy goods vehicles to Deep Bay Road is undesirable and the associated traffic impact shall be assessed by the Applicant. In this connection, on the basis of the current information, TD does not support the application from traffic engineering point of view.

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 access to prevent surface water flowing from the Site to the nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Environment

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

- (a) She does not support the application as there are sensitive uses (residential dwellings) in the vicinity of the Site (the closest being around 31m away). Environmental nuisance is expected.
- (b) There is no substantiated environmental complaint concerning the Site received over the past 3 years.
- (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 Environmental Aspects of Temporary Uses and Open Storage Sites" ("COP"), especially S(4) concerning water quality. Drainage channels and an oil interceptor should be installed to reduce pollutants from the site run-off.

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 south of Deep Bay Road lies in an area of "REC" zone, the current application seeks planning permission for open storage of construction machinery. The Site is not subject of any planning application.
- (b) With reference to the site photos dated 16.8.2018 and aerial photo of 2018, the Site is formed with large trees and shrubs to the north

and south of the Site. A natural stream is observed to the north of the Site. The applied use appears to be already in operation. The Site is situated in an area of rural landscape character disturbed by open storage yards. The proposed use is incompatible with the landscape character.

- (c) When comparing the aerial photos of 2015 and 2018 it is observed that the site was originally well vegetated with trees and shrubs but is now observed to be blanket cleared. Adverse landscape impact has taken place.
- (d) Approval of the application would likely encourage other similar applications to blanket clear the site prior to planning approval is obtained. The cumulative effect would be undermining the integrity of the “REC” zone and degradation of the rural landscape character in general. Furthermore the current Drainage Plan (**Drawing A-4**) proposes to drain the unfiltered (and likely tainted by chemicals from the machinery) directly to the natural stream which would cause further landscape and environmental impact (sensitive mangrove areas to the further northwest) outside of the application boundary.
- (e) Based on the above, he has reservations on the application from the landscape planning perspective.
- (f) Should the application be approved, 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.”
- (g) The Applicant is advised to set back the storage area away from the tree root zone (i.e. the dripline of the trees) of the existing trees and new proposed tree planting. Stacking and storage of materials within the dripline would likely damage the root system underground and damage the tree trunk and tree canopy aboveground.
- (h) The Applicant is reminded that approval of the landscape proposal under S.16 or approval condition does not imply approval of tree works such as felling/transplanting or pruning under lease. Any proposed tree preservation/removal scheme involving trees outside site in particular, the Applicant shall be reminded to approach relevant authority /government department(s) direct to obtain the necessary approval.

Conservation

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

Should the application be approved, the applicant should adopt necessary measures to avoid causing pollution or disturbance to the watercourse to

the north of the Site.

Drainage

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

- (a) He has no objection in principle to the application from drainage point of view, but he has some technical comments on the drainage proposal which are in **Appendix IV**.
- (b) Should the application be approved, he suggests to impose a condition requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his Division.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire services 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. In addition, the applicant should also be advised on the followings points:
 - i. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - ii. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
 - iii. Attached good practice guidelines for open storage should be adhered to (**Appendix V**).
- (c) Moreover, 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.”
- (d) To address this approval condition, the applicant is advised to submit a valid fire certificate (FS 251) to his Department for approval.
- (e) 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.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) 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 application site under the BO.
- (c) 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 respectively.
- (d) 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 Building (Planning) Regulations at the building plan submission stage.

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) Project Manager (West), CEDD (PM/W, CEDD);
- (b) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Director of Leisure and Cultural Services (DLCS);
- (e) Commissioner of Police (C of P); and
- (f) Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD).

11. Public Comments Received During Statutory Publication Period

On 10.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 31.8.2018, no

public comment was received.

12. Planning Considerations and Assessments

12.1 The Site is zoned “REC” which is intended primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. The applied use is not in line with the planning intention of the “REC” zone. There is no strong planning justification in the submission to merit a departure from such planning intention, even on a temporary basis.

12.2 The applied use is not compatible with the surrounding areas which are predominantly rural in character and comprising mainly fallow/active agricultural land in vicinity (**Plan A-2**).

12.3 The Site falls within Category 3 areas under the TPB PG-No. 13E. 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. 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 to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Planning permission could be granted on a temporary basis up to a maximum period of 3 years, 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.

12.4 The applied use does not meet the TPB Guidelines TPB PG-No. 13E in that no previous planning approvals for similar open storage uses have been granted for the Site and there are adverse comments from DEP and AC for T/NT, TD and reservation from CTP/UD&L of PlanD. The applicant fails to demonstrate that the applied use would not have adverse environmental, traffic and landscape impacts.

12.5 DEP does not support the application as there are sensitive receivers in the vicinity (the nearest residential structure is 31m away from the Site) and environmental nuisance is expected. TD does not support the application from traffic engineering point of view due to additional traffic flow of medium goods vehicles / heavy goods vehicles to Deep Bay Road which is undesirable. As such, the applicant fails to demonstrate that the applied use would not have adverse environmental and traffic impacts.

12.6 The Site is situated in an area of rural landscape character disturbed by open storage yards. In this regard, CTP/UD&L has reservations to the application from the landscape planning perspective. He considers the applied use is incompatible with the landscape character. Moreover, approval of the application would set an undesirable precedent to encourage other similar applications to blanket clear the site prior to planning permission is obtained. The cumulative effect would be undermining the integrity of the “REC” zone and degradation of the rural landscape character in general.

12.7 For similar applications in the same “REC” zone, there has been no cases approved by the Committee, in which they have no previous approvals before. For the 6 approved cases (Nos. A/YL-LFS/250, 255, 260, 272, 283 and 293) for 2 sites, sympathetic considerations were given in view of their previous approval history, among other considerations for their approvals. However, for the current application, no planning approval has been granted for similar uses so far. As such, to reject the current application is in line with previous Committee’s decisions.

12.8 There is no public comment received on the subject application.

13. Planning Department’s Views

13.1 Based on the assessment made in paragraph 12, the Planning Department does not support the application for temporary open storage of construction machinery for the following reasons:

- (a) the proposed development is not in line with the planning intention of the “REC” zone which is intended primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification to merit a departure from such planning intention, even on a temporary basis;
- (b) the proposed development is not in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that the applicant fails to demonstrate that the proposed development would not generate adverse environmental, landscape and traffic impacts and there is no exceptional circumstance to justify the development in the Category 3 areas; and
- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for applications for other developments within the “REC” zone, the cumulative effect of which will result in a general degradation of the environment.

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 **21.9.2021**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 7:00 pm and 9:00 am, 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 vehicle exceeding 5.5 tonnes, including container trailer/tractor, as defined in the Roads (Traffic) Ordinance and proposed by the applicant, is allowed to enter/exit or to be parked/stored on the Site at any time

during the planning approval period;

- (d) no vehicle over 10m long is allowed to enter/ exit or to be parked/stored on the Site at any time during the planning approval period;
- (e) no vehicle queuing back to or reverse onto/from the public road is allowed at any time during the planning approval period;
- (f) the submission of the revised 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 **21.3.2019**;
- (g) in relation to (f) above, the implementation of the revised 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 **21.6.2019**;
- (h) in relation to (g) above, the implemented drainage facilities 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 **21.3.2019**;
- (j) in relation 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 **21.6.2019**;
- (k) the provision of fire extinguisher(s) and the submission of a valid fire certificate (FS251) within **6** weeks from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **2.11.2018**;
- (l) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **21.3.2019**;
- (m) in relation to (l) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **21.6.2019**;
- (n) provision of fencing of 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 **21.3.2019**;
- (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 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 VI**.

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

Appendix I	Application Form received on 1.8.2018
Appendix Ia	Letter from the applicant dated 31.8.2018 in response to Transport Department's comments
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E)
Appendix III	Similar Applications within the same "REC" zone on the Draft Lau Fau Shan and Tsim Bei Tsui OZP since the Promulgation of TPB PG-No. 13E on 17.10.2008
Appendix IV	Detailed comments of concerned Government department
Appendix V	Good Practice Guidelines for Open Storage issued by the Fire Services Department
Appendix VI	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos