

RNTPC Paper No. A/YL-KTS/781
For Consideration by
the Rural and New Town
Planning Committee
on 18.5.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/781

<u>Applicant</u>	: Mr. CHOI Ying Sang
<u>Site</u>	: Lot 1595 (Part) in D.D.113, Ma On Kong, Kam Tin, Yuen Long
<u>Site Area</u>	: About 1,917m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zoning</u>	: "Agriculture" ("AGR")
<u>Application</u>	: Temporary Open Storage of Construction Materials and Machineries 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 materials and machineries for a period of 3 years. The Site is subject to one previous planning application No. A/YL-KTS/421 for the same applied use which was rejected by the Town Planning Board (the Board) upon review on 12.9.2008. The Site is currently paved and is being used for the applied use without valid planning permission (Plans A-2 and A-4a to b).
- 1.2 According to the applicant's submission, the development involves a total of 3 one-storey (3m high) temporary structures with a total of floor area of 150 m² for site office, storage and toilet uses. There are 2 private car parking spaces and 1 loading and unloading space provided on-site. The operation hours are from 9:00 a.m. to 5:00 p.m. Mondays to Fridays, 9:00 a.m. to noon on Saturdays and no operation on Sundays and public holidays. The Site is accessible to Kam Ho Road via local track. The plans showing the layout and access of the Site submitted by the applicant is shown on Drawings A-1 and A-2.

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

(a) Application form received on 27.3.2018 (Appendix I)

(b) Further information (FI) received on 26.4.2018 (Appendix Ia)
providing response to departmental comments
(*accepted and exempted from publication and
recounting requirements*)

(b) FIs received on 7.5.2018 and 9.5.2018 (Appendix Ib)
providing response to departmental comments
(*accepted and exempted from publication and
recounting requirements*)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the Application Form and FIs at **Appendices I, Ia and Ib**. They can be summarized as follows:

- (a) The Site was once used as a temporary quarry for construction of Ho Pui Reservoir. It has not been used for agricultural activities since the establishment of Ho Pui Village.
- (b) The Site has been used for the applied use for over 15 years, and such use has been accepted by the villager representative and the villagers. Besides, traffic impact on Kam Ho Road and local track is minimal.

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

The applicant is the sole “current land owner” of the respective lot. Detailed information would be deposited at the meeting for Member’s inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E) promulgated by the Town Planning Board on 17.10.2008 is relevant to the application. The Site falls within the Category 3 areas under the TPB PG-No. 13E. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The subject lot and its adjoining Government Land were the subject of current planning enforcement action (No. E/YL-KTS/397) involving storage use. Enforcement Notice

(EN) was issued to the responsible person on 14.3.2018 under s.23(1) of the Town Planning Ordinance (TPO). The use of the Site for storage use without a valid planning permission constitutes an unauthorized development under the TPO. Should there be sufficient evidence to prove that the use on site is an unauthorized development upon the expiry of the EN, further enforcement/prosecution action will be taken.

6. Previous Application

- 6.1 The Site is subject to one previous application No. A/YL-KTS/421 submitted by a different applicant as the current application. Details of the previous application are summarized in Appendix III and its location is shown on Plan A-1.
- 6.2 Application No. A/YL-KTS/421 for temporary open storage of construction materials and machinery for a period of 3 years was rejected by the Board upon review on 12.9.2008 on the grounds that the proposed development was not in line with the planning intention of the "AGR" zone; the application did not comply with the Town Planning Board Guidelines for 'Application for Open Storage and Port Back-up Use' in that the development was not compatible with the surrounding land uses which were predominantly rural in character and there was no previous approval granted at the Site and there were adverse departmental comments on the application; there was insufficient information to demonstrate that the proposed development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

7. Similar Applications

- 7.1 There are three similar applications (Nos. A/YL-KTS/529, 710 and 732) for temporary open storage use within the same "AGR" zone on the OZP since the promulgation of the TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in Appendix IV whilst the location of these application sites are shown on Plan A-1.
- 7.2 Applications No. A/YL-KTS/529 (for temporary open storage of recyclable materials (metals and plastics) for 3 years), 710 (for temporary open storage of construction machinery for 1 year) and 732 (for temporary open storage of construction tools, machinery and materials for 3 years) were rejected by the Committee on 15.4.2011 and 30.9.2016 (Application nos. A/YL-KTS/529 and 710 respectively) and by the Board upon review on 15.12.2017 (Application no. A/YL-KTS/732) mainly on the grounds that the development was not in line with the planning intention of the "AGR" zone and no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; the application did not comply with the TPB PG-No. 13E in

that there was no previous approval granted at the site and there were adverse departmental comments; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and/or landscape impacts on the surrounding areas; and approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone, and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

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

8.1 The Site is:

- (a) paved and used for the applied use without valid planning permission; and
- (b) accessible via a local track from Kam Ho Road.

8.2 The surrounding areas are rural in character mixed with open storage/storage yards, residential structures/dwellings and vacant/unused land. The open storages/storage yards are mostly suspected unauthorized development subject to enforcement action taken by the Planning Authority (Plan A-2):

- (a) to its immediate east, northeast and south is an area of unused land and vegetated slope zoned "Conservation Area" (Plan A-1);
- (b) to its southwest and northwest are open storage/storage yards, residential dwellings/structures (the nearest about 40m to the northwest), cultivated agricultural land, a farm and vacant/unused land.

9. Planning Intention

The planning intention of the "AGR" zone is 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 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 an 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 Kam Ho Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area (SKAHRA).
- (d) Should planning approval be given to the application, 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 LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department(TD). The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

10.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department is not and shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Kam Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint received in the past three years. However, in accordance with the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites", he does not support the application as there are sensitive receivers, i.e. residential dwellings/structures in the vicinity of the Site (the nearest about 40m to northwest), and environmental nuisance is expected.
- (b) The applicant is reminded that effluent discharges from the applied use are subject to control under the Water Pollution Control Ordinance (WPCO) and the applicant should obtain a discharge licence under the WPCO before a new discharge is commenced. It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures to prevent polluting the watercourse adjacent to the Site. If septic tank and soakaway system will be used, its design and construction shall follow the requirements of Environmental Protection Department (EPD)'s Practice Note for Professional (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department".
- (c) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by DEP.

Landscape

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

- (a) He has reservations on the application from the landscape planning perspective.
- (b) The Site is located within a low-lying plain to the northwest of the Tai Lam Country Park. An area zone "Conservation Area" ("CA") is located to the immediate east of the Site. The landscape in the surrounding area is predominately rural fringe in character consisting of natural streams and nullah, vacant land, and tree groups. Despite no planning permission has been granted, the area zoned "AGR" is dominated by open storage yards and temporary structures. The Site is the subject of a previous application for same temporary open storage of construction materials and machineries (application No. A/YL-KTS/421) rejected by the Board on review on 12.9.2008.
- (c) According to the aerial photo in 2005, the Site has been used as an open storage yard since then. With reference to the site inspection taken on 13.4.2018, no vegetation is found within the Site. Although further adverse impact on landscape resources due to the applied use is not expected, approval of the application may encourage other similar development first application later, resulting in irreversible changes to the existing landscape character in the area and potential risk of encroachment into the nearby "CA" zone.
- (d) Should the application be approved, approval condition on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board should be included.

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 application.
- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal and implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning permission.

Water Supply

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

He has no objection to the application. The Site is outside existing fresh water supply zone.

Nature Conservation and Agriculture

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

- (a) The Site is zoned as "AGR" but is abutting an area zoned as "CA" in the east. Upon recent site visit, the Site is apparently used for open storage of construction machineries and vehicles at present. The "CA" zone at the east of the Site was covered by common shrubs and herbaceous plants, as well as young native trees and fruit trees.
- (b) Agricultural activities are currently found in the vicinity of the Site. Although the Site is paved, it possesses potentiality of agricultural rehabilitation and can still be used for greenhouse cultivation or plant nursery. As such, the application is not supported from agriculture point of view.
- (c) According to the aerial photos and recent site visit, the current activities on the Site may have encroached on the abutting "CA" zone adjacent to the site boundary. In the view of the condition observed at present, he is concerned of the possible encroachment and disturbance on the nearby "CA" zone from the use. As such, he has reservation on the application from nature conservation point of view.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans. The good

practice guidelines for open storage (Appendix V) should be adhered to.

- (c) Having considered the nature of the open storage, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval should be included in the planning permission. To address this condition, the applicant should submit a valid fire certificate (FS251) to his department for approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) If the existing structures are erected on leased land without approval of his department (not being a New Territories Exempted House), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any approved use under the application.
- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BD should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (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) 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.

- (e) 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.

District Officer's Comments

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

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

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

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Commissioner of Police (C of P); and
- (c) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD).

11. Public Comments Received During Statutory Publication Period

- 11.1 On 6.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 27.4.2018, six public comments were received.
- 11.2 Four public comments including World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited and two members of the public (Appendices VI-2 to VI-3 and VI-5 to VI-6) object to the application mainly on the grounds of not in line with the planning intention of the "AGR" zone; no strong planning justification has been given in the submission for a departure from the planning intention even on a temporary basis; approval of the application will legitimate the unauthorized development; the cumulative effect of approving such similar application would result in a general degradation of the environment of the area, encroach on "AGR" zone and create adverse landscape and traffic impacts; and the Site is subject to previous rejected application.
- 11.3 The remaining two comments from Pat Heung Rural Committee and representative of Ho Pui Tsuen (Appendices VI-1 and VI-4) support the application mainly on the grounds of that the applied use had been existed at the Site for over 10 years; the Site has been used as storage of construction materials during the construction of Ho Pui Reservoir in the 1960s; the Site is not suitable for agricultural activities due to the lack of water supply and has not been used for agricultural activities; the applied use is a small and medium enterprise which should be supported.

12. Planning Considerations and Assessment

- 12.1 The Site falls within Category 3 areas under the TPB PG-No. 13E. The following considerations in the Guidelines are relevant:

Category 3 areas: within these areas, "existing" and approved open storage and port back-up uses are to be contained and further proliferation of such uses is not acceptable. 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.

- 12.2 The applied temporary open storage of construction materials and machineries is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land for agricultural purpose, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for used as greenhouse cultivation or plant nursery. Besides, no strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.

- 12.3 The Site is adjoining a 'CA' zone to its east. The surrounding land uses are a mixture of open storage/storage yards, residential structures/dwellings, cultivated agricultural land, and vacant/unused land. While there are some open storage/storage yards in the vicinity of the Site (Plan A-2), it is noted that most of them are suspected unauthorised developments subject to enforcement action by the Planning Authority. CTP/UD&L, PlanD has reservation on the application from landscape planning perspective as approval of the application may encourage other similar development first application later, resulting in irreversible changes to the existing landscape character in the area and potential risk of encroachment into the nearby "CA" zone. Also, DAFC has reservation on the application from nature conservation point of view due to possible encroachment and disturbance on the nearby "CA" zone from the use.

- 12.4 The development is not in line with the TPB PG-No. 13E in that there is no previous approval for open storage use granted at the Site and that "existing" and approved open storage use should be contained within the Category 3 area and further proliferation of such uses is not acceptable. Besides, there are adverse departmental comments on the application. Apart from DAFC and CTP/UD&L of PlanD, DEP does not support the application as there are sensitive receivers i.e.

residential dwellings/structures in the vicinity of the Site (the nearest about 40m to its northwest) and environmental nuisance is expected. There is no information in the submission to demonstrate that the applied use would not have adverse landscape and environmental nuisance. Hence, the current application does not warrant sympathetic consideration.

- 12.5 The Site is subject to a previous application No. A/YL-KTS/421 for open storage use which was rejected by the Board upon review on 12.9.2008. Also, there are three similar applications (Nos. A/YL-KTS/529, 710 and 732) within the same "AGR" zone which were rejected by Committee or by the Board on review on 15.4.2011, 30.9.2016 and 15.12.2017 respectively on similar considerations that the development was not in line with the planning intention of the "AGR" zone and no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; the application did not comply with the TPB PG-No. 13E in that there was no previous approval granted at the Site and there were adverse comments from the relevant government departments; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and/or landscape impacts on the surrounding areas; and approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone. Rejection of the current application is in line with the previous decision of the Committee/the Board on previous and similar applications.
- 12.6 There are six public comments received during the statutory publication period. Four of the public comments object to the application while the remaining two public comments supports the application as set out in paragraphs 11.2 and 11.3 above. In this regard, planning considerations and assessments as stated above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments as mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the application does not comply with the TPB PG-No. 13E in that there is no previous approval granted at the Site and there are adverse departmental comments and local objections on the application;

- (c) the applicant failed to demonstrate that the development would not generate environmental nuisance and adverse landscape impacts on the surrounding area; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

13.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years, until 18.5.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 5:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between noon to 5:00 p.m. on 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 dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the provision of the boundary fence for the Site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 18.11.2018;
- (g) the submission of 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 18.11.2018;
- (h) in relation to (g) above, the implementation of 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 18.2.2019;
- (i) 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 18.11.2018;

- (j) in relation to (i) above, the implementation of 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 18.2.2019;
- (k) in relation to (j) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (l) the provision of fire extinguisher(s) with a valid fire certificate (FS251) 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 29.6.2018;
- (m) the submission of fire service installation 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 18.11.2018;
- (n) in relation to (m) above, the provision of fire service installations 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 18.2.2019;
- (o) if any of the above planning conditions (a), (b), (c), (d), (e) or (k) 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;
- (p) if any of the above planning conditions (f), (g), (h), (i), (j), (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 the expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at Appendix VII.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form received on 27.3.2018
Appendix Ia	FI received on 26.4.2018 providing response to departmental comments
Appendix Ib	FIs received on 7.5.2018 and 9.5.2018 providing response to departmental comments
Appendix II	Relevant extract of Town Planning Board Guideline for "Application for Open Storage and Port Back-up uses" (TPB PG-No. 13E)
Appendix III	Previous applications covering the Site
Appendix IV	Similar applications within the same "AGR" zone on the Kam Tin South OZP
Appendix V	Good Practice Guidelines on Open Storage Sites
Appendices VI-1 to VI-6	Public comments received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Access Plan of the Site
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a – A-4b	Site Photos

PLANNING DEPARTMENT
MAY 2018

**Relevant Extract of the Town Planning Board Guidelines for
Application for Open Storage and Port Back-up Uses
(TPB PG-No.13E)**

1. On 17.10.2008, the 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) were promulgated, which set out the following criteria for the various categories of area:
 - (a) Category 1 areas: favourable consideration will normally be given to applications within these areas, subject to no major adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments should be submitted if the proposed uses may cause significant environmental and traffic concerns;
 - (b) Category 2 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. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas;
 - (c) 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; and
 - (d) 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.

2. In assessing applications for open storage and port back-up uses, the other major relevant assessment criteria are also summarized as follows:

- (a) there will be a general presumption against development on sites of less than 1,000 m² for open storage uses and 2,000 m² for port back-up uses in rural areas, other than sites located in major corridors, industrial/godown/workshop areas, quarrying activities or where it is demonstrated that optimum use is made of the site. This is to prevent the further proliferation of small sites in rural areas, minimizing sprawl over countryside areas and reducing travel trips;
- (b) port back-up sites and those types of open storage uses generating adverse noise, air pollution and visual intrusion and frequent heavy vehicle traffic should not be located adjacent to sensitive receivers such as residential dwellings, hospitals, schools and other community facilities;
- (c) port back-up uses are major generators of traffic, with container trailer/tractor parks generating the highest traffic per unit area. In general, port back-up sites should have good access to the strategic road network, or be accessed by means of purpose built roads;
- (d) adequate screening of the sites through landscaping and/or fencing should be provided where sites are located adjacent to public roads or are visible from surrounding residential areas;
- (e) there is a general presumption against conversion of agricultural land and fish ponds to other uses on an ad hoc basis, particularly in flood prone areas or sites which would obstruct natural drainage channels and overland flow; and
- (f) for applications involving sites with previous planning approvals, should there be no evidence to demonstrate that the applicants have made any genuine effort to comply with the approval conditions of the previous planning applications, planning permission may be refused, or a shorter compliance period for the approval conditions may be imposed, notwithstanding other criteria set out in the Guidelines are complied with.

Previous Application Covering the Application Site

Rejected Application

	Application No.	Proposed Use(s)	Date of Consideration by the TPB	Rejection Reasons
1.	A/YL-KTS/421	Temporary Open Storage of Construction Materials and Machinery for a Period of 3 Years	12.9.2008 [on review]	(a), (b), (c), (d)

Rejection Reasons

- (a) the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the TPB PG-No. 13D in that the development was not compatible with the surrounding land use; there is no previous approval granted at the Site and there are adverse departmental comments on the application;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding area; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

Similar Applications in the Same "AGR" Zone on the OZP

Rejected Applications

	<u>Application No.</u>	<u>Proposed Use(s)</u>	<u>Date of Consideration (RNTPC)</u>	<u>Rejection Reasons</u>
1	A/YL-KTS/529	Temporary open storage of recyclable materials (metal and plastics) for a period of 3 years	15.4.2011	(a), (b), (c), (d).
2	A/YL-KTS/710	Temporary open storage of construction machinery for a period of 1 years	30.9.2016	(a), (b), (c), (d)
3	A/YL-KTS/732	Temporary open storage of construction tools, machinery and materials for a period of 3 years	15.12.2017 [on review]	(a), (b), (c), (d)

Rejection Reasons

- (a) the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the TPB PG-No. 13E in that the development was not compatible with the surrounding land use; there is no previous approval granted at the Site and/or there are adverse departmental comments on the application;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and/or drainage impacts on the surrounding area; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

Good Practice Guidelines for Open Storage Sites

		Internal access for fire appliances	Lot boundaries (clear width)	Distance between storage cluster and temporary structure	Cluster size	Storage height
1.	Open Storage of Containers		2m	4.5m		
2.	Open Storage of non-combustibles or limited combustibles	4.5m	2m	4.5m		
3.	Open Storage of combustibles	4.5m	2m	4.5m	40m x 40m	3m

Remarks: Smoking and naked flame activities shall not be allowed within the open storage/recycling site.

Advisory clauses

- (a) Prior planning permission should have been obtained before commencing the applied use at the Site.
- (b) note DLO/YL, LandsD's comments that the Site comprises an 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. The Site is accessible to Kam Ho Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site. 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 LandsD acting in the capacity as landlord or lesser at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD;
- (c) note C for T's comments that the Site is connected to the public road network via a section of a local access road which is not managed by TD. The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly;
- (d) note CHE/NTW, HyD's comments that HyD is/shall not be responsible for the maintenance of any existing vehicular access connecting the Site and Kam Ho Road. Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains;
- (e) note DEP's comments that the applicant is reminded that effluent discharges from the proposed use are subject to control under the Water Pollution Control Ordinance (WPCO) and the applicant should obtain discharge licence under the WPCO before a new discharge is commenced. It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures to prevent polluting the watercourse adjacent to the Site. If septic tank and soakaway system will be used, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". The applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites" issued by DEP;
- (f) note D of FS's comments that in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to

his department for approval. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans. Besides, the good practice guidelines for open storage (Appendix V of this RNTPC paper) should be adhered to. To address the condition on provision of fire extinguisher(s), the applicant should submit a valid fire certificate (FS 251) to his department for approval. 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; and

- (g) note CBS/NTW, BD's comments that if the existing structures are erected on leased land without approval of the BD (not being New Territories Exempted Houses), they are unauthorized under the BO and should not be designated for any use under the application. Before any new building works (including containers / open sheds as temporary buildings) are to be carried out on the site, the prior approval and consent of the Building Authority should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized Person should be appointed as the coordinator for the proposed building works in accordance with the BO. For UBW erected on leased land, enforcement action may be taken by the BA 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. 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. If the sites do not abut on a specified street of not less than 4.5m wide, their permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Agenda Item 32

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/YL-KTS/781 Temporary Open Storage of Construction Materials and Machineries
for a Period of 3 Years in “Agriculture” Zone, Lot 1595 (Part) in D.D.
113, Ma On Kong, Kam Tin, Yuen Long
(RNTPC Paper No. A/YL-KTS/781)

Presentation and Question Sessions

123. Ms Ivy C.W. Wong, STP/FSYLE, presented the application and covered the following aspects as detailed in the Paper:

- (a) background to the application;
- (b) temporary open storage of construction materials and machineries for a period of three years;
- (c) departmental comments – departmental comments were set out in paragraph 10 of the Paper. The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application as the Site possessed potentiality of agricultural rehabilitation and could still be used as green house cultivation or plant nursery. Director of Environmental Protection (DEP) did not support the application as there were sensitive receivers in the vicinity of the Site. Chief Town Planner/Urban Design and Landscape,

Planning Department (CTP/UD&L, PlanD) had reservation on the application from landscape planning perspective as approval of the application might encourage other similar “development first application later” cases, resulting in irreversible changes to the existing landscape character in the area and potential risk of encroachment into the nearby “CA” zone. Other concerned departments had no objection to or no adverse comment on the application;

- (d) during the first three weeks of the statutory public inspection period, six public comments were received. Two supporting comments were received from Pat Heung Rural Committee and representative of Ho Pui Tsuen, and four objecting comments were received from World Wide Fund for Nature Hong Kong, Designing Hong Kong Limited and two members of the public. Major objecting grounds were set out in paragraph 11 of the Paper; and
- (e) PlanD’s views – PlanD did not support the application based on the assessments in paragraph 12 of the Paper. The applied use was not in line with the planning intention of the “Agriculture” (“AGR”) zone. DAFC did not support the application from the agriculture point of view as the Site possessed potential to be used as greenhouse cultivation or plant nursery. Besides, no strong planning justification had been given in the submission to justify for a departure from the planning intention, even on a temporary basis. Also, the Site was adjoining a “Conservation Area” (“CA”) zone, DAFC had reservation on the application from nature conservation point of view due to possible encroachment and disturbance on the nearby “CA” zone from the applied use. The development was not in line with the TPB PG-No. 13E in that there was no previous approval for open storage use granted at the Site. Adverse departmental comments on the application were received and the application did not warrant sympathetic consideration. The Site was subject to a previous application No. A/YL-KTS/421 for open storage use which was rejected by the Board. Three similar applications (Nos. A/YL-KTS/529, 710 and 732) within the same “AGR” zone were rejected by Committee or by the Board on review.

Rejection of the current application was in line with the previous decision of the Committee/the Board on previous and similar applications. Regarding the public comments received, the comments of government departments and planning assessments above about were relevant.

124. Members had no question on the application.

Deliberation Session

125. After deliberation, the Committee decided to reject the application. The reasons were:

- “(a) the development is not in line with the planning intention of the “Agriculture” (“AGR”) zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the Town Planning Board PG-No. 13E in that there is no previous approval granted at the Site and there are adverse departmental comments and local objections on the application;
- (c) the applicant fails to demonstrate that the development would not generate environmental nuisance and adverse landscape impacts on the surrounding area; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.”

城市規劃委員會

香港北角渣華道三百三十三號
北角政府合署十五樓

TOWN PLANNING BOARD

15/F., North Point Government Offices
333 Java Road, North Point,
Hong Kong.

傳 真 Fax: 2877 0245 / 2522 8426

電 話 Tel: 2231 4810

來函編號 Your Reference:

覆函請註明本會編號

In reply please quote this ref.: TPB/A/YL-KTS/781

By Registered Post

1 June 2018

Choi Ying Sang

(Attn.: 范開宏)

Dear Sir/Madam,

**Temporary Open Storage of Construction Materials and Machineries
for a Period of 3 Years in "Agriculture" Zone,
Lot 1595 (Part) in D.D. 113, Ma On Kong, Kam Tin, Yuen Long**

I refer to my letter to you dated 18.5.2018.

After giving consideration to the application, the Town Planning Board (TPB) decided to reject the application and the reasons are :

- (a) the development is not in line with the planning intention of the "Agriculture" ("AGR") zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the TPB PG-No. 13E in that there is no previous approval granted at the Site and there are adverse departmental comments and local objections on the application;
- (c) you fail to demonstrate that the development would not generate environmental nuisance and adverse landscape impacts on the surrounding area; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "AGR" zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

A copy of the TPB Paper in respect of the application (except the supplementary planning statement/technical report(s), if any) and the relevant extract of minutes of the TPB meeting held on 18.5.2018, in both English and Chinese, are enclosed herewith for your reference.

Under section 17(1) of the Town Planning Ordinance, an applicant aggrieved by a decision of the TPB may apply to the TPB for a review of the decision. If you wish to seek a review, you should inform me within 21 days from the date of this letter (on or before 22.6.2018). I will then contact you to arrange a hearing before the TPB which you and/or your authorized representative will be invited to attend. The TPB is required to consider a review application within three months of receipt of the application for review. Please note that any review application will be published for three weeks for public comments.

Under the Town Planning Ordinance, the TPB can only reconsider at the review hearing the original application in the light of further written and/or oral representations. Should you decide at this stage to materially modify the original proposal, such proposal should be submitted to the TPB in the form of a fresh application under section 16 of the Town Planning Ordinance.

If you wish to seek further clarifications/information on matters relating to the above decision, please feel free to contact Ms. Ivy Wong of Fanling, Sheung Shui & Yuen Long East District Planning Office at 2158 6297.

Yours faithfully,



(Raymond KAN)
for Secretary, Town Planning Board

(With Chinese Translation)

Advisory Clauses

- (a) prior planning permission should have been obtained before commencing the applied use at the Site;
- (b) note DLO/YL, LandsD's comments that the Site comprises an 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. The Site is accessible to Kam Ho Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site. The lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. 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 LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.
- (c) note C for T's comments that the Site is connected to the public road network via a section of a local access road which is not managed by TD. The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly;
- (d) note CHE/NTW, HyD's comments that HyD is not and shall not be responsible for the maintenance of any access connecting the Site and Kam Ho Road. Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains;
- (e) note DEP's comments that the applicant is reminded that effluent discharges from the applied use are subject to control under the Water Pollution Control Ordinance (WPCO) and the applicant should obtain discharge licence under the WPCO before a new discharge is commenced. It is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances and provide necessary mitigation measures to prevent polluting the watercourse adjacent to the Site. If septic tank and soakaway system will be used, its design and construction shall follow the requirements of EPD's Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department". The applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites" issued by DEP;

- (f) note D of FS's comments that in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans. Besides, the good practice guidelines for open storage (Appendix V of **Annex A**) should be adhered to. To address the condition on provision of fire extinguisher(s), the applicant should submit a valid fire certificate (FS 251) to his department for approval. 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; and
- (g) note CBS/NTW, BD's comments that if the existing structures are erected on leased land without approval of his department (not being New Territories Exempted Houses), they are unauthorized under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application. For unauthorized building work (UBW) erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's 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. Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO. The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulations respectively. 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) Regulation at the building plan submission stage.