

REVIEW OF APPLICATION NO. A/YL-SK/236
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Temporary Open Storage of Machineries for a Period of 3 Years in
“Residential (Group D)” zone
Lot 297 S.A RP (Part) in D.D. 112, Kam Sheung Road, Yuen Long**

1. Background

- 1.1 On 7.3.2018, the applicant, Mr. Chan Yuk Kim, sought planning permission to use the application site (the Site) for proposed temporary open storage of machineries under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Residential (Group D)” (“R(D)”) on the approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9 at the time of s.16 submission and currently in force. The Site is currently fenced, paved and vacant, and forms an extension of an open storage for machineries adjoining the Site to its north (**Plan R-1**).
- 1.2 On 4.5.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the development is not in line with the planning intention of the “R(D)” zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and for low-rise, low-density residential developments subject to planning permission from the Board. No strong planning justification has been given in the submission for a departure from the planning intension, even on a temporary basis;
 - (b) the application does not comply with the Town Planning Board Guidelines No. TPB PG-No. 13E in that no previous approval has been granted at the Site and there is adverse departmental comment on the application;
 - (c) the applicant fails to demonstrate that the development would not generate environmental nuisance on the surrounding areas; and
 - (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within this part of the “R(D)” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

1.3 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/YL-SK/236 (Annex A)
- (b) Extract of minutes of the RNTPC meeting held on 4.5.2018 (Annex B)
- (c) Secretary of the Board's letter dated 18.5.2018 (Annex C)

1.4 The Site is currently not a subject of any active enforcement case. The use of the Site for storage use without a valid planning permission constitutes an unauthorized development under the Ordinance. Should there be sufficient evidence to prove that the use on site is an unauthorized development under the Ordinance, appropriate enforcement action will be taken.

2. **Application for Review**

On 23.5.2018, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review.

3. **The Section 16 Application**

The Sites and its Surrounding Area (**Plans R-1, R-2**, aerial photo on **Plan R-3** and photos on **Plans R-4**)

3.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 applications by the RNTPC were describe in paragraph 8 of **Annex A**. There has been no material change of the situation since then (**Plan R-2**).

3.2 The Site:

- (a) fenced, paved and vacant; and
- (b) accessible to Kam Sheung Road via the open storage site adjoining the Site to the north.

3.3 The surrounding areas are rural in character mixed with open storage/storage yards, a vehicle workshop, residential dwellings/structures, vacant/unused land and a plant nursery (**Plan R-2**):

- (a) to its immediate north is an open storage of machineries which is an existing use as at the gazetting of the Shek Kong Interim Development Permission Area (IDPA) Plan on 5.10.1990. To its further north across Kam Sheung Road is a plant nursery;
- (b) to its east are an open storage yard, a vehicle workshop and unused land; and

- (c) to its immediate west and south is vacant land and to its further west is a residential development (about 50m away).

Planning Intention

- 3.4 There has been no change of planning intention of the “R(D)” zone, which is mentioned in paragraph 9 of **Annex A**.

Town Planning Board Guideline

- 3.5 The Site falls within Category 3 areas under 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 (the Board) on 17.10.2008. The relevant extract of the Guideline as set out at Appendix II of **Annex A**.

Previous Application

- 3.6 The previous application at the time of consideration of the s.16 application is mentioned in paragraph 6 of **Annex A**. Details of the application are summarized in Appendix III of **Annex A** and the location of the site are shown on **Plan R-1**. Since then, no additional previous application is involved.
- 3.7 Part of the Site was involved in one previous application No. A/YL-SK/36 submitted by the same applicant for the same use as the current applicant for the same use as the current application. Application No. A/YL-SK/36 for proposed temporary open storage of machinery covering a larger site (276m²) for a period of 12 months was rejected by the Board on review on 27.6.1997 on the grounds that the proposed development was not in line with the planning intention of the “R(D)” zone; it was not compatible with the surrounding rural area and the village settlement; approval of application would set an undesirable precedent and the cumulative effect of which would further degrade the environment of the area.

Similar Applications

- 3.8 There is no similar application within the same “R(D)” zone since the promulgation of the TPB PG-No. 13E on 17.10.2008 at the time of consideration of the application as mentioned in paragraph 7 of **Annex A**. There is no new similar application.

4. Comments from Relevant Government Departments

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraphs 10.1 and 10.2 of **Annex A**.
- 4.2 For the review application, the relevant Government departments have been further consulted and their comments are summarized as follows:

District Officer's Comments

- 4.2.1 The District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comment from locals upon close of consultation and he has no particular comment on the application.

Water Supply

- 4.2.2 The Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

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

- 4.3 The following Government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of **Annex A** and recapitulated below:

Land Administration

- 4.3.1 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) Lot 297 S.A RP (Portion) in D.D. 112 is covered by a STW No. 2223 to permit structures erected thereon for the purpose of "storage of machinery".
- (c) The Site is accessible to Kam Sheung Road via Government land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way to the Site.
- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limited within SKAHRA.
- (e) Should the application be approved, the STW holder(s) will need to apply to his office for modification of the STW conditions to

regularized any irregularities (if any) on Site. Such application(s) will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) Noting that the proposed development makes use of an existing vehicular access at D.D. 112 Lot 297 S.A RP from Kam Sheung Road and the respective additional traffic generated is limited, 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.

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

Noting that the proposed development will use the existing vehicular access at Lot 297 S.A RP in D.D. 112 from Kam Sheung Road, he has no comment on the application from the highways maintenance point of view.

Environment

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

- (a) There was no substantiated environmental complaint received in the past three years.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspects of Temporary uses and Open Storage Sites” (COP) issued by DEP, he does not support the application as sensitive receivers, i.e. residential dwellings, are found in the vicinity (the nearest is about 50m to its west (**Plan R-2**), and environmental nuisance is expected.
- (c) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest COP issued by DEP.

Landscape

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

- (a) He has no objection to the application from the landscape planning perspective.
- (b) The Site is adjacent to open storages on both sides while small houses are concentrated within the “Village Type Development” (“V”) zone at the further east and west to the Site. The Site is adjacent to Kam Sheung Road at the north. The adjoining site is the subject of a previous approved planning application (No. A/YL-SK/78) dated 11.6.1999, while the Site is part of the subject of a previous rejected planning application of the same use (No. A/YL-SK/36) dated 27.6.1997 on which he had some reservations from the landscape planning perspective.
- (c) Based on the aerial photo taken on 16.4.1997, the Site is situated in an area of rural landscape character comprising of scattered tree groups, open storages, farmlands and small houses. Although the proposed use is not in line with the planning intention of “R(D)” zone, it is not incompatible to the surrounding environment.
- (d) Referring to site visit dated 10.4.2018, the Site is hard paved and vacant. Four existing trees of common fruit tree species are spotted within the Site. Adverse impact on significant landscape resources arising from the proposed development is not anticipated.
- (e) Should the application be approved by the Board, approval conditions on the submission and implementation of tree preservation and landscape proposal should be included.
- (f) His detailed comment is at Appendix IV of **Annex A**.

Nature Conservation and Agriculture

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

As the Site is located within “R(D)” zone and is paved, he has no comment on the application from the nature conservation and agricultural point of view.

Drainage

4.3.7 Comments of Chief Engineer/Mainland North and Chief Engineer/Land Drainage, Drainage Services Department (CE/MN and CE/LD, DSD):

- (a) He has no in-principle objection to the application.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a drainage proposal for the development should be included in the planning permission.

Fire Safety

4.3.8 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 plans 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.
- (c) Having considered the nature of the open storage use, approval condition on provision of fire extinguisher(s) within 6 weeks from the date of planning approval is recommended for inclusion in the planning permission. To address this condition, the applicant should submit a valid fire certificate (FS 251) 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.

Electricity

4.3.9 Comments of the Director of Electrical and Mechanical Service (DEMS):

He has no particular comment on the application from the electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned

with the planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

4.4 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application as below:

- (a) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (c) Commissioner of Police (C of P).

5. **Public Comments Received During Statutory Publication Period**

5.1 On 1.6.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.6.2018, one public comment was received from a member of the public (**Annex E-1**). The commenter objects to the application mainly on the grounds that the proposed development was not compatible with the surrounding land uses; there is no merit in the review; there was no similar application within the same “R(D)” zone since the promulgation of the TPB PG-No.13E; the previous application submitted by the same applicant was rejected by the Board upon review; approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within this part of the “R(D)” zone.

5.2 During the s.16 application stage, one comment from a general public was received (Appendix VI of **Annex A**) objecting to the application mainly on the grounds that the application is to legitimize ongoing brownfield operation; open storage is incompatible with “R(D)” zone; the proposed use will cause environmental degradation that will impact the quality of the soil and endanger the health of residents; storage should be accommodated in purpose built parks; and approval of application would encourage further substandard and inappropriate land use.

6. Planning Considerations and Assessments

6.1 The application is for a review of RNTPC's decision on 4.5.2018 to reject the application for proposed temporary open storage of machineries for a period of 3 years. The rejection reasons were that the development is not in line with the planning intention of the "R(D)" zone; the application does not comply with the Town Planning Board Guidelines No. TPB PG-No. 13E; and the approval of the application, would set an undesirable precedent for similar applications within this part of the "R(D)" zone. The applicant has not submitted any written representation in support of the review, there is no major change in previous planning considerations and assessments as appended below.

6.2 According to TPB PG-No. 13E, the Site falls within Category 3 areas. The following 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 within these areas, 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, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions, planning permission could be granted a temporary basis up to a maximum period of 3 years.

6.3 The proposed development is for temporary open storage of machineries for a period of 3 years in "R(D)" zone. It is not in line with the planning intention of the "R(D)" zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and for low-rise, low-density residential developments subject to planning permission from the Board. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis.

6.4 The application does not comply with the TPB PG-No. 13E in that there is no previous approval granted at the Site. The Site forms an extension of the open storage of machinery to the immediate north, which is an existing use as at the gazetting of the Shek Kong IDPA Plan on 5.10.1990. However, according to TPB PG-No. 13E, "existing" and approved open storage use should be contained within the Category 3 areas and further proliferation of such use is not acceptable. Moreover, DEP does not support the application as there are residential structures/dwellings located in the vicinity (the nearest one is about 50m away to the northwest) (**Plan A-2**) and environmental nuisance is expected. Hence, the current application does not warrant sympathetic consideration.

- 6.5 The proposed development is not compatible with the surrounding land uses which are rural in character mainly with residential dwellings and unused land. There is no similar application within the same “R(D)” zone since the promulgation of the TPB PG-No. 13E on 17.10.2008. A previous application (No. A/YL-SK/36) submitted by the same applicant for the same temporary open storage use as the current application was rejected by the Board on review (paragraph 6 of **Annex A** and **Plan R-1** refer). Approval of the current application, even on a temporary basis, would set an undesirable precedent for similar applications within this part of the “R(D)” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.
- 6.6 One public comment was received during the statutory publication period at the s.17 stages raising objection to the application on the grounds as stated in paragraphs 5 above. In this regards, the planning assessments and considerations above are relevant.

7. **Planning Department’s Views**

- 7.1 Based on the assessments made in paragraph 6 and having taken into account the public comment mentioned in paragraph 5, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 4.5.2018, the Planning Department maintains its previous view of not supporting the review application for the following reason:
- (a) the development is not in line with the planning intention of the “R(D)” zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and for low-rise, low-density residential developments subject to planning permission from the Board. 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 no previous approval has been granted at the Site and there is adverse departmental comment on the application;
 - (c) the applicant fails to demonstrate that the development would not generate environmental nuisance on the surrounding areas; and
 - (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within this part of the “R(D)” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

- 7.2 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 24.8.2021, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and statutory holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) 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) the maintenance of existing boundary fencing on the Site at all times during the planning approval period;
- (f) the submission of tree preservation and 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 24.2.2019;
- (g) in relation to (f) above, the implementation of tree preservation and 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 24.5.2019;
- (h) 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 24.2.2019;
- (i) in relation to (h) 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 24.5.2019;
- (j) in relation to (i) above, the implemented drainage proposal on the Site shall be maintained at all times during the planning approval period;
- (k) the provision of fire extinguisher(s) within **6** weeks with a valid fire certificate (FS 251) from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 5.10.2018;

- (l) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 24.2.2019;
- (m) 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 24.5.2019;
- (n) if any of the above planning conditions (a), (b), (c), (d), (e) or (j) 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;
- (o) if any of the above planning conditions (f), (g), (h), (i), (k), (l) or (m) 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
- (p) upon expiry of the planning permission, the reinstatement of the application 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 **Annex F**.

8. Decision Sought

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to approve the review 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.
- 8.3 Alternatively, should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

9. Attachments

Annex A	RNTPC Paper No. A/YL-SK/236
Annex B	Extract of minutes of the RNTPC meeting held on 4.5.2018
Annex C	Secretary of the Board's letter dated 18.5.2018
Annex D	Letter dated 23.5.2018 from the applicant's representative

	applying for review of the application
Annex E-1	Public comment received during the statutory publication period
Annex F	Advisory clauses
Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3	Aerial Photo
Plans R-4	Site Photos

**PLANNING DEPARTMENT
AUGUST 2018**

**TPB Paper No.10462
for Consideration by
the Town Planning Board
on 24.8.2018**

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