

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/994**

<b><u>Applicant</u></b>	: Able Power Development Limited represented by R-riches Property Consultants Limited
<b><u>Site</u></b>	: Lots 1290 RP (Part) and 1291 (Part) in D.D. 107, Fung Kat Heung, Kam Tin, Yuen Long, New Territories
<b><u>Site Area</u></b>	: about 3,796m <sup>2</sup>
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan No. S/YL-KTN/11
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: Proposed Temporary Open Storage of Construction Materials for a Period of Three Years and Associated Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary open storage of construction materials for a period of three years and associated filling of land at the application site (the Site), which falls within an area zoned “AGR” zone on the approved Kam Tin North OZP No. S/YL-KTN/11 (**Plan A-1**). According to the covering Notes of the OZP, temporary use of land not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). Filling of land within the “AGR” zone also requires planning permission from the Board. The Site is currently vacant (**Plans A-2 to A-4**).
- 1.2 According to the applicant, about 2,216m<sup>2</sup> (or 58.4%) of the Site will be used for open storage of construction materials (including tiles, pipes, and bricks) and the remaining 1,580m<sup>2</sup> (or 41.6%) of the Site will serve as circulation area (**Drawing A-1**). The applicant also applies for proposed filling of land for the whole Site by not more than 1m (from levels ranging from +10.3mPD to +11.7mPD to levels ranging from +11.2mPD to +11.9mPD) for site formation and vehicular circulation (**Drawing A-2**). The operation hours will be between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays, with no operation on Sundays and public holidays. One loading/unloading space for medium goods vehicle will be provided at the Site. The Site is accessible from Mei Fung Road via a local track (**Plans A-1 to A-3**). The

site layout plan and the land filling plan submitted by the applicant are at **Drawings A-1** and **A-2** respectively.

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

- (a) Application form with attachments received on 6.2.2024 **(Appendix I)**
  - (b) Further information (FI) received on 19.4.2024\* **(Appendix Ia)**
  - (c) FI received on 24.5.2024\* **(Appendix Ib)**
- \* accepted and exempted from publication and recounting requirements*

1.4 On 5.4.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months as requested by the applicant.

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form with attachments and FIs at **Appendices I to Ib**. They can be summarised as follows:

- (a) The proposed use is temporary in nature and approval of the current application would not jeopardise the long-term planning intention of the “AGR” zone. There were also similar applications approved within the same “AGR” zone. As such, approving the current application will be in line with the Board’s previous decisions. The Site falls within Category 2 areas according to the Town Planning Board Guidelines for application for open storage and port back-up uses. The proposed use is not incompatible with the surrounding areas mainly occupied by open storages and temporary structures.
- (b) The proposed filling of land is necessary for site formation and vehicular circulation purpose to meet the operational needs. The applicant has submitted a drainage proposal to address the drainage impact arising from the proposed use. Relevant drainage proposal will be implemented and the applicant undertakes to reinstate the Site upon expiry of the planning approval.
- (c) The proposed use is anticipated to generate infrequent trips. There is a buffer of at least 3m between the existing watercourse to the west of the Site and the applicant will avoid affecting the watercourse. The applicant will strictly follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” and other relevant ordinances and practice notes. Hence, the proposed use will not induce significant adverse environmental, traffic and drainage impacts on the surrounding areas.
- (d) Regarding the right of way issue on the proposed access as raised in the public comments, the applicant will liaise with respective land owners and occupants to address their concerns and minimise any nuisance to them.

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

The applicant is not a “current land owner” of the Site 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. 31B) by posting site notice and sending notice to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

**4. Background**

The Site is not subject to any active enforcement action.

**5. Town Planning Board Guidelines**

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. 13G) promulgated by the Board on 14.4.2023 are relevant to the application. The Site falls within Category 2 areas under TPB PG-No. 13G. The relevant extracts of the Guidelines are attached at **Appendix II**.

**6. Previous Application**

There is no previous application at the Site.

**7. Similar Application**

7.1 There is one similar application (No. A/YL-KTN/962) for temporary open storage of construction machinery and materials within the same “AGR” zone in the vicinity of the Site in the past five years which was approved with conditions by the Committee in December 2023 mainly on the considerations that the proposed use on a temporary basis could be tolerated; the proposed use was not incompatible with the surrounding land uses; the application was generally in line with the Town Planning Board Guidelines for application for open storage and port back-up uses; and there was no adverse departmental comment or their technical concerns could be addressed by relevant approval conditions.

7.2 Details of the similar application are summarised in **Appendix III** and its location is shown on **Plan A-1**.

**8. The Site and Its Surrounding Area (Plans A-2 to A-4)**

8.1 The Site is:

- (a) currently vacant; and
- (b) accessible from Mei Fung Road via a local track.

8.2 The surrounding areas are rural in character mainly intermixed with storage/open storage yards (including one site with valid planning permission for temporary warehouse under application No. A/YL-KTN/920), vacant land (with valid planning permission for temporary warehouse under application No. A/YL-KTN/975), dog kennel (with valid planning permission for temporary animal boarding establishment under application No. A/YL-KTN/811), war game centre (without planning permission) and residential dwellings/structures (the nearest is within about 15m to the north). A nullah is within about 3m to the west of the Site and another nullah is about 20m to the south.

**9. Planning Intention**

9.1 The planning intention of the “AGR” zone is primarily 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.

9.2 According to the Explanatory Statement of the OZP for the “AGR” zone, as filling of land/pond may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

**10. Comments from Relevant Government Departments**

10.1 Apart from the government departments as set out in 10.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices IV** and **V** respectively.

10.2 The following government departments do not support the application:

**Agriculture and Nature Conservation**

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

- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation;
- (b) the Site falls within the “AGR” zone and is generally vacant. The agricultural activities are active in the vicinity, and agricultural

infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.; and

- (c) no comment from nature conservation perspective.

### **Environment**

#### 10.2.2 Comments of the Director of Environmental Protection (DEP):

- (a) does not support the application as it involves the use of heavy vehicles and there are sensitive uses within 100m from the Site (**Plan A-2**), environmental nuisance on the nearby residential uses could be generated by the proposed use;
- (b) no comment on the proposed filling of land; and
- (c) no environmental complaint was received concerning the Site in the past three years.

## 11. **Public Comments Received During Statutory Publication Period (Appendix VI)**

The application was published for public inspection. During the statutory public inspection period, six public comments were received from Kadoorie Farm and Botanic Garden, the Conservancy Association and individuals objecting to the application mainly on the grounds that the proposed use is not in line with the planning intention of “AGR” zone; approval of the current application will set an undesirable precedent of “destroy first, build later” practice; unauthorised works may be involved at the Site; consent from nearby lot occupants for right of way of the proposed access was not obtained; and the proposed use with filling of land will lead to adverse drainage and environmental impacts.

## 12. **Planning Considerations and Assessments**

- 12.1 The application is for proposed temporary open storage of construction materials for a period of three years and associated filling of land at the Site zoned “AGR”. The planning intention of the “AGR” zone is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Whilst the proposed use is not in line with the planning intention of “AGR” zone and DAFC does not support the application from agricultural perspective, taking into account the planning assessments below, the proposed use on a temporary basis of three years could be tolerated.
- 12.2 Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and DEP have no objection to or no comment on the proposed filling of land from drainage and environmental perspectives. An approval condition requiring the reinstatement of the Site to an amenity area is recommended

should the Committee decide to approve the application.

- 12.3 The proposed use is considered not incompatible with the surrounding uses with storage/open storage yards, vacant land, war game centre, dog kennel and residential dwellings/structures. The Chief Town Planner/Urban Design and Landscape, Planning Department considers that significant landscape impact is not anticipated and has no objection to the application from landscape planning perspective.
- 12.4 DEP does not support the application as the proposed use involves use of heavy vehicles and environmental nuisance is expected as there are sensitive receivers in the vicinity. To address DEP's concerns, approval conditions restricting the operation hours and prohibiting workshop activities are recommended in paragraph 13.2 below. The applicant is also advised to follow the revised "Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites" issued by DEP to minimise possible environmental nuisances generated by the proposed use.
- 12.5 The Site falls within Category 2 areas under TPB PG-No. 13G. The following considerations in the Guidelines are relevant:
- Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of three 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 use would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 12.6 The application is considered generally in line with TPB PG-No. 13G in that relevant departments consulted including the Commissioner for Transport, CE/MN of DSD and the Director of Fire Services have no objection to or no adverse comment on the application. DEP's concerns can be addressed as mentioned in paragraph 12.4 above. To address the technical requirements of concerned government departments, relevant approval conditions are recommended in paragraph 13.2 below.
- 12.7 There is one approved similar application in the vicinity of the Site as mentioned in paragraph 7.1 above. Approving the current application is in line with the Committee's previous decision.
- 12.8 Regarding the public comments objecting to the application as mentioned in paragraph 11, the Site is currently vacant and the applicant undertakes that liaison with relevant land owners and occupants will be followed. The departmental comments and planning assessments above are also relevant.

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department

considers that the proposed use could be tolerated for a period of three years.

- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of three years until 7.6.2027. 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 9:00 a.m., 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 dismantling, maintenance, repairing, cleansing, paint spraying and other workshop activities shall be carried out on the site at any time during the planning approval period;
- (d) the implementation of the accepted 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 7.3.2025;
- (e) in relation to (d) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (f) the provision of fire extinguisher(s) with a valid fire certificate 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 19.7.2024;
- (g) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.12.2024;
- (h) in relation to (g) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.3.2025;
- (i) if any of the above planning condition (a), (b), (c) or (e) 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;
- (j) if any of the above planning condition (d), (f), (g) or (h) 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
- (k) 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 V**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed use with filling of land is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

## **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**

<b>Appendix I</b>	Application form with attachments received on 6.2.2024
<b>Appendix Ia</b>	FI received on 19.4.2024
<b>Appendix Ib</b>	FI received on 24.5.2024
<b>Appendix II</b>	Relevant extract of TPB PG-No. 13G
<b>Appendix III</b>	Similar application
<b>Appendix IV</b>	Government department's general comments
<b>Appendix V</b>	Recommended advisory clauses
<b>Appendix VI</b>	Public comments



<b>Appendix VII</b>	Fire Services Department's good practice guidelines for open storage sites
<b>Drawing A-1</b>	Site layout plan
<b>Drawing A-2</b>	Land filling plan
<b>Plan A-1</b>	Location plan with similar application
<b>Plan A-2</b>	Site plan
<b>Plan A-3</b>	Aerial photo
<b>Plan A-4</b>	Site photos

**PLANNING DEPARTMENT  
JUNE 2024**