

RNTPC Paper No. A/YL-KTS/933A
For Consideration by
the Rural and New Town
Planning Committee
on 14.10.2022

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/933

<u>Applicant</u>	:	Mr. KOK Yun Kuen represented by PlanArch Consultants Limited
<u>Site</u>	:	Lots 391 RP (Part) and 392 RP in D.D.106, Shek Wu Tong, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	:	About 3,333 m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	:	“Other Specified Uses” annotated “Rural Use” (“OU(RU)”) [Maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]
<u>Application</u>	:	Temporary Open Storage of Electricity Generators, Compressors and Construction Machinery for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary open storage of electricity generators, compressors and construction machinery for a period of 3 years at the application site (the Site). The Site falls within an area zoned “OU(RU)” on the Kam Tin South OZP (**Plan A-1a**) and the applied use is neither a Column 1 nor Column 2 use in the “OU(RU)” zone. According to the covering Notes of the OZP, temporary use or development of any land not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently fenced, paved and used for the applied use without planning permission (**Plans A-2 to A-4b**).

- 1.2 According to the applicant, the development involves 6 structures with a total floor area of about 517 m² and building height ranging from 2.1m to 4.8m (1 to 2 storeys high) for ancillary offices and shelters for storage, with the open-air area be used for circulation and storage uses. Four private car parking spaces and four medium/heavy goods vehicles loading/unloading spaces are provided within the Site. The Site is accessible from Kam Sheung Road to its east. The operation hours are from 7:00 a.m. to 11:00 p.m. on Mondays to Saturdays with no operation on Sundays and statutory holidays. The site layout plan submitted by the applicant is shown on **Drawing A-1**.
- 1.3 The Site is the subject of 16 previous applications for open storage / temporary open storage of electricity generators and compressors with or without maintenance work (detailed in paragraph 6 below). The last application No. A/YL-KTS/823 for the same use with the same development parameters (except the addition of open storage of construction machinery) was approved with conditions for three years by the Rural and New Town Planning Committee (the Committee) in July 2019.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form and supplementary information (**Appendix I**) received on 16.6.2022
 - (b) Planning Statement received on 16.6.2022 (**Appendix Ia**)
 - (c) Further Information (FI) received on 26.7.2022 (**Appendix Ib**)
 - (d) FI received on 22.8.2022 (**Appendix Ic**)
- 1.5 On 12.8.2022, the Committee agreed to the applicant's request to defer making a decision on the application for one month to allow time for the applicant to address the departmental comments. The latest FI was received on 22.8.2022 and the application is scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information, planning statement and FIs at **Appendices I to Ic**. They can be summarized as follows:

- (a) The applied use is temporary in nature and approval of the application will not jeopardize the long-term planning intention of the area zoned "OU(RU)" on the OZP. The addition of storage of construction machinery to the applied use is for meeting the operational need of the development.

- (b) The Site has been used for open storage use under the previous applications approved by the Committee since 1995. The Site is well-maintained and all approval conditions of the previous application related to the drainage, fire safety and landscaping aspects have been complied with. There is no change in the planning circumstances since approval of the last application, and hence sympathetic consideration should be given by the Board.
- (c) The applicant has been undertaking the environmental mitigation measures in accordance with the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- (d) The development will not induce adverse environmental, landscape, drainage and traffic impacts. The operation of the applied use is not incompatible with the surrounding land uses as there are some open storage yard and workshop uses nearby.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines for ‘Designation of “OU(RU)” Zone and Application for Development within “OU(RU)” Zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No.38) is relevant to the application. The relevant assessment criteria are summarized as follows:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

- 4.2 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. 13F) promulgated on 27.3.2020 are relevant to the application. The Site falls within Category 3 areas under the Guidelines. Relevant extract of the Guidelines

is at **Appendix II**.

5. Background

The Site is currently not the subject of any active planning enforcement case.

6. Previous Applications

- 6.1 The Site is the subject of 16 previous applications for open storage / temporary open storage of electricity generators and compressors use (with / without maintenance work) and renewal of the planning approval granted by the Board, all of which were submitted by the same applicant as the current application¹. All the applications, except Application No. A/YL-KTS/19, were approved with conditions by the Committee between December 1995 and July 2019 mainly on the grounds that temporary approval of the applications on a temporary basis would not frustrate the long-term planning intention; the developments were not incompatible with the surrounding land uses; relevant departments in general had no objection to or no adverse comment; their technical concerns could be addressed by appropriate approval conditions; and the applications were generally in line with the then Town Planning Board Guidelines on applications for open storage and port back-up uses, and for renewal of planning approval for temporary use or development, and the Town Planning Board Guidelines on designation of “OU(RU)” and application for development within “OU(RU)” zone.
- 6.2 Application No. A/YL-KTS/19 (for open storage and maintenance of electricity generator and compressor on a permanent basis) was rejected by the Board on review in June 1995 mainly on the grounds that there was insufficient information in the submission to demonstrate that the development would not cause adverse traffic and visual impacts on the surrounding areas; the development might frustrate the planning of the alignment of the Western Corridor Railway at that time; and hence the application was not in line with the then Town Planning Guidelines for application for open storage and port back-up uses.
- 6.3 Compared with the last approved application No. A/YL-KTS/823, the current application is submitted by the same applicant and is the same in terms of the use (except the addition of storage of construction machinery), site area / boundary, layout and major development parameters. The applicant has

¹ Applications No. A/YL-KTS/19, 37, 54, 132, 219, 297 and 383 were submitted under the then “Undetermined” zone on the Kam Tin South OZP. The zoning of the sites has been amended to “OU(RU)” on the draft Kam Tin South OZP No. S/YL-KTS/10 which was gazetted on 22.9.2006.

complied with all the approval conditions and the planning permission lapsed on 6.7.2022.

- 6.4 Details of the previous applications are summarized in **Appendix III** and the locations are shown on **Plan A-1b**.

7. Similar Applications

- 7.1 There are 7 similar applications, involving 5 sites, for various temporary open storage uses within the “OU(RU)” zone in the vicinity of the Site in the past 5 years. All the applications were approved with conditions by the Committee between November 2017 and June 2022 on similar considerations as stated in paragraph 6.1 above.
- 7.2 Details of these applications are summarized in **Appendix III** and the locations are shown on **Plan A-1a**.

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

- 8.1 The Site is:
- (a) paved and fenced off, and currently used for the applied use without planning permission; and
 - (b) located on the western side of Kam Sheung Road with direct access from the road.
- 8.2 The surrounding areas have the following characteristics:
- (a) to its north and northwest are open storage yards, residential structures/dwellings (the nearest less than 10m in the north), nullah and grassland;
 - (b) to its immediate west are an open storage yard and ruin. To the further west, within an area zoned “Village Type Development” (“V”) are residential structures and parking of vehicles;
 - (c) to its south, across a local road, are village houses, an open storage yard, parking of vehicles and active farmland within the “V” zone; and
 - (d) to its east, across Kam Sheung Road, are open storage yards, and a site being used for restaurant and real estate agency (covered by approved application No. A/YL-KTS/890).

9. Planning Intention

The planning intention of the “OU(RU)” zone is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities.

10. Comments from Relevant Government Departments

10.1 Apart from the government department as set out in paragraph 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 department has objection to / reservation on the application:

Environment

Comments of the Director of Environmental Protection (DEP):

- (a) 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 located in the vicinity (the nearest less than 10 m in the north) (**Plan A-2**) and the development involves the use of heavy vehicles, environmental nuisance is thus expected.
- (b) there was no environmental complaint received against the Site in the past 3 years; and
- (c) DEP’s other advisory comments are provided in the Recommended Advisory Clauses in **Appendix V**.

11. Public Comment Received During Statutory Publication Period (Appendix VI)

The application was published for public inspection. During the statutory public inspection period, one public comment was received. An individual objects to the application mainly on the grounds that the development would cause adverse impacts on traffic, environment and fire safety thus affecting the well-being of the villagers nearby.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of electricity generators, compressors and construction machinery for a period of 3 years within the Site zoned “OU(RU)” (**Plan A-1a**). The planning intention of the “OU(RU)” zone is primarily for the preservation of the character of the rural area, and uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. Whilst the development is not in line with the planning intention of the “OU(RU)” zone, there is no known proposal for long-term development at the Site. It is considered that approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “OU(RU)” zone.

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

Category 3 areas: applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals (if required) 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.

12.3 The development is considered not incompatible with the surrounding land uses, which are rural in character predominated by open storage yards, residential dwellings/structures, parking of vehicles, shop and services and grassland. Similar open storage yards could be found within the same “OU(RU)” zone and the adjoining “Agriculture” zone in the east.

12.4 The application is generally in line with the TPB PG-No. 13F in that previous applications for almost the same open storage use have been granted since 1995 and all approval conditions under the last application No. A/YL-KTS/823 have been complied with. Concerned departments consulted, including C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS, have no adverse comment on the application, except DEP, and there is no local objection received against the application as conveyed by DO(YL). The applicant states that the Site is well managed and maintained in respect of the environmental, drainage,

landscaping and fire safety aspects. Compared with the last approved application No. A/YL-KTS/823, the current application submitted by the same applicant is the same in terms of the site area/boundary, layout and major development parameters, except for the addition of storage of construction machinery to the applied use for meeting the applicant's operational need. As there has been no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.

- 12.5 Whilst DEP does not support the application as there are sensitive receivers, i.e. domestic dwellings / structures, in the vicinity of the Site (**Plan A-2**) and the development involving the use of heavy vehicles may result in environmental nuisance, it should be noted that the Site is abutting Kam Sheung Road and ingress/egress to the Site does not need to pass through the nearby domestic structures. Besides, there has been no environmental complaint received against the Site in the past three years. In order to minimize any potential environmental nuisances and address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 13.2 below. In addition, the applicant will be advised to adopt the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Uses" issued by DEP.
- 12.6 A total of 15 previous planning applications for almost the same open storage use at the Site submitted by the same applicant were approved by the Committee between 1995 and 2019 (paragraph 6 and **Plan A-1b** refer). There are seven similar applications within the same "OU(RU)" zone in the vicinity of the Site in the past five years (**Plan A-1a**). All applications were approved with conditions by the Committee on similar considerations as stated in paragraph 6.1 above. Approval of the current application is in line with the Committee's decisions on previous and similar applications
- 12.7 Regarding the public comment on the application as detailed in paragraph 11 above, government departments' comments and planning assessments above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department considers that the applied use could be tolerated for a period of 3 years.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 14.10.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 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 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;
- (d) the peripheral fence wall shall be maintained at all times during the planning approval period;
- (e) the existing drainage facilities within the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a record of the existing drainage facilities on site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 14.1.2023;
- (g) the fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (h) if any of the above planning condition (a), (b), (c), (d), (e) or (g) 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; and
- (i) if the above planning condition (f) 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.

Advisory clauses

The recommended advisory clauses are 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 development is not in line with the planning intention of the “OU(RU)” zone, which is for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. 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 reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application form and supplementary information received on 16.6.2022
Appendix Ia	Planning Statement received on 16.6.2022
Appendix Ib	FI received on 26.7.2022
Appendix Ic	FI received on 22.8.2022
Appendix II	Relevant extract of TPB PG-No. 13F
Appendix III	Previous and similar applications
Appendix IV	Government departments’ general comments
Appendix V	Recommended advisory clauses
Appendix VI	Public comment

Drawing A-1	Site layout plan
Plan A-1a	Location plan with similar applications
Plan A-1b	Previous application plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a & A-4b	Site photos

**PLANNING DEPARTMENT
OCTOBER 2022**