

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/411

- Applicant** : Lemgo Estates Limited represented by Mr. LIT Ying-cheung, Edward
- Site** : Lots 579 RP, 580, 581, 582, 583, 584 (Part) and 590 in D.D.129 and Adjoining Government Land (GL), Lau Fau Shan, Yuen Long, New Territories
- Site Area** : About 5,706m² (including GL of about 1,250m² or 21.9%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/10
- Zoning** : “Green Belt” (“GB”)
- Application** : Temporary Warehouse for Storage of Construction Materials for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary warehouse for storage of construction materials for a period of 3 years and filling of land at the application site (the Site) (**Plan A-1**). The Site falls within an area zoned “GB” on the draft Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/10. According to the covering Notes of the OZP, temporary use or development of any land or building 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. Besides, filling of land within the “GB” zone requires planning permission from the Board. The Site is not involved in any previous planning application. It is currently hard-paved and occupied by the applied use and open storage without valid planning permission (**Plans A-2 to A-4c**).
- 1.2 The Site directly abuts and is accessible from Deep Bay Road at its west. As shown on the layout plan at **Drawing A-1**, the proposal comprises 7 structures of 1 storey (2.44m to 7.54m) high, with a total floor area of about 2,886m². 2 structures are used for warehouses (each with a canopy attached on the side of their entrances) and 1 for open-side canopy, all of which are for storage of construction materials. The remaining 2 structures are used for latrines. A loading/unloading space for medium goods vehicle would be provided. No parking spaces would be provided.

- 1.3 According to the applicant, the operation hours would be between 10 a.m. and 5 p.m. from Mondays to Fridays, and there would be no operation on Saturdays, Sundays and public holidays. The 2 latrines are served by septic tank.
- 1.4 Moreover, according to the applicant, the entire Site (about 5,706m²) has been concrete-paved for about 0.3m in thickness. In addition, 2 concrete platforms (with an area of about 41.8m² and about 180m² respectively, and a thickness of about 1.28m) have been formed underneath the warehouse at the north, and the open-side canopy respectively (**Drawing A-2**). The purposes of the concrete paving and concrete platforms are not specified. The layout plan and the location plan of the concrete platforms are at **Drawings A-1** and **A-2** respectively.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 19.10.2021 (Appendix I)
 - (b) Supporting Planning Statement (Appendix Ia)
 - (c) Supplementary Information (SI) received on 22.10.2021 (Appendix Ib)
 - (d) SI received on 25.10.2021 (Appendix Ic)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the supporting planning statement at **Appendix Ia**. They can be summarised as follows:

- (a) The applied use can address the shortage of land for logistics, transportation and storage of bulky construction materials in the New Territories. It can also provide job opportunities to local residents in the rural area. The applied use is considered most suitable for the Site.
- (b) The applied use has been in existence since the early 1990s. Majority of the existing structures at the Site have been converted since early 1990s for the applied use from the structures permitted under Modification of Tenancies No. 19865 and MT/LM No. 11688, which were only cancelled by the District Lands Officer/Yuen Long on 4.2.2021. The development at the Site has already merged harmoniously with the surroundings. Approval of the application on a temporary basis does not constitute a substantial departure from the planning intention, and would not set an undesirable precedent.
- (c) The Site is located in an area randomly erected with temporary structures. Taking into account the long-existence and the scale of the development, and that ample private land has been formed as loading/unloading area, the applied development is not incompatible with the surroundings.
- (d) The applied use would not cause adverse landscape, traffic, drainage and environmental impacts to the surroundings.
- (e) The applied use is well supported by local residents.

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. For the GL portion, 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. 31A) are not applicable.

4. Town Planning Board Guidelines

Town Planning Board Guidelines for "Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance" (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are summarised as follows and detailed at **Appendix II**.

- (a) there is a general presumption against development (other than redevelopment) in "GB" zone;
- (b) an application for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas;
- (c) the design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, and cause any adverse visual impact on the surrounding environment;
- (d) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features;
- (e) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area;
- (f) the proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution; and
- (g) any proposed development on a slope or hillside should not adversely affect slope stability.

5. Background

The Site is currently not subject to any active planning enforcement action. Should there be sufficient evidence to form an opinion of unauthorised development (UD) under the Town Planning Ordinance, planning enforcement action would be instigated as appropriate.

6. Previous Application

The Site is not involved in any previous planning application.

7. Similar Applications

- 7.1 Within the same “GB” zone, there are 8 similar applications (No. A/YL-LFS/90, 130, 200, 252, 259, 262, 280 and 346) involving 5 sites for temporary warehouse for storage of various materials with or without open storage use. All of them were rejected/dismissed by the Rural and New Town Planning Committee (the Committee), by the Board on review or by the Town Planning Appeal Board (the Appeal Board) on appeal. Details of the similar applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-LFS/90 and 130 involving the same site for temporary warehouse were dismissed by the Appeal Board on appeal in 2003 and 2007 respectively on grounds of insufficient justifications for departure from the planning intention, incompatibility with the surrounding rural character, failure to demonstrate no adverse environmental and/or drainage impacts, and/or setting undesirable precedent.
- 7.3 Applications No. A/YL-LFS/259, 280 and 346 involving 2 sites for temporary warehouse with or without open storage use were rejected by the Committee between 2014 and 2019 mainly on grounds of not in line with the planning intention, not in line with the TPB PG-No. 10 due to incompatibility with the surrounding environment and/or failure to demonstrate no adverse landscape impacts, failure to demonstrate no adverse traffic impact, and/or setting undesirable precedent.
- 7.4 Applications No. A/YL-LFS/200, 252 and 262 involving 2 sites for temporary warehouse with or without open storage use within the Wetland Buffer Area were rejected by the Committee or the Board on review between 2010 and 2014 mainly on similar grounds as stated in paragraph 7.3 above, and/or not in line with the then TPB PG-12B for Application for Developments within the Deep Bay Area under Section 16 of the Town Planning Ordinance.

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

8.1 The Site:

- (a) is entirely concrete-paved and erected with some of the temporary structures under application. It is occupied by the applied use and open storage without valid planning permission; and
- (b) directly abuts and is accessible from Deep Bay Road at its west.

8.2 The surrounding areas have the following characteristics:

- (a) to the north are a warehouse, unused land and shrubland;
- (b) to the east is shrubland intermixed with graves and ruins;

- (c) to the south and southeast are a warehouse with open storage yard, unused land, a pond, ruin and a village house; and
- (d) to the immediate west are a warehouse with open storage, shrubland and vacant land. To the further west across Deep Bay Road is shrubland intermixed with graves.

9. Planning Intention

- 9.1 The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.
- 9.2 As filling of land/pond or excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarised as follows:

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
 - (a) The Site comprises Old Schedule Agricultural Lots (OSALs) and GL. The OSALs are 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 was previously covered by Modification of Tenancy No./Letter of Approval No. MNT 19865 and Letter of Approval No. MT/LM 11688 (**Plan A-2**). For Modification of Tenancy No. MNT 19865, the permitted user of the structures were private residential, porch and watchman shed. For Letter of Approval No. MNT 19865, the permitted user of the structures were pigsty, chicken shed and agricultural store. For Letter of Approval No. MT/LM 11688, the permitted user of the structures were agricultural store, pigsty and porch. However, it was revealed in 2020 that the area covered by the above permit had been altered and extended, and the purposes of use of the structures had been changed. As such, the above permits were cancelled by his office on 26.2.2021.
 - (c) No permission is given for occupation of the GL included in the Site (about 1,250m² subject to verification). The act of occupation of GL without Government’s prior approval is not allowed. It is also noted

that there is a proposed access to be built on the GL (about 1,195m²) connecting Deep Bay Road and the Site. There is no guarantee that a right-of-way over GL will be granted. In addition, according to the established practice, application of Short Term Tenancy for the purpose of access on GL will not be entertained, even if the planning application is approved by the Board.

- (d) Should planning approval be given to the subject planning application, the lot owner of the lots will need to immediately apply to his office for permitting the structures to be erected or to regularise any irregularities on site, if any. The applicant has to either exclude the GL from the Site or immediately apply for a formal approval prior to the actual occupation of the GL. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Application(s) for any of the above will be considered by LandsD acting in the capacity of 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 rent or fee, as may be imposed by LandsD.

Traffic

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

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided within the Site. No vehicles are allowed to queue back to public roads or reverse onto/ from public roads.
- (c) The local track leading to the Site is not under the Transport Department (TD)'s purview. The applicant shall obtain consent of the owners/ managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) Adequate drainage measures shall be provided to prevent surface water running from the Site to the nearby public roads and drains.
- (b) The access road connecting the Site with Deep Bay Road is not and will not be maintained by his office. His office should not be responsible for maintaining any access connecting the Site and Deep Bay Road.

Environment

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

- (a) He does not support the application as the applied use involves heavy vehicles and there is sensitive receiver, i.e. residential dwelling located to the immediate southeast (less than 10m away) of the Site (**Plan A-2**), and environmental nuisances are expected.
- (b) There is no substantiated environmental complaint pertaining to the Site received in the past 3 years.
- (c) Should the application be approved, the applicant should be reminded of the detailed comments at **Appendix V**.

Landscaping

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

- (a) She has reservation on the application from landscape planning perspective.
- (b) The Site is located in an area of rural coastal plain landscape character predominated by tree groups, woodlands and village houses with temporary structures and warehouse observed in the proximity. The Site is hard paved with existing temporary structures generally along the site boundary and no existing vegetation is found in the Site.
- (c) However, by comparing the aerial photos taken in 2013 to 2014 (**Plans A-3b and A-3c**), vegetation clearance and hard paving for making vehicular access to Deep Bay Road were observed within the Site. Significant landscape impact had taken place.
- (d) Approval of the application may encourage similar developments in the area and the cumulative impact of which would result in further degradation of the landscape character and quality of the surrounding environment and undermine the planning intention of the “GB” zone.

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 from drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest that a condition should be stipulated requiring the applicant to submit a drainage proposal, to implement and maintain the proposed drainage facilities to the

satisfaction of his department.

Fire Safety

10.1.7 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 applicant should note his detailed comments on the submission of FSIs proposal at **Appendix V**.

Building Matters

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

- (a) As there is no record of approval granted by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use under application.
- (b) The applicant should be reminded of the detailed comments at **Appendix V**.

District Officer's Comments

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

His office has not received any feedback from locals.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (c) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (d) Project Manager (West), CEDD (PM(W), CEDD);
- (e) Commissioner of Police (C of P);
- (f) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (g) Director of Electrical and Mechanical Services (DEMS).

11. Public Comments Received During Statutory Publication Period

On 29.10.2021, the application was published for public inspection. During the statutory public inspection period, 3 public comments, including Kadoorie Farm and Botanic Garden and 2 individuals (**Appendices IV-1 to IV-3**) were received objecting to the application on grounds that the proposed development is not in line with the planning intention of the "GB" zone and would bring adverse traffic, environmental and fire safety

impacts to villagers living nearby, the “GB” sites that served as buffer shall be protected, and approval of the subject application would send out a wrong message that brownfield uses within “GB” zone are tolerated.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary warehouse for storage of construction materials for a period of 3 years and filling of land. The Site falls within the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. Moreover, filling of land within the “GB” zone requires planning permission from the Board as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. The applied development is not in line with the planning intention of the “GB” zone. Since the Site is located at the centre of the “GB” zone (**Plan A-1**), the applied use of temporary warehouse with associated land filling would affect the integrity of the “GB” zone. There is no strong planning justification given in the submission for a departure of such planning intention.
- 12.2 As stated in TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The development and its vehicular access road should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. The development should not be the source of pollution. In these regards, DEP does not support the application as the applied use involves operation of heavy vehicles and there is sensitive receiver at the immediate southeast (less than 10m away) of the Site (**Plan A-2**). Environmental nuisance is expected. Moreover, CTP/UD&L of PlanD has reservation on the application, as significant landscape impact had taken place between 2013 and 2014 when the northwestern portion of the Site was cleared of vegetation and hard paved for provision of an access to Deep Bay Road (**Plans A-3b and A-3c**). Approval of the application may encourage similar developments in the area and the cumulative impact of which would result in further degradation of the landscape character and quality of the surrounding environment. As such, the applied use and filling of land are considered not in line with TPB PG-No. 10.
- 12.3 The Site is situated in an area rural in character and predominated by shrubland intermixed with temporary structures, graves, unused land and village house. Although there are warehouses, open storage yard and vehicle park in the vicinity, they are suspected UD's subject to enforcement actions by the Planning Authority. As stated in TPB PG-No. 10, the design and layout of any proposed development within “GB” zone should be compatible with the surrounding area. The applied development, which is industrial in nature with concrete paving covering the entire Site, is considered not compatible with the surrounding environment.
- 12.4 Other concerned departments including C for T, DAFC, CE/MN of DSD, H(GEO) of CEDD and D of FS have no objection to or no comment on the applied development from traffic, nature conservation, drainage, geotechnical and fire safety perspectives.
- 12.5 There is no previous planning application covering the Site. Also, no approval for similar applications for warehouse use has been granted by the Committee or the Board within the same “GB” zone. Approval of the application would set an

undesirable precedent and encourage proliferation of warehouses within the same “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment of the area, thereby frustrating the planning intention of the “GB” zone. Rejecting the subject application is in line with the previous decisions of the Committee.

- 12.6 There are 3 public comments received objecting to the application on grounds as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 above and having taken into account the public comments mentioned in paragraph 11 above, the Planning Department does not support the application for the following reasons:

- (a) the applied development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
- (b) the applied development is not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10) in that the applicant fails to demonstrate that the applied development would not have significant adverse environmental and landscape impacts on the surrounding areas; and
- (c) approval of the application would set an undesirable precedent for similar applications for warehouse use within the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the 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 **10.12.2024**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation from 5:00 p.m. to 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no vehicle exceeding 24 tonnes, including heavy goods vehicle and container trailer/tractor, as defined in the Road Traffic Ordinance, is allowed to enter/exit or to be parked/stored on the Site at any time during the planning approval

period;

- (d) no open storage or workshop activities should be carried out on the application site at any time during the planning approval period;
- (e) the submission of a 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 **10.6.2022**;
- (f) in relation to (e) above, the implementation of the 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 **10.9.2022**;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of a fire service installations proposal within **6 months** from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **10.6.2022**;
- (i) in relation to condition (h) above, the implementation of the fire service installations proposal within **9 months** from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **10.9.2022**;
- (j) if any of the above planning conditions (a), (b), (c), (d) 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;
- (k) if any of the above planning conditions (e), (f), (h) or (i) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (l) 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**.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse the planning permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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 permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application Form received on 19.10.2021
Appendix Ia	Supporting Planning Statement
Appendix Ib	Supplementary Information received on 22.10.2021
Appendix Ic	Supplementary Information received on 25.10.2021
Appendix II	Extracts of Town Planning Board Guidelines for Application for Development within Green Belt Zone (TPB PG-No. 10)
Appendix III	Similar Applications within the same “GB” zone
Appendices IV-1 to IV-3	Public Comments Received During Statutory Publication Period
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Location Plan of the Concrete Platforms
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plans A-3a to A-3c	Aerial Photos taken in 2021, 2014 and 2013
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2021**