

RNTPC Paper No. A/YL-PH/936
For Consideration by
the Rural and New Town
Planning Committee
on 13.1.2023

APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/936

<u>Applicant</u>	: Tang Yau Kee Construction Engineering Limited represented by BMI Appraisals Limited
<u>Site</u>	: Lots 371 RP, 373 (Part) and 385 in D.D. 110, Pat Heung, Yuen Long
<u>Site Area</u>	: About 4,763 m ²
<u>Land Status</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zonings</u>	: “Agriculture” (“AGR”) (about 99%) and “Open Storage” (“OS”) (about 1%)
<u>Application</u>	: Renewal of Planning Approval for Temporary Open Storage of Construction Materials and Machinery with Ancillary Office for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary open storage of construction materials and machinery with ancillary office for a period of 3 years. About 99% of the Site falls within an area zoned “AGR” on the Pat Heung OZP and the applied use is neither a Column 1 nor Column 2 use for the “AGR” zone. 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). For the remaining 1% of the Site falling within “OS” zone, the applied use is always permitted. The Site is currently partly fenced off and partly paved, and used for the applied use with valid planning permission under Application No. A/YL-PH/825 (**Plans A-2 to A-4**).

- 1.2 According to the applicant, two single storey structures with a total floor area of about 306.25m² and building height of not more than 7.62m are erected within the Site for ancillary office use. Goods delivered to the Site are stored at the open area, where they will remain stationary until they are transported away on demand. No workshop, industrial, parts breaking or painting activities would be carried out at the Site. The operation hours are between 8:00 a.m. and 6:00 p.m. from Mondays to Saturdays, and there is no operation on Sundays and public holidays. No heavy goods vehicles exceeding 24 tonnes will be used for operation of the development. The Site is accessible from Kam Tai Road via a local track. The site layout plan and vehicular access plan submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.3 The Site is involved in seven previous applications (No. A/YL-PH/359, 419, 474, 618, 682, 739 and 825) for various temporary open storage uses (details at paragraph 6 below). When compared with the last approved application (No. A/YL-PH/825), the current application submitted by the same applicant is the same in terms of the applied use, site area/ boundary, layout and major development parameters. All the approval conditions for application No. A/YL-PH/825 have been complied with and the planning permission is valid until 28.1.2023.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary information (**Appendix I**)
received on 1.12.2022, 7.12.2022 and 9.12.2022
 - (b) Planning statement (**Appendix Ia**)
 - (c) Further information (FI) received on 30.12.2022 (**Appendix Ib**)

2. Justifications from the Applicant

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

- (a) The development is temporary in nature and will not jeopardize the planning intention of the “AGR” zone. The Government will still have full control of the Site for implementation of the “AGR” zone after the planning permission expires.
- (b) Due to economic restructuring and sharp decline in agricultural activities, many farming areas within Shek Kong and Kam Tin have been abandoned or converted into semi-industrial and open storage uses. The applied use provides

a short-term solution to meet the demand for storage space, which cannot be provided in urban areas.

- (c) The applied use is compatible with the surrounding land uses and is in line with the Town Planning Board Guidelines on ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 13F). The Site falls within Category 3 areas and there was no local objection or adverse departmental comments on the application. All the approval conditions for the previous application have been complied with.
- (d) The development will not generate significant adverse traffic, landscape, environmental and drainage impacts. The applicant will make every effort in complying with approval conditions should the application be approved.

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

The applicant is not a “current land owner” 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. 31A) by notifying the current land owners through registered posts. Detailed information would be deposited at the meeting for Member’s inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34D) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.
- 4.2 TPB PG-No. 13F promulgated on 27.3.2020 are relevant to the application. The Site is mainly within Category 3 areas (about 99% of the Site in the “AGR” zone) with a minor portion within Category 1 areas (about 1% of the Site in “OS” zone). The relevant extract of the Guidelines is at **Appendix III**.

5. Background

The Site is currently not subject to any active planning enforcement action.

6. Previous Applications

- 6.1 The Site was involved in seven previous applications (No. A/YL-PH/359, 419, 474, 618, 682, 739 and 825) for various temporary open storage uses.

- 6.2 Applications No. A/YL-PH/359, 417 and 474 were dismissed/ rejected by the Town Planning Appeal Board, the Rural and New Town Planning Committee (the Committee) or the Board on review between 2002 and 2005 on similar grounds that the developments were not in line with the planning intention of the “AGR” zone; the development did not comply with the Town Planning Board Guidelines for Application for “Open Storage and Port Back-up Uses”; there was insufficient information in the submissions to demonstrate that the developments would not have adverse drainage/ environmental impacts; and the approval of the applications would set undesirable precedents.
- 6.3 The last four applications (No. A/YL-PH/618, 682, 739 and 825) for proposed and renewal of planning approval for temporary open storage of constructions materials and machinery with ancillary office for 3 years were approved with conditions by the Committee between 2011 and 2020 for the reasons that the applications were submitted for relocation of the applicant’s original site within the works area of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project with Highways Department’s support (for No. A/YL-PH/618); the developments were not incompatible with the surrounding land uses; temporary planning permission would not frustrate the long term planning intention; the developments were generally in line with the then TPB-PG No. 13E, 34B and 34C in that previous approvals had been granted and the approval conditions under the previous approvals were complied with; there was no adverse comment from relevant government departments and/or their concerns and technical requirements could be addressed by appropriate approval conditions.
- 6.4 Compared with the last Application No. A/YL-PH/825, the current application submitted by the same applicant is the same in terms of the applied use, site area / boundary, layout and major development parameters. The planning permission is valid until 28.1.2023 and all the approval conditions are complied with.
- 6.5 Details of the previous applications are summarised in **Appendix IV** and the locations are shown on **Plan A-1b**.

7. Similar Applications

- 7.1 There are eight similar applications for various temporary open storage uses within the same “AGR” zone in the vicinity of the Site straddling the Kam Tin North OZP and Pat Heung OZP in the past 5 years.

Category 2 areas

- 7.2 There are six applications (Nos. A/YL-KTN/648, 654, 692, 704, 729 and 827), involving five sites, for various temporary open storage uses within the “AGR”

zone in the vicinity of the Site. All the applications were approved with conditions by the Committee between May 2019 and May 2022 for similar reasons as stated in paragraph 6.3 above. However, planning approval for application No. A/YL-KTN/654 was revoked in June 2019 due to non-compliance with approval conditions.

Category 3 areas

- 7.3 There are two applications (Nos. A/YL-PH/774 and A/YL-KTN/706), involving separate sites, for temporary open storage uses within the “AGR” zone in the vicinity of the Site. The latter application (No. A/YL-KTN/706), with its site located within the “AGR” zone on the Kam Tin OZP, was approved with conditions by the Committee in May 2020 on similar grounds as stated in paragraph 6.3 above. The former application (No. A/YL-PH/774) was rejected by the Board on review on 27.7.2018 mainly on the grounds that the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas.
- 7.4 Details of the applications are summarised in **Appendix IV** and the locations are shown on **Plan A-1a**.

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

- 8.1 The Site is:
- (a) currently partly fenced off and partly paved, and used for the applied use with valid planning permission under Application No. A/YL-PH/825; and
 - (b) accessible from Kam Tai Road via a local track.
- 8.2 The surrounding areas have the following characteristics:
- (a) to its north are an open storage yard, a nullah and a construction machinery repair workshop with valid planning permission (No. A/YL-PH/838);
 - (b) to the east are parking of vehicles and graves. To its further east and southeast are religious institutions (i.e. a ‘Fah Tong’ (佛堂) and a church) and residential structures/ dwellings (the nearest less than 20m away);
 - (c) to the south are open storages yards and an orchard; and
 - (d) to the west and southwest are parking of vehicles with valid planning permissions (No. A/YL/KTN/694 and 710), an open storage yard and

the site approved for temporary transitional housing development and hobby farm use (Application No. A/YL-PH/913).

9. Planning Intention

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

10.1 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 V and VI** respectively.

10.2 The following government department has objection to / reservation on the application:

Environment

Comments of the Director of Environmental Protection (DEP):

- (a) there was no environmental complaint received against the Site in the past three years; and
- (b) according to the latest “Code of Practice on Handling the Environmental Aspects of Temporary Use and Open Storage Sites”, she does not support the application as sensitive receivers, i.e. residential structures are found to the southeast (less than 20m away) of the Site and the applied use involve the use of heavy vehicles, environmental nuisance is expected.

11. Public Comment Received During Statutory Publication Period

The application was published for public inspection. During the statutory public inspection period, ~~no~~ a public comment *from an individual* was received. *The individual objected to the application on the grounds that the applied use would induce adverse traffic, environmental, traffic and fire safety impacts to the surrounding areas.*

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning permission for temporary open storage of construction materials and machinery with ancillary office for a period of three years at the Site mostly zoned “AGR” (99%) with a minor portion zoned “OS” (1%). The development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/ fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Nevertheless, DAFC has no comment on the application from both agricultural and nature conservation perspectives. It is considered that the approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone.
- 12.2 The development is considered not incompatible with the surrounding land uses, which are mainly rural in character intermixed with open storage yards, parking of vehicles, workshop, residential structures/ dwellings and religious institutions. Besides, the Site is situated next to Category 2 areas to its west under TPB PG-No. 13F and at the fringe of the “OS” zone to the south, where there are various existing open storage uses.
- 12.3 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 (irrespective of whether the application is submitted by the applicant of previous approval or a different applicant). Sympathetic consideration may be given if genuine efforts have been demonstrated in compliance with approval conditions of the previous planning applications and relevant technical assessments/proposals have been included in the fresh applications, 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 on a temporary basis up to a maximum period of 3 years.
- 12.4 The application is generally in line with the TPB PG-No. 13F and 34D in that previous approvals for the same use were granted since 2011 and all approval conditions under the last approved application (No. A/YL-PH/825) have been complied with. The current application submitted by the same applicant is the same as the last approved application in terms of the applied use, site area / boundary, layout and major development parameters. Relevant departments consulted, except DEP, have no adverse comment on the application and there is no local objection received against the renewal application as conveyed by

DO(YL). As there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.

- 12.5 Concerned departments consulted, except DEP, have no adverse comment on /objection to the application. DEP does not support the application as there are residential dwellings/ structures located to the southeast (less than 20m away) and the applied use involved the use of heavy vehicles, environmental nuisance is expected. Nevertheless, there is no environmental complaint at the Site received in the past three years. To minimise the potential environmental nuisances / technical requirements of concerned departments, appropriate approval conditions are recommended in paragraph 13.2 below. The applicant will also be advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' issued by DEP.
- 12.6 There are seven similar applications for temporary open storage uses within the "AGR" zone in the vicinity of the Site approved by the Committee in the past 5 years. Approval of the current renewal application is in line with the Committee's previous decisions.
- 12.7 ~~No~~ ***An objecting*** public comment was received during the statutory publication period ***as stated in the paragraph 11 above. In this regard, the departmental comments and planning considerations and 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 above***, 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 and be renewed from 29.1.2023 until 28.1.2026. 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 public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no heavy goods vehicles exceeding 24 tonnes, including container

tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be stored/parked at or enter/exit the Site at any time during the planning approval period;

- (d) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (e) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (f) the existing drainage facilities implemented on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of condition records of the existing drainage facilities on the Site within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 29.4.2022;
- (h) if any of the above planning condition (a), (b), (c), (d), (e) or (f) 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 (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice.

[The above approval conditions are the same as those under the planning permission of previous Application No. A/YL-PH/825, except those on conditions related to the traffic and drainage aspect, based on relevant departments' comments from C for T and CE/MN of DSD.]

Advisory clauses

The recommended advisory clauses are at **Appendix VI**.

- 13.3 There is no strong reason to recommend rejection of the renewal application.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for renewal of the planning application.
- 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 with supplementary information received on 1.12.2022, 7.12.2022 and 9.12.2022
Appendix Ia	Planning statement
Appendix Ib	FI received on 30.12.2022
Appendix II	Relevant extract of TPB PG-No. 34D
Appendix III	Relevant extract of TPB PG-No. 13F
Appendix IV	Previous and similar applications
Appendix V	Government departments' general comments
Appendix VI	Recommended advisory clauses
Appendix VII	<i>Public comment</i>
Drawing A-1	Layout plan
Drawing A-2	Vehicular access 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
Plan A-4a & 4b	Site photos

**PLANNING DEPARTMENT
JANUARY 2023**