

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/953

<u>Applicant</u>	: Mr. TANG Shing-chun represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 55 (Part) in D.D. 108, Pat Heung, Yuen Long
<u>Site Area</u>	: About 2,650m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Residential (Group D)” (“R(D)”) [Maximum plot ratio of 0.2 and building height of 2 storeys (6m)]
<u>Application</u>	: Proposed Temporary Open Storage of Construction Materials and Machineries with Ancillary Facilities for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary open storage of construction materials and machineries with ancillary facilities for a period of 3 years and filling of land at the application site (the Site). The Site falls within an area zoned “R(D)” on the Pat Heung OZP (**Plan A-1a**). According to the covering Notes of the OZP, temporary use or development not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). Filling of land within “R(D)” zone also requires planning permission from the Board. The Site is currently paved, erected with a few temporary structures and used for the applied use without planning permission (**Plans A-2 to A-4b**).
- 1.2 According to the applicant, the proposed development involves 1 two-storey structure (about 7m high) with a total floor area of about 216m² for site office, washroom and meter room uses. The applicant also applies for regularization of filling of land to about 34.4mPD to 35.0mPD for the whole site. A private car parking space and a loading/unloading (L/UL) space for medium goods vehicle will be provided at the Site. The proposed operation hours are

between 9:00 a.m. and 6:00 p.m. from Mondays to Saturdays, and there will be no operation on Sundays and public holidays. The Site is accessible to Fan Kam Road via a local track. The site layout plan submitted by the applicant is shown on **Drawing A-1**.

- 1.3 The Site is involved in six previous applications for various temporary open storage and temporary vehicle park uses (details at paragraph 6 below). The planning permission under the last application (No. A/YL-PH/869), which was submitted by the same applicant and for the same use as the current application, was revoked due to non-compliance with approval conditions. Compared with the last application, the current application is generally the same in terms of site area/boundary, layout and major development parameters except a change in the L/UL provision.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with supplementary information (Appendix I) received on 11.5.2023 and 17.5.2023
 - (b) Further Information (FI) received on 7.6.2023 and 8.6.2023* (Appendix Ia)
 - (c) FI received on 12.6.2023* (Appendix Ib)
 - (d) FI received on 19.6.2023 * (Appendix Ic)
 - (e) FI received on 20.6.2023 * (Appendix Id)

** exempted from publication and recounting requirements*

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 and FIs at **Appendices I to Id**, which could be summarised as follows:

- (a) The Site falls within Category 2 areas under Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses in which the Site is considered suitable for open storage use. The applied use is temporary in nature and will not jeopardise the long-term planning intention of the Site. Similar developments approved by the Board could be found in its vicinity.
- (b) The applicant will comply with all the approval conditions to be stipulated by the Board. In order to minimise the environmental nuisance generated by the proposed use, the applicant will strictly follow the 'Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites' issued by the Environmental Protection Department (EPD) and other statutory requirements. The applicant will also follow the Professional Persons Environmental Consultative Committee Practice Notes for sewage

treatment. Only medium goods vehicles will be deployed for transportation of construction materials and machineries. The traffic generated by the proposed development is minimal. No adverse traffic and drainage impacts are anticipated.

- (c) A 2.5m-high solid metal wall will be erected along the site boundary to minimise nuisance to the surrounding area. No dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities will be carried out at the Site. The machineries will only be stored at the Site and no operation of the machineries will be conducted.
- (d) The applicant will remedy the unauthorised building works (UBWs) under lease currently at Site and submit Short Term Waiver application to the Lands Department (LandsD).

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 posting a notice at the Site and sending notice to the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13G) promulgated by the Board on 14.4.2023 are relevant to the application. The Site is within Category 2 areas under TPB PG-No. 13G. The relevant extract of the Guidelines is at **Appendix II**.

5. Background

The current open storage use at the Site would be subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site was involved in six previous applications (No. A/YL-PH/529, 542, 623, 662, 691 and 869). Application No. A/YL-PH/529 for temporary vehicle park use is not relevant to the current application. Applications No. A/YL-PH/542, 623, 662 and 691 for various temporary open storage uses were rejected by the Rural and New Town Planning Committee (the Committee) or the Board upon review between July 2007 and June 2014, mainly on the reasons that the development was not in line with the planning intention; the development did not comply with the then TPB PG-No. 13D/13E; and the applicant failed to demonstrate that the development would not generate

adverse environmental, drainage, traffic and landscape impacts on the surrounding areas.

- 6.2 Application No. A/YL-PH/869 submitted by the same applicant for the same temporary open storage use (with the same layout and major development parameters except the L/UL provision) as the current application was approved with conditions by the Committee in January 2021, mainly on the considerations that temporary approval would not frustrate the long-term planning intention of the “R(D)” zone; the development was not incompatible with the surrounding land uses; there was no adverse departmental comments or the concerns of the departments could be addressed by relevant approval conditions; and the development was generally in line with the then TPB PG-No. 13F. The planning permission under application No. A/YL-PH/869 was revoked in April 2023 due to non-compliance with the approval conditions for submission and/or implementation of drainage and fire service installations (FSIs) proposal within the specified periods.
- 6.3 Details of the applications are summarised in **Appendix III** and their locations are shown on **Plan A-1b**.

7. **Similar Applications**

- 7.1 There are three similar applications (No. A/YL-PH/760, 801 and 909), involving 2 sites, for various temporary open storage uses (including renewal of temporary planning approval) within the same “R(D)” zone in the vicinity of the Site in the past 5 years. Application No. A/YL-PH/760 for temporary open storage of construction materials was rejected by the Board upon review in March 2018 mainly for similar reasons as stated in paragraph 6.1 above. The application was subsequently subject to an appeal (No. 5/2018) by the applicant but was dismissed by the Appeal Board in March 2019. Applications No. A/YL-PH/801 and 909 were approved with conditions by the Committee in March 2019 and May 2022 respectively on similar considerations as stated in paragraph 6.2 above.
- 7.2 Details of these applications are summarised at **Appendix III** and their 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, erected with a few temporary structures and used for the applied use without planning permission; and
 - (b) accessible to Fan Kam Road via a local track.

8.2 The surrounding areas have the following characteristics:

- (a) to the north, east and west are open storage/storage yards, a vehicle repair workshop, residential structures/dwellings (the nearest within about 10m from the Site), grassland and vacant land;
- (b) to the south across a watercourse is grassland; and
- (c) the “Village Type Development” (“V”) zone of the village settlement of Ta Shek Wu (打石湖) is located about 500m to the southwest of the Site (**Plan A-1a**).

9. **Planning Intention**

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low density residential developments subject to planning permission from the Board.

10. **Comments from Relevant Government Departments**

- 10.1 Apart from the government departments 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 departments have adverse comments on/do not support the application:

Land Administration

Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) LandsD has adverse comments on the application;
- (b) 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; and
- (c) LandsD has grave concerns given that there are unauthorised building works and/or uses on Lot No. 55 in D.D. 108 which are already subject to lease enforcement actions according to case priority. The lot owner(s) should remedy the lease breaches as demanded by LandsD.

Environment

Comments of the Director of Environmental Protection (DEP):

- (a) the Environmental Protection Department (EPD) does not support the application as it involves use of heavy vehicles and there is residential dwelling within 100m from the Site boundary (**Plan A-2**), environmental nuisance on the nearby residential uses could be generated by the proposed use;
- (b) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the revised 'Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites' to minimise any potential environmental nuisance from the proposed use; and
- (c) there was no environmental complaint received against the Site in the past three years;

11. Public Comments Received During Statutory Publication Period (Appendix VII)

The application was published for public inspection. During the statutory public inspection period, four public comments from individuals including one representing a group of villagers from Ta Shek Wu were received. The commenters object to the application mainly on the grounds that the development is not in line with the planning intention; the development would cause adverse impacts on traffic, noise, air, drainage and fire safety aspects; and there is previous non-compliance of approval conditions.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of construction materials and machineries with ancillary facilities for a period of 3 years and filling of land at the Site zoned "R(D)". The planning intention of the "R(D)" zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. While the proposed development is not in line with the planning intention of the "R(D)" zone, there is currently no known proposal for long-term development at the Site. It is considered that approval of the application on a temporary basis of 3 years would not jeopardise the long-term planning intention of the Site. Filling of land within the "R(D)" zone requires planning permission from the Board. In this regard, the Chief Engineer/Mainland North of Drainage Services Department and DEP have no objection from the 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.

- 12.2 The development is considered not incompatible with the surrounding land uses, which are mainly rural in character predominated by open storage/ storage yards, grass land and vacant land. While DEP does not support the application considering that environmental nuisance could be generated by the proposed use, the applicant proposes a 2.5m-high solid metal wall along the site boundary to minimise nuisance to the surrounding area. According to the submission, the operation hours will be between 9:00 a.m. to 6:00 p.m. from Mondays to Saturdays only and no workshop activities or operation of the machineries will be carried out at the Site. Relevant approval conditions restricting the operation hours and prohibiting workshop activities are recommended in paragraph 13.2 below. To minimise any potential environmental nuisances, the applicant will be advised to follow the ‘Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites’ issued by EPD.
- 12.3 DLO/YL of LandsD has adverse comments on the application in view of the existing UBWs at the Site. In this regard, the applicant states that remedial action will be followed-up and Short Term Waiver application will be submitted to LandsD. Relevant advisory clause on need for application to LandsD for regularisation for UBWs is also recommended.
- 12.4 The Site falls within Category 2 areas under TPB PG-No. 13G (**Appendix II**). The following guidelines are relevant:
- Category 2 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. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 12.5 The application is considered generally in line with TPB PG-No. 13G in that the concerned departments including the Commissioner for Transport (C for T), the Chief Engineer/ Mainland North of the Drainage Services Department (CE/MN of DSD), the Director of Fire Services (D of FS) and the Director of Agriculture, Fisheries and Conservation (DAFC) have no adverse comments on the application. To address the technical requirements of concerned government departments, relevant approval conditions are also recommended in paragraph 13.2 below. The concerns of DEP and DLO/YL of LandsD could be addressed as mentioned in paragraphs 12.2 and 12.3 above.
- 12.6 The Site is the subject of an approved previous application (No. A/YL-PH/869) submitted by the same applicant for the same temporary open storage use as the current application. The planning permission was revoked due to non-compliance with the approval conditions on submission and/or implementation of drainage and FSIs proposals. For the current application, the applicant has submitted drainage and FSIs proposals in support of the application. CE/MN of DSD and D of FS have no adverse comment on the application. Should the Committee decide to approve the application, the

applicant will be advised that should he fail to comply with the approval conditions again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.

- 12.7 There are two approved similar applications for temporary open storage use within the same “R(D)” zone in the vicinity of the Site in the past 5 years as stated paragraph 7.1 above. The only rejected similar application (No. A/YL-PH/760) is different in planning circumstances from the current application in that the former did not comply with the then TPB PG-No. 13E. In this regard, approving the current application is in line with the Committee’s previous decisions.
- 12.8 For the objecting public comments received as stated in paragraph 11 above, the departmental comments and planning assessments and considerations as stated above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taking into account the public comments 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 23.6.2026. 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 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, operation of machineries or other workshop activities shall be carried out on the site at any time during the planning approval period;
- (d) the submission of a revised 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 23.12.2023;
- (e) in relation to (d) above, the implementation of the revised 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 23.3.2024;

- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the provision of fire extinguisher(s) 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 4.8.2023;
- (h) the submission of a revised 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 23.12.2023;
- (i) in relation to (h) above, the implementation of the revised 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 23.3.2024;
- (j) if any of the above planning condition (a), (b), (c) 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;
- (k) if any of the above planning condition (d), (e), (g), (h) or (i) 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
- (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**.

- 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 "R(D)" zone which is intended primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Town Planning Board. There is no strong planning justification 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

Appendix I	Application form with supplementary information received on 11.5.2023 and 17.5.2023
Appendix Ia	FI received on 7.6.2023 and 8.6.2023
Appendix Ib	FI received on 12.6.2023
Appendix Ic	FI received on 19.6.2023
Appendix Id	FI received on 20.6.2023
Appendix II	Relevant extract of TPB PG-No. 13G
Appendix III	Previous and similar applications
Appendix IV	Government departments' general comments
Appendix V	Recommended advisory clauses
Appendix VI	FSD's good practice guidelines for open storage sites
Appendix VII	Public comments
Drawing A-1	Site layout plan
Plan A-1a	Location plan with similar applications
Plan A-1b	Previous applications plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plans A-4a & 4b	Site photos

**PLANNING DEPARTMENT
JUNE 2023**