

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PN/77

- Applicant** : Topgold Holdings Limited represented by R-riches Property Consultants Limited
- Site** : Lot 8 (Part) in D.D. 135, Sheung Pak Nai, Yuen Long, New Territories
- Site Area** : About 4,904m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Warehouse for Storage of Miscellaneous Goods for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary warehouse for storage of miscellaneous goods for a period of three years and filling of land at the application site (the Site) zoned “AGR” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years requires planning permission from the Town Planning Board (the Board). Besides, filling of land within the “AGR” zone also requires planning permission from the Board. The Site is currently formed and partly concrete-paved, erected with structures, and occupied by storage of miscellaneous items without valid planning permission (**Plans A-2, A-4a to A-4d**).
- 1.2 The Site is accessible from Nim Wan Road via an access track (**Drawing A-2**). As shown on the proposed layout plan at **Drawing A-1**, one two-storey structure (about 13m in height) with a total floor area of about 6,980m² is proposed for warehouse, site office, meter room, fire service pump room and water tank uses. According to the applicant, the Site would be used for storage of miscellaneous goods, such as packaged food, apparel, footwear, electronic goods and furniture. Two parking spaces for private cars and three loading/unloading spaces for light goods vehicles would be provided.
- 1.3 According to the applicant, the operation hours would be from 9:00 a.m. to 7:00 p.m. from Mondays to Saturdays. There would be no operation on Sundays and public holidays. No storage of dangerous goods or workshop activities would be carried out at the Site. Peripheral landscape planting of 39 trees and fencing of 2.5m high would be erected along the site boundary (**Drawing A-4**).

1.4 Moreover, the applicant proposes to fill the entire Site (about 4,904m²)¹ with concrete of about 0.1m to 0.2m in depth for manoeuvring of vehicles and erection of structure (**Drawing A-3**).

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

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|-----|---|------------------------|
| (a) | Application Form with attachments received on 11.3.2024 | (Appendix I) |
| (b) | Further Information (FI) received on 22.3.2024* | (Appendix Ia) |
| (c) | FI received on 10.7.2024* | (Appendix Ib) |
| (d) | FI received on 6.11.2024* | (Appendix Ic) |

** accepted and exempted from publication and recounting requirements*

1.6 On 10.5.2024 and 6.9.2024, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer making a decision on the application for two months each, so as to allow time for the applicant to submit FI to address departmental comments.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments to the Application Form at **Appendix I**. They can be summarised as follows:

- (a) the proposed use would not jeopardise the long-term planning intention of the “AGR” zone;
- (b) there is no active agricultural activity at the Site. The proposed use would better utilise deserted agricultural land and create new employment opportunities;
- (c) the traffic generated by the proposed use would be minimal. Sufficient manoeuvring space would be provided to avoid vehicles turning back onto the local access. Hence, adverse traffic impact is not anticipated;
- (d) the applicant would strictly comply with all pollution control legislations, and strictly follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. Boundary fencing would be erected to minimise nuisance to the surrounding area. The proposed use would not generate significant nuisance on the surrounding areas; and
- (e) adequate mitigation measures will be provided to mitigate any adverse impact arising from the proposed use.

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

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

¹ The extent is indicative only and may be adjusted as appropriate.

4. Background

- 4.1 The Site was largely covered with vegetation and trees, with minor portions used for storage / deposit of containers when the Sheung Pak Nai and Ha Pak Nai Interim Development Permission Area (IDPA) Plan was gazetted on 14.9.1990 (**Plan A-3e**). Between 2016 and 2019 (**Plans A-3b to A-3d**), vegetation clearance (including tree felling) and paving works had been undertaken at the Site. Temporary structures were also erected.
- 4.2 Part of the Site is subject to a planning enforcement action (Case No. E/YL-PN/68) against unauthorized development (UD) involving storage use (including deposit of containers) (**Plan A-2**). Enforcement Notice (EN) was issued to the concerned parties on 14.11.2023 requiring the UD to discontinue, and the Compliance Notice (CN) was issued on 30.9.2024. Subsequently, Reinstatement Notice (RN) was issued on 17.10.2024 requiring the concerned parties to remove the leftover, debris and fill materials (including hard-paving) on the land and to grass the land by 17.1.2025. If the RN is not complied with, prosecution action would be taken.

5. Previous Applications

- 5.1 The Site was, in part or in whole, involved in three previous applications for temporary racing circuit, hobby farm and service area uses. Details of these previous applications are summarised in **Appendix II** and their locations are shown on **Plan A-1**.

Approved application

- 5.2 Application No. A/YL-PN/35 for temporary hobby farm use for a period of three years was approved with conditions by the Committee in 2012. The considerations for this previous application are not relevant to the current application which involves a different use.

Rejected applications

- 5.3 Application No. A/YL-HT/414 covering a much larger site for temporary racing circuit for a period of three years was rejected by the Committee in 2005. The considerations for this previous application are not relevant to the current application which involves a different use.
- 5.4 Application No. A/YL-PN/64 covering the western part of the Site for temporary service area (including vehicular access, manoeuvring space, car parking and loading and unloading bay) to serve the adjoining storage use for a period of three years was rejected by the Board on review on 7.5.2021 mainly on grounds of being not in line with the planning intention, and failure to demonstrate no adverse landscape, environmental and traffic impacts on the surrounding areas. In particular, use of heavy vehicles was involved. Furthermore, the Board also considered that the applicant's claim that the adjoining storage use was a tolerated use could not be substantiated². Compared with the last previous application No.

² The applicant of application No. A/YL-PN/64 claimed that the storage uses adjoining the Site to the south was in operation before gazettal of the IDPA Plan on 14.9.1990 and should be regarded as a tolerated use. The Board also considered that

A/YL-PN/64, the current application is submitted by the same applicant for a different use, with a larger site area (+2,485m² or +102.7%) and total floor area (+6,980m²).

6. Similar Applications

- 6.1 Within the same “AGR” zone, there were two similar applications (No. A/YL-PN/30 and 41) for storage/warehouse with or without open storage use, both of which were rejected by the Committee. Details of the similar applications are summarised at **Appendix II** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-PN/30 for temporary storage of construction materials and equipment, and open storage of construction materials, equipment and containers with watchman quarters for a period of three years was rejected by the Committee on 23.9.2011 mainly on grounds of being not in line with planning intention; the site having high potential for agricultural rehabilitation in view of active agricultural use in the vicinity; incompatible with the landscape character of the surrounding area; no technical assessment submitted to address the potential traffic and environmental impacts; not in line with the then Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses; and setting of undesirable precedent.
- 6.3 Application No. A/YL-PN/41 for warehouse for cleaning supplies and fertilizers for a period of three years was rejected by the Committee on 2.1.2015 mainly on grounds of being not in line with the planning intention; the Site having potential for agricultural rehabilitation in view of active agricultural activities nearby; not compatible with the surrounding rural environment comprising mainly farmland and ponds; failure to demonstrate no adverse environmental and landscape impacts on the surroundings; and setting of undesirable precedent.

7. The Site and Its Surrounding Areas (Plans A-1 to A-4d)

- 7.1 The Site is:
 - (a) formed and partly concrete-paved, partly fenced off, erected with structures, and used for storage of some miscellaneous items without valid planning permission; and
 - (b) accessible via an access track from Nim Wan Road.
- 7.2 The surrounding areas are predominated by woodland. To its north across Nim Wan Road are ponds, cultivated land, graveyards and residential dwellings which fall within the “Coastal Protection Area” (“CPA”) zone. Other uses such as storage yards and village office are also found in the vicinity of the Site. The storage uses in the vicinity are suspected UDs subject to planning enforcement action.

even if the operation at the adjoining site was a tolerated use, it did not necessarily mean that the applied use should be approved to support the tolerated use.

8. Planning Intention

- 8.1 The “AGR” zone is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
- 8.2 As filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government departments as set out in paragraph 9.2 below, other departments consulted have no objection to or no adverse comment on the application. Their general comments on the application and advisory comments are provided in **Appendices III and IV** respectively.
- 9.2 The following government departments have comments / adverse comments on the application:

Land Administration

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

- (a) He has reservation on the planning application since there are unauthorized structures on the private Lot 8 in D.D.135 which are already subject to lease enforcement action. The lot owner(s) should apply for regularization on the lease breaches as demanded by LandsD.
- (b) The applicant should note his advisory comments at **Appendix IV**.

Agriculture and Nature Conservation

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

Agriculture

- (a) He does not support the application from an agricultural perspective.
- (b) The Site falls within the “AGR” zone and is generally vacant and occupied by some structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site possesses potential for agricultural rehabilitation, and can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc.

Nature Conservation

- (c) He has no comment from nature conservation perspective.

Environment

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

- (a) He has no objection to the application as the proposed use does not involve operation of heavy vehicles.
- (b) In the past three years, there are six substantiated environmental complaints on air quality and noise aspects pertaining to the Site, which had been used as a metal recycling workshop. Site inspection in November 2021 revealed that the Site involved processing of metal stock (including loading, unloading, processing and stockpiling), generating noise and evolved air pollutants in the form of dust which caused potential air pollution. An Air Pollution Abatement Notice (APAN) under the Air Pollution Control Ordinance was issued in November 2021. As violation of APAN was found in April 2022, prosecution action was taken and the concerned parties were convicted in October 2022.

Landscaping

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

- (a) The Site is situated in an area of rural landscape predominated by village houses, farmland, ponds and scattered tree groups. Existing ponds and/or active farmlands within the “AGR” and adjoining “CPA” zone are located in close proximity to the Site. The Site is partly hard paved and erected with temporary structures. No existing vegetation is observed within the Site.
- (b) By comparing the aerial photos taken in 2016 and 2019 (**Plans A-3b and A-3d**), vegetation clearance (including tree felling) and concrete paving had been undertaken at the Site. Significant adverse impact on landscape resources had taken place.
- (c) The proposed additional 39 trees (**Drawing A-4**) could not mitigate the impact generated by filling of land on the adjacent ponds and active farmlands within the same “AGR” zone and adjacent “CPA” zone. The proposed use is considered incompatible with the surrounding landscape resources (ponds and active farmlands) and landscape character (rural landscape).

10. Public Comments Received During the Statutory Publication Period

On 22.3.2024, the application was published for public inspection. During the statutory public inspection period, two public comments from Kadoorie Farm & Botanic Garden Corporation and an individual were received (**Appendices V-1 and V-2**) objecting to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; the Site is a ‘destroy first, build later’ case; the proposed use has no merit; and the Site is subject to planning enforcement action.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary warehouse for storage of miscellaneous goods for a period of three years and filling of land (with concrete covering the entire Site) within the “AGR” zone of the OZP (**Plan A-1**). The proposed use with associated filling of land is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from the agricultural perspective on the considerations that the Site possesses potential for agricultural rehabilitation as agricultural activities are active and agricultural infrastructures are available in the vicinity. The Site can be used for agricultural activities such as open-field cultivation, greenhouses, plant nurseries, etc. There is no strong justification given in the submission to warrant a departure from the planning intention, even on a temporary basis.
- 11.2 The Site is located in an area predominated by woodland intermixed with small-scale structures. To the immediate north of the Site across Nim Wan Road is the “CPA” zone predominated by ponds, woodland and agricultural land. The proposed use, with a structure having a building height as high as 13m and a site coverage of 71% and filling of concrete covering the entire Site (about 4,904m²), is considered incompatible with the surrounding environment and land uses.
- 11.3 By comparing the aerial photos taken between 2016 and 2019 (**Plans A-3b to A-3d**), it is noted that vegetation clearance (including tree felling) and concrete paving had been undertaken at the Site. In this regard, CTP/UD&L of PlanD considers that significant landscape impact has taken place. She also considers that the proposed use with associated filling of land is incompatible with the surrounding landscape resources and landscape character of the area, including the ponds and active farmland within the subject “AGR” zone and the adjoining “CPA” zone.
- 11.4 While DEP has no objection to the application, there were six substantiated environmental complaints in the past three years on air quality and noise aspects pertaining to the Site when it was operated as an unauthorized metal recycling workshop. Moreover, DLO/YL, LandsD has reservation on the application since there are unauthorized structure(s) at the Site which are already subject to lease enforcement action. Other relevant government departments including the Commissioner for Transport, Chief Engineer/Mainland North of the Drainage Services Department and Director of Fire Services have no objection to or no adverse comment on the application from traffic, drainage and fire safety perspectives respectively.
- 11.5 No previous planning permission for warehouse use has been granted for the Site. There is also no approved similar application within the same “AGR” zone. Rejection of the current application is in line with the previous decisions of the Committee.
- 11.6 Regarding the two public comments received objecting to the application as stated in paragraph 10 above, the planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) the proposed use with associated filling of land is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate that the proposed use with associated filling of land would not have significant adverse landscape impact on the surrounding areas.

12.2 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 three years until **20.12.2027**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission of a drainage proposal within **6 months** from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.6.2025**;
- (b) in relation to (a) above, the implementation of the drainage proposal within **9 months** from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.9.2025**;
- (c) in relation to (b) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (d) 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 **20.6.2025**;
- (e) in relation to (d) 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 **20.9.2025**;
- (f) if the above planning condition (c) 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;
- (g) if any of the above planning condition (a), (b), (d) or (e) 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

- (h) 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 IV**.

13. Decision Sought

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

14. Attachments

Appendix I	Application Form with Attachments received on 11.3.2024
Appendix Ia	FI received on 22.3.2024
Appendix Ib	FI received on 10.7.2024
Appendix Ic	FI received on 6.11.2024
Appendix II	Previous and Similar Applications
Appendix III	Government Departments' General Comments
Appendix IV	Recommended Advisory Clauses
Appendices V-1 and V-2	Public Comment Received During Statutory Publication Period
Drawing A-1	Proposed Layout Plan
Drawing A-2	Vehicular Access Plan
Drawing A-3	Proposed Land Filling Plan
Drawing A-4	Landscape Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3e	Aerial Photos taken in 2023, 2019, 2017, 2016 and 1990
Plans A-4a to A-4d	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2024**