

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/312

<u>Applicant</u>	: Mr. TONG Peter represented by Ms. MAK Suk Kuen
<u>Site</u>	: Lot 292 in D.D. 112, Lin Fa Tei, Shek Kong, Yuen Long, New Territories
<u>Site Area</u>	: About 1,930 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Open Storage and Warehouse (excluding Dangerous Goods Godown) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary open storage and warehouse (excluding dangerous goods godown) for a period of 3 years. The Site falls within an area zoned “AGR” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘open storage’ and ‘warehouse (excluding dangerous goods godown)’ are neither a Column 1 nor Column 2 use within the “AGR” zone. Nevertheless, temporary use or development of any land or building not exceeding a period of 3 years may be allowed with permission from the Town Planning Board (the Board). The Site is currently used for the applied use without planning permission (**Plans A-4a and A-4b**).
- 1.2 According to the applicant, the Site consists of four single-storey structures with heights of not more than 3.5m and a total floor area of 170m², which are used for warehouse and ancillary office uses. The remaining open area of about 1760m² (about 91%) will mainly be used for open storage, landscaping, car parking and vehicular circulation purposes (**Drawing A-1**). The operation hours are 9 a.m. to 6 p.m. on Mondays to Fridays, 9 a.m. to 1 p.m. on Saturdays, with no operation on Sundays and public holidays. The Site is accessible via a local access road branching off from Kam Sheung Road. One parking space each for medium goods vehicle (MGV) and heavy goods vehicle (HGV) are provided on-site. The layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application Form with Attachment received on **(Appendix I)**
21.6.2021
- (b) Further information (FI) received on 9.8.2021 (*exempted from publication*) **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ia**, and are briefly summarised as follows:

- (a) the applied development is for the storage of drilling equipment and porcelains. No adverse environmental, air, noise and sewage impact is envisaged;
- (b) about 50% of the Site is used as greenery area. As such, the development can better preserve the natural environment of the New Territories as compared with the conventional warehouses;
- (c) the development is for the proposed open storage and warehouse uses only and will not be rented out. There are two staff members on-site, and two MG/HGV parking spaces are used for the shipment of goods only. A maximum of one to two trips per day are anticipated; and
- (d) the development is used for storing goods for the applicant's company. The approval of the development can reduce the operating cost of the company and ease the pressure of staff layoff.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is one of the two "current land owners". He 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 (the Ordinance) (TPB PG-No. 31A) by obtaining consent of the remaining land owner of the Site. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is currently a subject of an active planning enforcement actions (No.: E/YL-SK/234) against unauthorised developments (UD) involving storage use. Enforcement Notices were issued on 10.5.2021 to the concerned parties requiring discontinuation of the UD. If the requirement of the statutory notices was not complied with upon the expiry of the compliance period of the notices, prosecution action would be taken against the notice recipients.

5. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 13F for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13F) promulgated by the Board on 27.3.2020 is relevant to the application. The Site falls within the Category 3 areas under the TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.

6. Previous Application

There is no previous application in respect of the Site.

7. Similar Applications

- 7.1 There are three similar applications (Nos. A/YL-SK/40, 87 and 269) on two different sites for open storage of building materials / vehicles (with warehouse for storage of vehicle parts) uses within the same “AGR” zone on the OZP. Details of these applications are summarised in **Appendix III** and the locations are shown on **Plan A-1**.
- 7.2 These three applications for a period of 12 months or 3 years were rejected by the Rural and New Town Planning Committee (Committee) between 1997 and 2019 mainly on the grounds that the developments were not in line with the planning intention of the “AGR” zone; they did not comply with the relevant Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses; they were incompatible with the surrounding environment; there was insufficient information in the submission to demonstrate that the development would not have adverse visual/drainage impacts; and approval of the applications would set undesirable precedents for similar applications.

8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on **Plan A-3, and site photos on **Plans A-4a** and **A-4b**)**

- 8.1 The Site is:
- (a) currently partly fenced, hard-paved and occupied by the applied use without planning permission; and
 - (b) accessible via a local access road branching off from Kam Sheung Road.
- 8.2 The surrounding areas are predominantly rural in character intermixed with active/fallow farmland and domestic dwellings/structures (**Plan A-2**):
- (a) to its northwest, north and east is a group of residential structures/dwellings sandwiched by some active/fallow farmland;
 - (b) to its west are a gardening site, a storage yard, and a piece of unused land;
 - (c) to its southeast are a vacant hobby farm site (approved under Application No. A/YL-SK/298), a storage yard, and a car washing site; and

- (d) to its south across Kam Sheung Road are a real estate agency (approved under Application No. A/YL-SK/287), a couple of storage yards, a vehicle repairing yard, a gardening site, and a piece of unused land within “Residential (Group D)” (“R(D)”) zone.

9. Planning Intention

The planning intention of the “AGR” zone is 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.

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 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
- (b) should planning approval be given to the planning application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularise any irregularities on-site, if any. Besides, given the applied use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as 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 the Commissioner for Transport (C for T):

- (a) having regard to the FI (**Appendix Ia**), he has no comment on the application from traffic engineering perspective;
- (b) should the application be approved, approval condition that no vehicle is allowed to queue back to or reverse onto/from public

road at any time during the planning approval period should be included; and

- (c) his detailed comments are at **Appendix V**.

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

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) according to the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application since there are sensitive receivers in the vicinity (residential dwellings about 20m away from the Site) and the applied use involves the use of heavy vehicles and environmental nuisance is expected (**Plan A-2**);
- (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 Aspects of Temporary Uses and Open Storage Sites” issued by his department to minimise any potential environmental nuisances; and
- (c) there is no environmental complaint in relation to the Site received in the past three years.

Agriculture and Nature Conservation

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

- (a) as the Site possesses potential for agricultural rehabilitation, the application is not supported from the agricultural point of view;
- (b) the Site falls within the “AGR” zone and is currently a cemented vacant area. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water sources are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc.; and

- (c) he has no comment on the application from nature conservation perspective.

Landscape

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

- (a) he has some reservations on the application from the landscape planning perspective;
- (b) based on aerial photo of 2020, the Site is located in an area of rural inland plains landscape character surrounded by farmlands and clusters of trees. According to his site record taken on 6.7.2021, the Site is partially hard-paved and partially occupied by lawn and planting areas. Temporary structures are observed in the southeastern portion of the Site. Some existing trees of common species are found in the northern and southeastern portion of the Site;
- (c) based on the layout plan provided by the applicant, although direct conflict between the applied development and existing landscape resources within the Site is not anticipated, the applied development is considered not entirely compatible with the surrounding environment comprising farmlands and clusters of trees. Moreover, according to record, no similar development has previously been approved by the Board within the same “AGR” zone, and the latest similar application (No. A/YL-SK/269) for temporary open storage use in proximity to the Site was rejected by the Board in 2019. Should the application be approved, it would encourage more similar developments within the area, and the cumulative impact of such approval would degrade the landscape quality of the surrounding environment; and
- (d) should the application be approved, the applicant should be advised that the approval of the application does not imply approval of tree works such as pruning, transplanting and felling. Tree removal applications should be submitted directly to relevant authority(ies) for approval.

Drainage

10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) he has no objection in-principle to the applied development; and
- (b) should the application be approved, conditions should be stipulated in the approval letter requiring the applicant the submission of a drainage proposal and the implementation and

maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

Building Matters

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

- (a) before any new building works (including containers / open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are unauthorised building works (UBW) under the Buildings Ordinance (BO). An Authorised Person should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (b) for UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO; and
- (c) his detailed comments are at **Appendix V**.

Fire Safety

10.1.9 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 layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans. Good Practice Guidelines for Open Storage Sites (**Appendix VI**) should be adhered to;
- (c) having considered the nature of open storage, approval condition for “the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS.” shall be added. To address this additional approval condition, the applicant shall submit a valid fire certificate (FS 251) to his department for approval; and
- (d) the applicant is reminded that if the proposed structure(s) is required to comply with the BO, detailed fire service

requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

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

he has not received any comments from locals upon close of consultation and he has no particular comment on the application.

10.2 The following Government departments have no objection to/adverse comment on the application:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

11. Public Comments Received During Statutory Publication Period

On 6.7.2021, the application was published for public inspection. During the three-week statutory publication period, a total of 24 public comments (**Appendix IV**) were received from a Yuen Long District Council Member, two Indigenous Inhabitant Representatives and one Resident Representative of Sheung Tsuen, Chairperson and Vice-chairperson of Sheung Tsuen Village Committee and 15 local residents (all in similar letter format), the Kadoorie Farm & Botanic Garden Corporation, and two individuals. Among the 24 public comments, 23 comments object to the application mainly on the grounds that the filling of land at the Site has led to flooding problem in the area; the applied use is incompatible with the surrounding agricultural uses and would lead to soil pollution; the application would worsen the traffic condition and congestion issue at Kam Sheung Road; there is no previous planning approval at the Site; and the provision of open storage and warehouse within the rural area would lead to fire safety hazard and adversely affect the safety and quality of living of the villagers. The remaining one comments that an Enforcement Notice covering the Site has been issued but there is no any corresponding Compliance Notice.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage and warehouse (excluding dangerous goods godown) for a period of 3 years (**Plan A-1**). The planning intention of the "AGR" zone 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. The applied use is not in line with the planning intention of the "AGR" zone. DAFC does not support the application from the agricultural point of view as the Site possesses potential for agricultural rehabilitation and can be used for agricultural activities such as greenhouses and plant nurseries. No

strong planning justification has been given in the submission to merit a departure from the planning intention, even on a temporary basis.

- 12.2 The development is not entirely compatible with the surrounding areas which are predominantly rural in character intermixed with active/fallow farmland and domestic dwellings/structures (**Plan A-2**). CTP/UD&L, PlanD does not support the application and considers that the applied development is not entirely compatible with the surrounding environment comprising farmlands and clusters of trees. Should the application be approved, it would set an undesirable precedent for similar developments within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone.
- 12.3 The application does not comply with the TPB PG-No. 13F in that the Site falls within Category 3 areas where applications would normally not be favorably considered unless the applications are subject to previous planning approvals. It is noted that no previous planning approval has been granted to the Site and there are adverse departmental comments and local objections against the application.
- 12.4 In environmental term, DEP does not support the application since there are sensitive receivers in the vicinity (residential dwellings are about 20m away from the Site) and the proposed use involves the use of heavy vehicles, and environmental nuisance is expected. Other relevant departments including C for T, D of FS, CE/MN of DSD, CE/C of WSD have no objection to/no adverse comments on the application.
- 12.5 There are three similar applications for open storage use with/without warehouse uses within the same “AGR” zone, which were all rejected by the Committee between 1997 and 2019. The Committee’s considerations on these three applications as stated in paragraph 7.2 are generally applicable to the current application. Rejecting the current application is generally in line with the Committee’s previous decisions.
- 12.6 Regarding the 24 public comments received during the statutory publication period, the departmental comments and the 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 comments in paragraph 11, the Planning Department does not support the application for the following reasons:
 - (a) the development is not in line with the planning intention of the “AGR” zone which is intended 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. No strong planning justification has been given in the submission for a departure from the planning intention of the “AGR” zone, even on a temporary basis;

- (b) the development does not comply with the Town Planning Board Guidelines for Application for Temporary Open Storage and Port Back-up Uses (TPB PG-No. 13F) in that no previous planning approval has been granted to the Site and there are adverse departmental comments and local objections against the application;
- (c) the applicant fails to demonstrate that the development would not generate adverse environmental impact to the surrounding areas; and
- (d) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the landscape quality 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 13.8.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 6:00p.m. and 9:00a.m. from Mondays to Fridays and between 1:00p.m. and 9:00a.m. on Saturdays, 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 vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) 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 13.2.2022;
- (e) in relation to (d) 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 13.5.2022;
- (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 24.9.2021;
- (h) the submission of a fire service installation 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 13.2.2022;
- (i) in relation to (h) above, the implementation of the fire service installation 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 13.5.2022;

- (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 the 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 at **Appendix V**.

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 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 the permission should be valid on a temporary basis.

15. Attachments

Appendix I	Application Form with Attachment received on 21.6.2021
Appendix Ia	Further information (FI) received on 9.8.2021
Appendix II	Extract of the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13F)
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Appendix VI	Good Practice Guidelines for Open Storage Sites
Drawing A-1	Layout Plan
Plan A-1	Location Plan

Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2021**