

TPB Paper No. 10847

**For Consideration by
the Town Planning Board on 8.7.2022**

REVIEW OF APPLICATION NO. A/YL-LFS/422
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Warehouse for Storage of Electronic Goods
for a Period of 3 Years and Filling of Land in “Green Belt” Zone,
Lots 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281 and 1282
in D.D.129, Lau Fau Shan, Yuen Long, New Territories**

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1. Background

- 1.1 On 7.1.2022, the applicant, Ocean Union International Logistics Co. Limited, sought planning permission for temporary warehouse for storage of electronic goods for a period of 3 years and filling of land at the application site (the Site) under the section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Green Belt” (“GB”) on the draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (OZP) No. S/YL-LFS/10 at the time of application and the approved Lau Fau Shan and Tsim Bei Tsui OZP No. S/YL-LFS/11 currently in force (**Plan R-1**).
- 1.2 On 4.3.2022, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application for the following reasons:
- (a) the applied development was not in line with the planning intention of the “GB” zone, which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from the planning intention;
 - (b) the applied development was not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ in that the applied development was considered not compatible with the surrounding areas, and the applicant failed to demonstrate that the applied development would not have significant adverse landscape impacts on the surrounding areas;
 - (c) the applicant failed to demonstrate that the applied development would not generate adverse traffic impact on the surrounding areas; and
 - (d) approval of the application would set an undesirable precedent for similar applications for warehouse use within the “GB” zone. The cumulative effect of approving such similar applications would result in a general

degradation of the environment of the area.

- 1.3 The site area is about 4,411m². The entire Site has been hard-paved with concrete or asphalt for an average of 1.5m in thickness. The proposal comprises 4 structures of 1 storey (3m - 7m) high, with a total floor area of about 1,787m² for storage of electronic goods, toilet, ancillary office and guard room uses. 2 parking spaces for medium goods vehicle (MGV), 1 for heavy goods vehicle (HGV) and 1 for private car would be provided. Also, 2 loading/unloading spaces for HGV and MGV each would be provided. The land filling under application is to regularise the hard-paving on-site.
- 1.4 The Site was previously the subject of a planning enforcement action (No. E/YL-LFS/515) against unauthorised development (UD) involving storage use (including deposit of containers) and workshop use (**Plan R-2**). Enforcement Notice (EN) was issued on 6.11.2020 requiring the discontinuance of the UD by 6.2.2021. The UD was subsequently found to have been discontinued, and Compliance Notice was issued on 8.7.2021 for compliance with the EN. The storage use (including deposit of containers) currently at the Site would be subject to planning enforcement action.
- 1.5 For Members' reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-LFS/422 (Annex A)
 - (b) Extract of minutes of the RNTPC Meeting held on 4.3.2022 (Annex B)
 - (c) Secretary of the Board's letter dated 18.3.2022 (Annex C)

2. Application of Review

On 8.4.2022, the applicant applied, under Section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application with written representation in support of the review application (**Annex D**).

3. Justifications from the applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annex D** as summarised below:

Should the application be rejected, the applicant would not be capable to pay wages to its 36 employees. The applicant must pay wages to its employees on time, for they are often the sole breadwinner of their families. The adverse impacts of laying the employees off under the pandemic are unimaginable. Hence, the applicant submitted the review application so as to continue the operation of the company.

4. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-1 and R-2, aerial photo on Plan R-3a and site photos on Plans R-4a to R-4c)

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the section 16 application by the RNTPC were described in paragraph 8 of **Annex A**. There has not been any major change in the planning circumstances of the area since then.
- 4.2 The Site is:
- (a) fenced off, entirely hard-paved with concrete and asphalt, and erected with temporary structures. It is occupied by the applied use without valid planning permission; and
 - (b) located to the south of Deep Bay Road, and is accessible via a local track on government land (GL) and private lots branching off Deep Bay Road.
- 4.3 The surrounding areas have the following characteristics. Some of the uses are suspected UD's subject to enforcement action by the Planning Authority:
- (a) to the immediate north are parking of container vehicles and woodland. The woodland at the northeast of the Site falls within the Tsim Bei Tsui Egret Site of Special Scientific Interest (SSSI);
 - (b) to the further east are the mangroves falling within the Inner Deep Bay SSSI;
 - (c) to the south and southeast are workshops and warehouses. To the further south is a woodland; and
 - (d) to the southwest across a local track is shrubland intermixed with graves.

Planning Intention

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

Town Planning Board Guidelines

- 4.6 Town Planning Board Guidelines for "Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance" (TPB PG-No. 10) are relevant to the application. The relevant assessment criteria are

detailed at Appendix II of **Annex A**.

- 4.7 According to Town Planning Board Guidelines for “Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance” (TPB PG-No. 12C), the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are detailed at Appendix III of **Annex A**.

Previous Application

- 4.8 The Site is not involved in any previous planning application.

Similar Applications

- 4.9 Within the same “GB” zone, there are 9 similar applications (No. A/YL-LFS/90, 130, 200, 252, 259, 262, 280, 346 and 411) involving 6 sites for temporary warehouse for storage of various materials with or without open storage use. All of them were rejected by the RNTPC/the Board on review or dismissed by the Town Planning Appeal Board (the Appeal Board) on appeal. Details of the similar applications are summarised at **Annex E** and their locations are shown on **Plan R-1**.
- 4.10 Applications No. A/YL-LFS/90 and 130 involving the same site for temporary warehouse were dismissed by the Appeal Board on appeal in 2003 and 2007 respectively on grounds of insufficient justifications for departure from the planning intention, incompatibility with the surrounding rural character, failure to demonstrate no adverse environmental and/or drainage impacts, and/or setting undesirable precedent.
- 4.11 Applications No. A/YL-LFS/259, 280, 346 and 411 involving 3 sites for temporary warehouse with or without open storage use were rejected by the RNTPC between 2014 and 2021 mainly on grounds of not in line with the planning intention; not in line with the TPB PG-No. 10 due to incompatibility with the surrounding environment, failure to demonstrate no adverse traffic, landscape and/or environmental impacts, and/or setting undesirable precedent.
- 4.12 Applications No. A/YL-LFS/200, 252 and 262 involving 2 sites for temporary warehouse with or without open storage use within the WBA were rejected by the RNTPC or the Board on review between 2010 and 2014 mainly on similar grounds as stated in paragraph 4.11 above, and/or not in line with the then TPB PG-No. 12B for Application for Developments within the Deep Bay Area under Section 16 of the Ordinance.

5. Comments from Relevant Government Departments

- 5.1 Comments on the section 16 application made by relevant government departments are stated in paragraph 10 of **Annex A**.
- 5.2 For the review application, the relevant government departments have been further consulted and their updated comments are summarised as follows:

District Officer's Comments

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

He has consulted the locals regarding the review application. A local comment from the Village Representatives of Mong Tseng Wai and Mong Tseng Tsuen and villagers (**Annex F**) was received objecting to the review application on grounds that the applied use is not suitable at the protected "GB" zone; the traffic generated by the applied use would induce pedestrian-vehicular conflict at the access road which is substandard; approval of the application would open the flood gate for similar applications; and the applied use would adversely affect the fung shui of the burial ground of the villagers in the vicinity of the Site.

- 5.3 For other relevant government departments further consulted, all maintain their previous views on the section 16 application and have no further comments on the review application. In relation to the reasons for rejection of the section 16 application, the views of the Commissioner for Transport (C for T) and the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) are recapitulated as follows:

Traffic

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

- (a) The traffic of the Site would be through a local track leading to Deep Bay Road which is a single-track road. Based on the submission of the application, the applied use would generate traffic involving medium and heavy goods vehicles.
- (b) The applicant is requested to justify that the nearby public road network has adequate capacity to accommodate the traffic induced by the applied use at the Site. In particular, the traffic impact on the local road should be well assessed as a result of the applied use, since it is highly likely that vehicles in opposite directions need to negotiate with each other where passing bay is not available.

Landscaping

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

- (a) The Site is in rural coastal plains predominated by woodland, scrubland, ponds, hard paved and disturbed by temporary structures and open storages. The Site is covered by self-seeded vegetation along the site boundary. Having compared the site condition through the aerial photos from 2013 to 2021 (**Plans R-3a**

to **R-3d**), vegetation clearance on the tree and vegetation clutter along the site boundary and extensive site formation works with filling of concrete and asphalt were found within the Site.

- (b) As “GB” zone is intended to promote the conservation of the natural environment and no similar application for warehouse use was previously approved in the same “GB” zone, the applied development is considered incompatible with the landscape character of the surrounding landscape setting from landscape planning perspective.

6. Public Comments on the Review Application Received During the Statutory Publication Period

- 6.1 On 29.4.2022, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, 3 public comments were received from the Kadoorie Farm & Botanic Garden Corporation and 2 individuals (**Annexes G-1 to G-3**) objecting to the review application mainly on the grounds that the applied development is not in line with the planning intention of the “GB” zone; the applied development is not far from the Tsim Bei Tsui Egrettry and Inner Deep Bay SSSIs, and the ecologically sensitive Deep Bay coastline; the applied development would generate adverse traffic, environmental and fire safety impacts to the surroundings; and there is no justification for the review application.
- 6.2 4 public comments objecting to/raising concerns over the application were received at the section 16 application stage, which are set out in paragraph 11 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC’s decision on 4.3.2022 to reject the application for temporary warehouse for storage of electronic goods for a period of 3 years and filling of land at the Site zoned “GB” zone on the OZP (**Plan R-1**). The application was rejected for the reasons that the applied development was not in line with the planning intention of the “GB” zone; the applied development was not in line with the TPB PG-No. 10; the applicant failed to demonstrate that the applied development would not generate adverse traffic impact on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications for warehouse use within the “GB” zone.
- 7.2 In the section 17 application, the applicant has provided written justification for the review application on compassionate ground, i.e. continued operation to safeguard the welfare of its employees, which is not a relevant planning consideration. Since the consideration of the subject application by the RNTPC on 4.3.2022, there has been no major change in planning circumstances. Planning considerations and assessments on the review application are appended below.

Planning Intention of the “GB” Zone

- 7.3 The Site falls within the “GB” zone of the OZP, which is primarily intended for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone. Moreover, filling of land within the “GB” zone requires planning permission from the Board as it may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment. The applied use and land filling, involving the entire Site with concrete/asphalt of 1.5m in thickness, are not in line with the planning intention of the “GB” zone. There is no strong planning justification given in the submission for a departure of such planning intention.

Land Use Compatibility

- 7.4 The Site is located in an area predominated by woodland. To its immediate northeast is the Tsim Bei Tsui Egretry SSSI while to its further east is the Inner Deep Bay SSSI (**Plans R-1 and R-2**). Although there are workshops and warehouses to the south and southeast of the Site, they are suspected UD's subject to enforcement action by the Planning Authority. The applied development which had involved vegetation clearance and extensive hard-paving is considered not compatible with the surrounding areas.

Adverse Landscape Impact on the Surrounding Areas

- 7.5 According to the TPB PG-No. 10, an application for new development within “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The development should not involve extensive clearance of existing natural vegetation and affect the existing natural landscape. The design and layout of any proposed development within “GB” zone should be compatible with the surrounding area. In these regards, with reference to the aerial photos taken between 2013 and 2015 (**Plans R-3b to R-3d**), trees and vegetation clutter along the periphery of the Site were cleared, and extensive site formation was undertaken for, inter alia, the applied use. CTP/UD&L of PlanD considered that the applied development is incompatible with the landscape character of the surrounding landscape setting. As such, the applied use and the associated filling of land are considered not in line with the TPB PG-No. 10.

Adverse Traffic Impact

- 7.6 C for T concerns whether the nearby public road network (including the single-track local track leading to Deep Bay Road) has adequate capacity to accommodate the traffic induced by the applied use, particularly when medium and heavy goods vehicle traffic would be generated, and it is highly likely that vehicles in opposite directions need to negotiate with each other where passing bay is not available. However, the applicant has not provided any information to address the above traffic concerns. Hence, there is insufficient information to assess whether the applied use would not have adverse traffic impact on the

surrounding areas.

Setting Undesirable Precedent

- 7.7 There is no previous planning application covering the Site. Also, no approval for similar applications for warehouse use has been granted by the RNTPC or the Board within the same “GB” zone. Approval of the application would set an undesirable precedent and encourage proliferation of warehouses within the same “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the natural environment of the area, thereby frustrating the planning intention of the “GB” zone. Rejecting the review application is in line with the previous decisions of the Board.

Other Departmental Comments

- 7.8 Other concerned departments including the Director of Agriculture, Fisheries and Conservation, Director of Environmental Protection, Chief Engineer/Mainland North of the Drainage Services Department, Head of Geotechnical Engineering Office of the Civil Engineering and Development Department and Director of Fire Services have no objection to or no comment on the applied development from nature conservation, environmental, drainage, geotechnical and fire safety perspectives.

Public Comments

- 7.9 Regarding the local views relayed by DO/YL of HAD as detailed in paragraph 5.2.1 and the public comments received objecting to the review application on the grounds as detailed in paragraph 6 above, the planning considerations and assessments in paragraph 7.1 to 7.8 above are relevant.

8. Planning Department’s Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the local views and public comments mentioned in paragraphs 5.2.1 and 6, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 4.3.2022, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the applied development is not in line with the planning intention of the “GB” zone, which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention;
 - (b) the applied development is not in line with the TPB PG-No. 10 in that the applied development is considered not compatible with the surrounding

areas, and the applicant fails to demonstrate that the applied development would not have significant adverse landscape impacts on the surrounding areas;

- (c) the applicant fails to demonstrate that the applied development would not generate adverse traffic impact on the surrounding areas; and
- (d) approval of the application would set an undesirable precedent for similar applications for warehouse use within the “GB” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

8.2 Alternatively, should the Board 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 **8.7.2025**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no open storage or workshop activities should be carried out on the Site at any time during the planning approval period;
- (b) 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 **8.1.2023**;
- (c) in relation to (b) 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 **8.4.2023**;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a proposal for water supplies for firefighting and fire service installations 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 **8.1.2023**;
- (f) in relation to condition (e) above, the provision of water supplies for firefighting and fire service installations 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 **8.4.2023**;
- (g) if any of the above planning conditions (a) or (d) 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;
- (h) if any of the above planning conditions (b), (c), (e) or (f) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice;

and

- (i) 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 **Annex H**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review 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.

10. Attachments

Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3a to R-3d	Aerial Photos in 2021, 2015, 2014 and 2013
Plans R-4a to R-4c	Site Photos
Annex A	RNTPC Paper No. A/YL-LFS/422
Annex B	Extract of minutes of the RNTPC meeting held on 4.3.2022
Annex C	Secretary of the Board's letter dated 18.3.2022
Annex D	Applicant's letter dated 8.4.2022 applying for review
Annex E	Similar Applications within the same "GB" zone
Annex F	Local comment received
Annexes G-1 to G-3	Public comments received during the statutory publication period of the review application
Annex H	Recommended advisory clauses

**PLANNING DEPARTMENT
JULY 2022**