

REVIEW OF APPLICATION NO. A/YL-PN/64
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Service Area (including Vehicular Access, Manoeuvring Space,
Car Parking and Loading and Unloading Bay) for a Period of 3 Years
in “Agriculture” Zone and area shown as ‘Road’,
Lot 8 (Part) in D.D. 135 and adjoining Government Land (GL),
Sheung Pak Nai, Yuen Long, New Territories**

1. Background

- 1.1 On 24.11.2020, the applicant, Topgold Holdings Limited represented by Aikon Development Consultancy Limited, sought planning permission for temporary service area (including vehicular access, manoeuvring space, car parking and loading and unloading bay) for a period of 3 years under s.16 of the Town Planning Ordinance (the Ordinance) at the application site (the Site). The Site falls within an area zoned “Agriculture” (“AGR”) (about 98.6%) and area shown as ‘Road’ (about 1.4%) on the Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9 (**Plan R-1**).
- 1.2 On 22.1.2021, the Rural and New Town Planning Committee (the RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
 - (a) the applied use was not in line with the planning intention of the “AGR” zone. The planning intention of the “AGR” zone was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis; and
 - (b) the applicant failed to demonstrate that the applied use would not generate adverse landscape, environmental and traffic impacts on the surrounding areas.
- 1.3 The site area is about 2,419m² (including 124.5m² of GL). The Site is accessible from Nim Wan Road (**Plan R-1 and Drawing R-1**). As shown on the layout plan at **Drawing R-1**, there are three heavy goods vehicle parking spaces/ loading and unloading bays to support the operation of two storage operators adjoining the Site. The applicant claims that the two storage operators adjoining the Site to the south are tolerated use under the OZP. The remaining area of the Site would be utilized as vehicular access, vehicle manoeuvring space and landscape area. The operation hours are from 8:00 a.m. to 6:00 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays.
- 1.4 The Site is subject to an enforcement action against unauthorised development (UD)

involving storage use (including deposit of containers) (**Plan R-2**). Enforcement Notice (EN) No. E/YL-PN/56 was served on 18.9.2020 and the UD was subsequently discontinued. Reinstatement Notice was issued on 21.4.2021 requiring the concerned parties to remove the fill materials and to grass the land.

1.5 For Members' reference, the following documents are attached:

- (a) RNTPC Paper No. A/YL-PN/64 (Annex A)
- (b) Extract of minutes of the RNTPC Meeting held on 22.1.2021 (Annex B)
- (c) Secretary of the Board's letter dated 5.2.2021 (Annex C)

2. **Application for Review**

On 18.2.2021, the applicant applied, under section 17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). In support of the review application, the applicant has submitted written representation dated 25.2.2021 providing justifications for the review (**Annex D**).

3. **Justifications from the Applicant**

The grounds for review put forward by the applicant in support of the review application are detailed in the written representation at **Annex D**. They can be summarized as follows:

- (a) The applied use is solely intended to regularize and improve the existing traffic arrangement at the Site in order to support the operation of the tolerated use adjoining the Site. No storage use, or other new uses or developments are involved in the Site.
- (b) No additional traffic flow or loading/unloading activities other than the existing traffic arrangement will be involved in the Site. The applicant is willing to use medium goods vehicles and light goods vehicles and to reduce the total number of vehicular trips in and out of the Site to maximum of twice per day.
- (c) The applicant is willing to adopt various measures including increasing the height of the fencing surrounding the Site to 2.5m, and changing the operation hours, if necessary, to minimise noise impacts to the surrounding areas.
- (d) No additional vegetation clearance or paving will be involved and the applicant will reserve more than 20% of the Site as landscape area to ensure no adverse landscape impact.
- (e) Given the exceptional characteristics of the Site and the above-mentioned intention of the application, approval of the current application would not create an undesirable precedent.

4. The Section 16 Application

The Site and Its Surrounding Areas

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no major change in the situation since then.
- 4.2 The Site is:
- (a) currently hard paved, fenced off and occupied for the applied use without valid planning permission (**Plans R-2, 3a, 4a and 4b**); and
 - (b) accessible from Nim Wan Road.
- 4.3 The surrounding areas have the following characteristics: (**Plans R-2 and 3a**)
- (a) to its immediate east and south are warehouses without valid planning permission. To its south are some residential dwellings and unused land. To its further south is Tsing Shan Firing Range;
 - (b) to its southwest is a pond. To its further west across Nim Wan Road is another pond for temporary fishing ground with valid planning permission; and
 - (c) to its immediate north is a sitting-out area, a storage area and unused land. To its further north across Nim Wan Road are some residential dwellings which are about 49m from the Site, vacant land, storage area, vegetable marketing co-operative society, a latrine, shrubland and a site for an electricity transformer room with valid planning permission.

Planning Intention

- 4.4 There has been no change in planning intention of the concerned “AGR” zone as mentioned in paragraph 8 of **Annex A**.
- 4.5 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.

Previous Applications

- 4.6 The Site is involved in 2 previous applications (No. A/YL-HT/414 and A/YL-PN/35) for temporary racing circuit and temporary hobby farm uses respectively. Details of these previous applications are in **Appendix II of Annex A** and their locations are shown on **Plan R-1**.
- 4.7 Application No. A/YL-HT/414 covering a very large area of 52 ha with 79% of the site falling within the “Green Belt” (“GB”) and “AGR” zones of the then Ha Tsuen OZP and 21% within the “AGR” zone of the Sheung Pak Nai and Ha Pak Nai OZP, for temporary racing circuit for a period of 3 years, was rejected by the RNTPC in 2005. The reasons were not in line with the planning intentions, insufficient

information to demonstrate that it would not have adverse impacts on the Site and the adjacent areas, and setting an undesirable precedent.

- 4.8 Application No. A/YL-PN/35, covering a larger site (about 5,725m²), for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years was approved by the RNTPC in 2012 on the considerations that the long-term planning intention of the area would not be frustrated, no adverse traffic, environmental and drainage impacts and similar approvals had been given. However, the planning permission was revoked on 18.2.2014 due to non-compliance with time-limited approval conditions on provision of fencing, drainage, fire safety and landscape aspects.
- 4.9 Comparing to the last application, the current application was submitted by a different applicant for a different use and on a smaller site.

Similar Applications

- 4.10 Within the same “AGR” zone, there are three similar applications (No. A/YL-PN/30, 38 and 41) for storage use since 17.10.2008. Details of these applications are summarized at **Appendix III of Annex A** and the locations of these application sites are shown on **Plan R-1**.
- 4.11 The three similar applications (No. A/YL-PN/30, 38 and 41) at three sites for various temporary open storage and/or warehouse uses for a period of 3 years each were rejected by the RNTPC between 2011 and 2015 on the grounds of not in line with planning intention, incompatible with surrounding rural environment, not complying with the then TPB PG-No. 13E and/or TPB PG-No. 10 and setting of an undesirable precedent.

5. Comments from Relevant Government Departments

- 5.1 For the review application, the following government departments have been further consulted and their updated comments are summarised as follows:

Traffic

5.1.1 Comments of the Commissioner for Transport (C for T):

- (a) The applied use at the Site may involve access of medium goods vehicles / heavy goods vehicles through Nim Wan Road and Deep Bay Road which are single track roads. The traffic impact to Nim Wan Road and Deep Bay Road should be well-assessed as a result of the applied use, since it is likely that goods vehicles in opposite directions need to negotiate with each other where passing bay is not available.
- (b) The proposed temporary vehicular access, manoeuvring space and car parking spaces are of total area of 2,419 m². Transport Department (TD) is of the view that the proposed area of 2,419m² is more than sufficient for regularizing the access arrangement for adjacent warehouses. The excessive area may generate additional traffic flow to adjacent public roads. If there is additional traffic flow to adjacent public roads, the applicant

shall justify that the nearby public road network has adequate capacity to accommodate the traffic induced by the applied use.

- (c) The warehouse operators shall also consider using light goods vehicles instead of medium goods vehicles / heavy goods vehicles as the transport tool to facilitate the adjacent warehouses. In the case that only light goods vehicles would be used, the area required for temporary vehicular access, manoeuvring space and car parking spaces shall be reviewed and reduced.
- (d) The applicant shall elaborate how the sightline could be improved as a result of the applied use.

Environment

5.1.2 Comment of the Director of Environmental Protection (DEP):

- (a) DEP maintains his previous view of not supporting the application. The application involves the use of medium goods vehicles, as proposed by the applicant under the review application, and there are sensitive receivers of residential use in the vicinity (with the nearest one situated about 49m to the north) (**Plan R-2**), thus environmental nuisance is expected. The applicant fails to demonstrate how the operation of the applied use and the medium goods vehicle traffic traveling along the Nim Wan Road will not cause noise nuisances to the dwellings in the surrounding areas.
- (b) There is no substantiated complaint pertaining to the Site received in the past 3 years.
- (c) Should the planning application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.

5.2 The following Government departments maintain their previous comments on the s.16 application in paragraph 9.1 of **Annex A**, which are recapitulated below:

Land Administration

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

- (a) The Site comprises Old Schedule Agricultural Lot and GL. The Old Schedule Agricultural Lot is 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.
- (b) Lot 8 (Part) in D.D. 135 is covered by a Short Term Waiver (STW) No. 756 for shop (commercial) use.
- (c) No permission is given for occupation of the GL included in the Site (about 124.5m² subject to verification). The act of occupation of GL without Government’s prior approval is not allowed. In addition,

according to the established practice, application of Short Term Tenancy for the purpose of vehicular access will not be entertained, even if the planning application is approved by the Board.

- (d) Should planning approval be given to the application, the STW holders will need to apply to his office for modification of the STW conditions where appropriate. The applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application(s) of any of the above will be considered by LandsD acting in the capacity of 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/are approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Agriculture

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

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

Landscape

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

- (a) He has reservation on the application from the landscape planning perspective.
- (b) The Site, adjoining Nim Wan Road, falls within mainly on “AGR” zone and a minor portion in an area shown as ‘Road’ on the OZP. The Site is subject to two previous applications No. A/YL-HT/414 and A/YL-PN/35 for temporary racing circuit and temporary hobby farm uses. The last application No. A/YL-PN/35 was revoked due to non-compliance with approval conditions including the landscape condition. The current application seeks planning approval for temporary vehicular access, manoeuvring space, car parking and loading and unloading bay use for a period of 3 years.
- (c) With reference to the aerial photo of 2020, the Site is hard paved and used as an open storage yard. Some existing trees are observed to the north outside the Site and a wooded knoll to the south of the Site.

Existing temporary structures are found to the east and immediate south of the Site, while village houses are found to the immediate north and further north of the Site. The Site is situated in an area of rural landscape character predominated by wooded areas and fish ponds. The extensive hard paving within the Site is incompatible with the landscape character of the surrounding area.

- (d) According to the aerial photos from 2008 (**Plan R-3b**) to 2020, the Site was originally covered with dense vegetation. However, vegetation clearance, hard paving and open storage had been observed at the Site over the years. Significant landscape impact has taken place. Approval of the application would encourage other similar applications to blanket clear the site prior to obtaining planning approval. The cumulative effect of which would result in general degradation of landscape quality of the surrounding environment.
- (e) In consideration that the Site is not facing any prominent public frontage and there are existing trees along Nim Wan Road, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

5.3 The following government departments maintain their previous views on the s.16 application as stated in paragraph 9.1 of **Annex A**:

- (a) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
- (b) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Director of Fire Services (D of FS); and
- (e) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD).

5.4 The following government bureau and departments maintain their previous views of having no comment on the review application:

- (a) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (c) Project Manager(West), CEDD (PM/W, CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Antiquities and Monuments Office, Development Bureau (AMO, DEVB); and
- (f) Commissioner of Police (C of P).

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

6.1 On 5.3.2021, the review application was published for public inspection. During the statutory public inspection period, 29 public comments were received from the Kadoorie Farm & Botanic Garden Corporation (KFBG), World Wide Fund for Nature Hong Kong (WWF), Village Representative (VR) of Sheung Pak Nai Tsuen, Ha Tsuen

Rural Committee (HTRC) and 25 individuals (**Annex E**). WWF, KFBG and 24 individuals raised objection to the application while the VR of Sheung Pak Nai Tsuen, HTRC and one individual support the application.

6.2 The objection grounds are summarized as follows:

- (a) the applied use is not in line with the planning intention of the “AGR” zone;
- (b) the Board should not encourage ‘destroy first, develop later’ approach;
- (c) Deep Bay Road and Nim Wan Road are single track roads. The applied use would induce adverse traffic impact to the surrounding areas; and
- (d) the applied use would induce adverse environmental and fire safety impacts to the surrounding residential settlements.

6.3 The supporting grounds are summarized as follows:

- (a) the storage use adjacent to the Site has been in operation for many years. The applied use would not induce additional traffic and environmental impacts to the surrounding areas;
- (b) the applied use could provide sufficient manoeuvring space and parking space for the storage use to ensure road safety at Nim Wan Road;
- (c) the proposed landscape area could improve the environment of the surrounding area; and
- (d) the applied use is temporary in nature which would not frustrate the long-term land use of the “AGR” zone.

6.4 25 public comments were received at the s.16 application stage. WWF, KFBG and 10 individuals raised objection to the application while 13 individuals support the application and details are set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

7.1 The application is for temporary service area (including vehicular access, manoeuvring space, car parking and loading and unloading bay) for a period of 3 years at the Site (**Plan R-1**). The application was rejected by the RNTPC for the reasons that the proposed development was not in line with the planning intention of the “AGR” zone and the applicant failed to demonstrate the proposed development would not generate adverse landscape, environmental and traffic impacts on the surrounding areas.

7.2 The applicant submitted justifications in support of the review application that the applicant is willing to use medium goods vehicles and light goods vehicles instead of heavy goods vehicles to support the operation of the adjoining site, reduce the total number of vehicular trips in and out of the Site to maximum of twice per day, increase the height of the fencing surrounding the Site to 2.5m and change the operation hours if necessary to minimise noise impacts to the surrounding areas and reserve more than 20% of the Site as landscape areas to reduce adverse landscape impact. Since the

consideration of the subject application by the RNTPC on 22.1.2021, there has been no change in planning circumstances. Planning considerations and assessments on the review application are appended below.

Planning Intention of “AGR” Zone

- 7.3 The Site is zoned “AGR” on the OZP, which is primarily intended 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. The applied use, which is to serve the storage use at the adjoining site, is not in line with the planning intention of the “AGR” zone. In this regard, DAFC maintains his view of not supporting the application from agricultural point of view as the Site has potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

Land Use Compatibility

- 7.4 The Site is situated in an area of rural landscape character predominated by wooded areas and fish ponds. The extensive hard paving within the Site is incompatible with the landscape character of the surrounding area (**Plans R-2 and R-3a**). The approval of the application would set an undesirable precedent to encourage other similar applications with site modification prior to planning permission is obtained. The cumulative impact of which would result in a general degradation of the surrounding rural environment. Even though the applicant claims to reserve more than 20% of the Site as landscape area, 80% of the Site would remain hard-paved. In this regard, CTP/UD&L, PlanD maintains his previous view of having reservation on the application from the landscape planning perspective.

Environmental and Traffic Impacts on the Surrounding Areas

- 7.5 Although the applicant is willing to use medium and light goods vehicles instead of heavy goods vehicles on the Site, DEP maintains his view of not supporting the application as it involves the use of medium goods vehicles and there are sensitive receivers of residential use in the vicinity of the Site, with the nearest one located about 49m to its north (**Plan R-2**), and environmental nuisance is expected. After consideration of the justifications in support of the review application submitted by the applicant, C for T maintains his view of having concerns over the traffic impact of the applied use involving the use of medium goods vehicles on Nim Wan Road and Deep Bay Road which are single track roads. Besides, the applicant fails to justify the need of an excessive area (about 2,419m²) for regularizing the access arrangement. C for T considered that the applicant still failed to provide traffic analysis to support his assertion. In this regard, the applicant fails to demonstrate that the proposed use would not have adverse environmental and traffic impacts on the surrounding areas.

Previous and Similar Applications

- 7.6 While there were one approved and one rejected previous applications at the Site, they were for different uses (i.e. temporary hobby farm and temporary racing circuit respectively) covering larger sites, the considerations thereof are of not much relevance to the current application which is for temporary service area to support a storage use. The RNTPC has previously rejected three similar applications (No. A/YL-

PN/30, 38 and 41) at three sites for various temporary open storage or warehouse uses between 2011 and 2015 on the grounds of not in line with planning intention, incompatible with surrounding rural environment, not complying with the then TPB PG-No. 13E and/or TPB PG-No. 10 and setting of an undesirable precedent. Rejection of the current application is in line with the previous decision of the RNTPC. Moreover, there is no exceptional circumstance to approve the application.

Public Comments

- 7.7 There are 29 public comments received, of which 26 object to and 3 support the review application mainly on grounds stated in paragraph 6 above. The planning considerations and assessments in paragraphs 7.1 to 7.6 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments mentioned in paragraph 6 and given that there has been no change in the planning circumstances since the consideration of the subject application by the RNTPC on 22.1.2021, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
- (a) the applied use is not in line with the planning intention of the “AGR” zone. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also 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 such planning intention, even on a temporary basis; and
 - (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape, environmental and traffic impacts on the surrounding areas.
- 8.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **7.5.2024**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation from 6:00 p.m. to 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing boundary fencing should be maintained at all times during the planning approval period;
- (d) the submission of a run-in/out proposal for the Site within **6 months** from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by **7.11.2021**;

- (e) in relation to (d) above, the provision of a run-in/out within **9 months** from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by **7.2.2022**;
- (f) 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 **7.11.2021**;
- (g) in relation to (f) 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 **7.2.2022**;
- (h) in relation to (g) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (i) the submission of a fire service installations proposal within **6 months** from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **7.11.2021**;
- (j) in relation to (i) above, the implementation of the fire service installations proposal within **9 months** from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **7.2.2022**;
- (k) if any of the above planning conditions (a), (b), (c) or (h) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) 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
- (m) upon expiry of the planning permission, the reinstatement of the Site to 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 F**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of 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

Drawing R-1	Layout Plan
Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3a and 3b	Aerial Photo
Plans R-4a and 4b	Site Photos
Annex A	RNTPC Paper No. A/YL-PN/64
Annex B	Extract of minutes of the RNTPC Meeting held on 22.1.2021
Annex C	Secretary of the Board's letter dated 5.2.2021
Annex D	Letter dated 18.2.2021 and written representation dated 25.2.2021 providing justifications for the review
Annex E	Public comments received during statutory publication periods of the review application
Annex F	Recommended advisory clauses

**PLANNING DEPARTMENT
MAY 2021**