

TOWN PLANNING BOARD

TPB Paper No. 10926

**For Consideration by
the Town Planning Board on 15.9.2023**

**REVIEW OF APPLICATION NO. A/YL-TT/578
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Temporary Warehouse for Storage of Construction Equipment
for a Period of 3 Years in “Village Type Development” Zone,
Lot 936 in D.D. 118, No. 66 Nam Hang Tsuen, Yuen Long, New Territories**

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1. Background

- 1.1 On 3.11.2022, the applicant, Concut Engineering Limited represented by Conrad Tang & Associates Limited, sought planning permission for temporary warehouse for storage of construction equipment for a period of three years at the application site (the Site) under section 16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Village Type Development” (“V”) on the draft Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/19 (currently in force¹) (**Plan R-1**).
- 1.2 On 23.12.2022, the Rural and New Town Planning Committee (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 “V” zone, which was primarily for development of Small Houses (SHs) by indigenous villagers. No strong planning justifications had been given in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applied use was not compatible with the surrounding residential character.
- 1.3 There is no change to the development parameters in the review application. To recapitulate, the site area is about 265.2 m². As shown on the layout plan at **Drawing A-2 of Annex A**, the proposal comprises four one-storey structures under five canopies (2.9m to 4.03m high) with a total floor area of about 189.1 m² for warehouse, site office and toilet uses. The ingress/egress point is located at the east of the Site. The warehouse is for storage of construction equipment, including drilling equipment and forklifts. A private car parking space and a loading/unloading (L/UL) space for light van are provided.
- 1.4 For members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TT/578 (**Annex A**)

¹ The Site falls within an area zoned “V” on the approved Tai Tong OZP No. S/YL-TT/18 at the time of submission. There is no change to the “V” zone under the OZP No. S/YL-TT/19 currently in force.

- (b) Extract of minutes of the RNTPC Meeting held on 23.12.2022 **(Annex B)**
- (c) Secretary of the Board's letter dated 13.1.2023 **(Annex C)**

2. Application for Review

- 2.1 On 2.2.2023, the applicant applied, under Section 17(1) of the Ordinance, for a review of RNTPC's decision to reject the application with supplementary information in support of the review application (**Annexes D1 and D2**). On 26.6.2023, the applicant submitted Further Information (FI) (**Annex D3**) to provide further justifications and responses to departmental comments in support of the review application.
- 2.2 The review application was originally scheduled for consideration by the Board on 28.4.2023. Upon the request of the applicant, the Board agreed to defer a decision on the review application for two months on 28.4.2023.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review of the application are detailed in the supplementary information and at **Annexes D2 and D3** as summarised below:

- (a) since there is no SH application approved/under processing within the Site, approval for the applied use on a 3-year temporary basis would not jeopardise the long-term planning intention of the "V" zone;
- (b) in the New Town OZPs such as Sha Tin and Tai Po, industrial buildings (where warehouse use is always permitted) in the vicinity of residential and "V" zones are not uncommon. It demonstrates that warehouse use and residential use are not incompatible uses;
- (c) there are two similar applications (No. A/YL-PH/844 and A/YL-TYST/1123) for temporary warehouse use approved in the Pat Heung and Tong Yan San Tsuen areas. The current application shared similar characteristic and should warrant the same planning considerations;
- (d) to address the comments from the Transport Department, information on the hourly trip generation and trip attraction and the details of parking and L/UL spaces are provided. Adverse traffic impact caused by the applied use is not anticipated;
- (e) an area zoned "Other Specified Uses" annotated "Rural Use" ("OU(RU)") to the immediate east of the Site has been recently re-categorised from Category 3 to Category 2 in the Town Planning Board Guidelines No. 13G (TPB PG-No. 13G)² in which planning permission for open storage and port back-up uses would be

² The Town Planning Board Guidelines No. 13G (TPB PG-No. 13G) on 'Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance' promulgated on 14.4.2023

granted on a temporary basis. Same planning considerations should be adopted for the current application; and

- (f) the applied use has been in operation since 2008 without causing any complaint or adverse impact on the surroundings. Sympathetic consideration should be given to the current application.

4. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-2 to R-4b)

- 4.1 The situation of the Site and its surrounding areas at the time of the consideration of the section 16 application by the RNTPC was described in paragraphs 8.1 and 8.2 of **Annex A**. There has not been any major change in the planning circumstances of the Site and the area since then.
- 4.2 The Site is:
 - (a) accessible from Tai Shu Ha Road West to its east via a local track; and
 - (b) paved and occupied by the applied use without valid planning permission.
- 4.3 The surrounding areas have the following characteristics:
 - (a) comprise predominantly village houses and residential structures with scattered parking of vehicles, open storage/storage yards, a construction site, unused land and vacant land/structures;
 - (b) there are many residential structures in the vicinity of the Site with the nearest ones located to its immediate west; and
 - (c) the parking of vehicles and open storage/storage yards in the vicinity are suspected unauthorized developments (UDs) subject to planning enforcement action.

Planning Intention

- 4.4 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of SHs by indigenous villagers. It is also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

Previous Application

- 4.5 There is no previous application concerning the Site.

Similar Application

- 4.6 There is one similar application for temporary storage of furniture and miscellaneous items for a period of three years (No. A/YL-TT/145) within the subject “V” zone, which was rejected by the RNTPC of the Board on 25.7.2003 mainly on the grounds that the development was not in line with the planning intention of the “V” zone; incompatible with the surrounding residential and rural character; there was no information in the submission to demonstrate that no suitable land within “Open Storage” zones was available for the development; and setting of an undesirable precedent. Details of the application are summarised in **Annex E** and the location of the site is shown on **Plan R-1**.

5. Comments from Relevant Government Departments

- 5.1 Comments of the section 16 application made by relevant government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the following government department has been further consulted and its new/updated comments are summarised as follows:

Traffic

- 5.2.1 Comments of the Commissioner for Transport (C for T):
- (a) no adverse comment on the application;
 - (b) the local track with 2.7m wide leading to the Site is not under her department’s purview. The applicant shall obtain consent of the owners/ managing parties of the local track for using it as the vehicular access to the subject site; and
 - (c) sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road is allowed.
- 5.3 For the review application, the following government department maintains its previous adverse views on the section 16 application in paragraph 9.2 of **Annex A**.

Land Administration

- 5.3.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
- He has grave concerns given that there are unauthorized building works and/or uses on the private lot(s) which are already subject to lease enforcement actions. The lot owner(s) should remedy the lease breaches as demanded by his department.
- 5.4 The following government departments maintain their previous views on the section 16 application as stated in paragraphs 1-6 of **Appendix III** of **Annex A**:

- (a) Chief Highway Engineer/New Territories West, Highways Department;
- (b) Director of Environmental Protection;
- (c) Chief Engineer/Mainland North, Drainage Services Department;
- (d) Director of Fire Services;
- (e) Chief Building Surveyor/New Territories West, Buildings Department; and
- (f) District Officer (Yuen Long), Home Affairs Department.

5.5 The following government departments maintain their previous views of having no objection to/no comment on the application as stated in paragraph 7 of Appendix III of **Annex A**:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department;
and
- (c) Commissioner of Police.

6. Public Comment on the Review Received During the Statutory Publication Period

- 6.1 On 10.2.2023, the review application was published for public inspection. During the statutory public inspection period, a public comment was received from an individual opining that the health and safety of the residents shall be protected (**Annex F**).
- 6.2 A total of three public comments, including two objecting comments and one providing adverse views on the application, were received at the section 16 application stage as set out in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for review of the RNTPC's decision on 23.12.2022 to reject the subject application for temporary warehouse for storage of construction equipment for a period of three years at the Site zoned "V" on the OZP. The application was rejected for the reasons that (i) the applied use was not in line with the planning intention of the "V" zone, which was primarily for development of SHs by indigenous villagers. No strong planning justifications had been given in the submission for a departure from the planning intention, even on a temporary basis; and (ii) the applied use was not compatible with the surrounding residential character.

Justifications for the Review Application

- 7.2 The applicant submitted justifications in support of the review application, mainly on the grounds that (1) approval of the applied use on a temporary basis would not jeopardise the long-term intention of the "V" zone given that the Site was not subject to SH application or approval; (2) it is not uncommon to find industrial buildings (where warehouse use is always permitted) in the vicinity of residential and "V" zones on New Town OZPs which demonstrate that warehouse and residential uses are not incompatible uses; (3) there are two approved applications for temporary warehouse use in the "V" zone on the Pat Heung and Tong Yan San Tsuen OZPs; (4) no adverse traffic impact will be caused by the applied use; (5)

same planning consideration for the nearby “OU(RU)” zone under the latest TPB PG-No. 13G should be adopted; and (6) the applied use has been in existence for many years without causing any complaint or adverse impact on the surroundings and hence sympathetic consideration should be given to the current application.

- 7.3 Since the consideration of the subject application by RNTPC on 23.12.2022, there has been no major change in planning circumstances regarding the applied use, the Site and its surrounding areas. Having considered the justifications under the review submission, the planning considerations and assessments are appended below.

Planning Intention of the “V” Zone

- 7.4 The Site falls within the “V” zone on the OZP which is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of SHs by indigenous villagers. It is also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. The applied use is not in line with the planning intention of the “V” zone. Though there is no SH application approved or under processing at the Site as claimed under Justification (1), the applied use for storage of construction equipment is not serving the village or in support of the village development. There are no strong planning justifications in the submission for a departure from the planning intention, even on a temporary basis.

Land Use Compatibility

- 7.5 The surrounding area of the Site is predominantly village houses and residential structures. It is also located in close proximity to village cluster of Nam Hang Tsuen with the nearest one located to its immediate west (**Plan R-2**). The proposed temporary warehouse use may generate adverse impacts or nuisance to the surrounding area. Although there are scattered open storage/storage yards in the vicinity, they are all suspected UD's subject to planning enforcement action. The applied use is generally considered not compatible with the surrounding residential character.
- 7.6 In Justifications (2) and (3), the applicant contends that industrial buildings (where warehouse use is always permitted) in the vicinity of residential and “V” zones are not uncommon in some New Town OZPs and two approved applications (No. A/YL-PH/844 and A/YL-TYST/1123) in Pat Heung and Tong Yan San Tsuen areas are quoted in support of the argument. In this regard, it should be noted that each application should be assessed based on its own individual circumstances. Application No. A/YL-PH/844 was approved mainly on sympathetic consideration that there were previous approvals and the subject site is mainly surrounded by the Shek Kong Stabling Sidings that the warehouse would allow the residual land parcel to be better utilised. Application No. A/YL-TYST/1123 was approved mainly on sympathetic consideration that there were previous approvals and the subject site would be resumed by the Government for Yuen Long South Development in due course. Furthermore, to address the possible interface issue, industrial and residential uses are designated with different zonings and with appropriate separation measures adopted. For this application, however, the applied use is located in close proximity to the village cluster within the same “V” zone.

The planning circumstances of the current application, including the land use compatibility issue as assessed in paragraph 7.5 above are therefore different from those under the New Town OZPs and the approved cases quoted.

Traffic Aspect

- 7.7 In Justification (4), the applicant claimed that no adverse traffic impact will be caused by the applied use. In this regard, traffic impact was not a rejection reason for the section 16 application.

TPB PG-No. 13G

- 7.8 In Justification (5), the applicant claimed that an area zoned “OU(RU)” to the immediate east of the Site has been re-categorised from Category 3 to Category 2 under the TPB PG-No. 13G and same planning consideration should be adopted for the current application. In this regard, TPB PG-No. 13G is not applicable to the current application as the applied use is outside the scope of the said guidelines.

Setting Undesirable precedent

- 7.9 There is no previous application for warehouse use approved at the Site and no approval for similar applications for warehouse use has been granted by the RNTPC within the “V” zone of the OZP. In Justification (6), the applicant claimed that there is no complaint or adverse impact caused by the applied use since its operation and therefore the application should be given with sympathetic consideration. Approval of the current application would however set an undesirable precedent to rationalise any such non-conforming uses and encourage proliferation of similar developments in the same “V” zone.
- 7.10 There is one similar application (No. A/YL-TT/145) within the same “V” zone which was rejected by the RNTPC in 2003 mainly on the grounds that, amongst others, the development was not in line with the planning intention of the “V” zone and not compatible with the surrounding residential and rural character. Such considerations are generally relevant to the current application. Rejecting the current application is in line with the previous decision of the RNTPC.

Other Department Comments

- 7.11 Whilst DLO/YL, LandsD has grave concerns on the application given there are unauthorized building works and/or uses on the Site which are currently subject to lease enforcement actions, such issues can be dealt with separately under the land administration regime. Other relevant departments, including Director of Environmental Protection, Chief Engineer/Mainland North of Drainage Services Department and Director of Fire Services have no objection to/no adverse comments on the application.

Public Comments

- 7.12 There is one public comment opining to the review application received during the statutory publication period as summarised in paragraph 6 above. The planning considerations and assessments in paragraphs 7.1 to 7.11 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7 above, having taken into account the public comment mentioned in paragraph 6 above and given that there has been no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 23.12.2022, 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 “V” zone, which is primarily for development of SHs by indigenous villagers. No strong planning justifications have been given in the submission for a departure from the planning intention, even on a temporary basis; and
 - (b) the applied use is not compatible with the surrounding residential character.
- 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 three years until 15.9.2026. 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 planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.3.2024;
- (b) in relation to (a) 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 15.6.2024;
- (c) in relation to (b) above, the implemented drainage facilities on the Site 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 planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.3.2024;
- (e) in relation to (d) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.6.2024;
- (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; and
- (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.

Advisory clauses

The recommended advisory clauses are at **Annex G**.

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

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| Plan R-1 | Location Plan |
| Plan R-2 | Site Plan |
| Plan R-3 | Aerial Photo |
| Plan R-4a to R-4b | Site photos |
| Annex A | RNTPC Paper No. A/YL-TT/578 |
| Annex B | Extract of Minutes of the RNTPC Meeting Held on 23.12.2022 |
| Annex C | Secretary of the Board's letter dated 13.1.2023 |
| Annex D1 | Email Dated 2.2.2023 from the Applicant for Review |
| Annex D2 | Supplementary Information |
| Annex D3 | FI received on 26.6.2023 |
| Annex E | Similar Application |
| Annex F | Public Comment |
| Annex G | Recommended Advisory Clauses |

**PLANNING DEPARTMENT
SEPTEMBER 2023**