

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/653

<u>Applicant</u>	:	TAI Hiu Tung represented by R-riches Property Consultants Limited
<u>Site</u>	:	Lot 4115 (Part) in D.D. 104, Kam Tin, Yuen Long
<u>Site Area</u>	:	About 650 m ²
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	:	“Other Specified Uses” annotated “Railway Reserve” (“OU(Railway Reserve)”)
<u>Application</u>	:	Proposed Temporary Open Storage of Construction Materials (Excluding Soil, Cement, Chemical Product and Dangerous Goods) 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 of construction materials (excluding soil, cement, chemical product and dangerous goods) for a period of 3 years. The Site is currently fenced off and mostly vacant (**Plans A-2 to A-4**).
- 1.2 The Site is the subject of two previous applications (No. A/YL-KTN/440 and 515) for the similar temporary open storage use for a period of 2 years which were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 9.5.2014 and 18.3.2016 respectively. All the approval conditions of these applications have been complied with. The planning permission of the last approved application lapsed on 18.3.2018.
- 1.3 According to the applicant, there will be 3 single-storey structures with a building height of about 3.4m and a total floor area of about 52.5m² for office and rain shelter uses. 2 loading and unloading spaces for light goods vehicles (not exceeding 5.5 tonnes) will be provided. There will be 5 staffs working at the Site. The operation hours will be from 8 a.m. to 6 p.m. from Mondays to Fridays and from 8 a.m. to 1 p.m. on Saturdays. There will be no operation on Sundays and public holidays. No workshop activities will be carried out. Septic tank will be used at the

Site. The Site is accessible to Sam Tam Road via a local track. The layout and vehicular access plans submitted by the applicant are at **Drawings A-1 and A-2**.

- 1.4 Compared with the last approved application (No. A/YL-KTN/515), the current application is for similar open storage use submitted by a different applicant for a longer period (from 2 years to 3 years). Both applications have the same site area, number of structures, total floor area and layout.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with supplementary statement and plans received on 25.3.2019 **(Appendix I)**
 - (b) Further Information (FI) received on 7.5.2019 providing response to departmental comments **(Appendix Ia)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary statement and FI in **Appendices I to Ia**. They can be summarized as follows:

- (a) The Site is subject to two previous approved applications for temporary open storage, and approval of the application would not result in undesirable precedent. The proposed development is temporary in nature and would not jeopardize the long-term planning intention of the “OU(Railway Reserve)” zone.
- (b) No land filling/excavation will be carried out within the Site. To minimize adverse traffic impact to the surrounding area, there will be sufficient maneuvering space for the light goods vehicle within the Site and no vehicles will be allowed to queue back to or reverse onto /from outside the Site. Also, no parking space for private car will be provided and staff will be requested to access to the Site by public transport.
- (c) The proposed development will only operate within the Site and the operation will not encroach upon the adjacent “Conservation Area” (“CA”) zone. For sewerage treatment at the Site, all wastewater will be discharged to septic tank to minimize adverse impact to the nearby “CA” zone. Boundary fencing will also be erected to minimize disturbance and pollution to the natural stream along the southern boundary of the Site.
- (d) If the application is approved, the applicant will reinstate the Site into an amenity area after the expiry of planning permission and submit and implement landscape, fire services installations and drainage proposals to fulfil relevant approval conditions.

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

The applicant is not a “current land owner” but 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 (TPB PG-No. 31A) by posting site notice and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E) is relevant to application. The Site is within Category 2 areas under TPB PG-No. 13E promulgated by the Town Planning Board (the Board) on 17.10.2008. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The Site is subject to on-going planning enforcement action (No. E/YL-KTN/485) against an unauthorized development (UD) involving storage use. Enforcement Notice (EN) was issued on 19.3.2019 to the concerned parties requiring discontinuation of the UD. If requirement of the EN is not complied with upon expiry of the compliance period of the notice, the concerned parties will be subject to further enforcement action.

6. Previous Applications

6.1 The Site was involved in two previous applications (No. A/YL-KTN/440 and 515) for similar temporary open storage use but submitted by a different applicant as the current application. Details of the applications and their locations are shown in **Appendix III** and **Plan A-1** respectively.

6.2 The applications for temporary open storage of construction materials (excluding cement, sand, chemical product, dangerous goods)/renewal application were approved with conditions by the Committee on 9.5.2014 and 18.3.2016 respectively for the reasons that the exact alignment and development programme of the proposed Northern Link (NOL) had yet to be finalized and temporary approval would not jeopardize the long-term planning intention of the “OU(Railway Reserve)” zone; the development was not incompatible with the surrounding land uses; the application was generally in line with TPB PG-No. 13E in that relevant departments except Director of Environmental Protection (DEP) had no adverse comment on the application and previous approval had been granted; environmental concern could be addressed by appropriate approval conditions; and previous approval has been granted to similar applications within the same “OU(Railway Reserve)” zone. All approval conditions of both applications had been complied with, and the planning permission of the last approved application lapsed on 18.3.2018.

7. Similar Applications

- 7.1 There were a total of 13 similar applications (No. A/YL-KTN/313, 327, 342, 353, 362, 414, 419, 425, 476, 480, 534, 586 and 591) for various temporary open storage uses within the same “OU(Railway Reserve)” zone since the promulgation of TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 All applications for planning permission/renewal application were approved with conditions by the Committee between 2008 and 2018 for similar reasons that the alignment of the proposed NOL had yet to be finalised and temporary approvals would not jeopardize the long term planning intention of the “OU(Railway Reserve)” zone; the proposed developments were not incompatible with the surrounding land uses; the applications were generally in line with TPB PG-No.13E in that relevant departments except the DEP had no adverse comment on the application and previous approvals had been granted; environmental concern could be addressed by appropriate approval conditions; and previous approvals have been granted for similar use in the same zone. However, the planning permissions for application Nos. A/YL-KTN/313, 362, 414, 419, 476 and 480 were revoked on 23.1.2009, 22.10.2012, 6.12.2014, 24.1.2014 (for both A/YL-KTN/414 and 419), 4.2.2018 and 8.4.2017 respectively due to non-compliance with approval conditions.

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

- 8.1 The Site is:
- (a) currently fenced-off and mostly vacant; and
 - (b) accessible via a local track from San Tam Road.
- 8.2 The surrounding areas are rural in characters predominated by residential structures/dwellings, cultivated agricultural land, storage/open storage yards, parking of vehicles and vacant/unused land:
- (a) to its south is a private club and canteen with planning permission (No. A/YL-KTN/592) for temporary shop and services (financial institution) with ancillary staff canteen. Further south are residential dwellings/structures, cultivated agricultural land, parking of vehicles and vacant/unused land. An area zoned “Industrial (Group D)” is located to the further southeast and mainly occupied by residential structures/dwellings and an open storage yard;
 - (b) to its north are residential structures/dwellings (the nearest about 15m away), cultivated agricultural land, storage yard and unused land;
 - (c) to its immediate east is an area zoned “Conservation Area” (“CA”) which are mainly vacant/unused land, parking of vehicles and cultivated agricultural land; and

- (d) to its west are cultivated agricultural land and unused land. San Tam Road is at the further west.

9. Planning Intention

The planning intention of the “OU(Railway Reserve)” is primarily for railway development. According to the Explanatory Statement, the area covers the proposed NOL alignment, and the exact alignment of the NOL has yet to be finalized.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views on the application are summarized 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.
- (b) The Site is accessible from San Tam Road through Government land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the planning application, the lot owner will need to apply to his office to permit structures to be erected or regularize any irregularity on Site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by the LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such applications will be approved. If such applications 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 the LandsD.

Traffic

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

- (a) Should the application be approved, the approval conditions on only light goods vehicle is allowed to access the Site and 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.
- (b) The Site is connected to the public road network via a section of a local access which is not managed by Transport Department. The land status of the local access road should be clarified with the LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) HyD does not and will not maintain any access connecting the Site and Sam Tam Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD2-2, RDO, HyD):

- (a) The Site falls within the administrative route protection for the proposed Northern Link (NOL), which is a recommended railway scheme under the Railway Development Strategy 2014 (RDS-2014). Although the programme and the alignment of the proposed NOL are still under review, those areas within the administrative route protection boundary maybe required to be vacated at the time for the construction of the NOL and subject to nuisance, such as noise and vibration of the proposed NOL.
- (b) He has no in-principle objection to the application from the development point of view of the NOL, provided that the applicant is satisfied with the surrounding condition of nuisance taking into account the future construction, operation and maintenance of NOL.

Environment

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

- (a) No substantiated environmental complaint concerning the Site has been received in the past 3 years.

- (b) According to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP), he does not support the application as there are sensitive receivers, i.e. residential structure/dwellings located in the vicinity of the Site (the closest one is about 15m to its north) (**Plan A-2**), and environmental nuisance is expected.
- (c) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest COP issued by DEP.

Nature Conservation

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

- (a) The Site falls within “OU(Railway Reserve)” zone and is already hard-paved. On the other hand, it is abutting “CA” zone to the east. The applicant stated that the proposed development will not encroach upon the adjacent “CA” zone and a boundary fence will be erected to minimize disturbance and pollution to the natural stream along the southern boundary of the Site. In addition, all wastewater will be discharged to septic tank to minimize adverse impact to the “CA” zone. In view of the above, he has no strong view on the application from nature conservation point of view.
- (b) Should the application be approved, appropriate condition should be imposed to require the applicant to set up a peripheral fencing to separate from the adjoining “CA” zone and the adjacent watercourse. The applicant should also adopt necessary measures to minimize disturbance or pollution to the adjacent “CA” zone and watercourse during operation.

Landscape

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

In consideration that some existing trees were located along the boundary within the Site, should the application be approved, approval condition on the maintenance of existing trees within the Site in healthy condition at all times during the approval period should be included.

Drainage

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

- (a) He has no in-principle objection to the proposed development.
- (b) Presumably, the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-KTN/515.
- (c) Should the application be approved, conditions requiring the applicant to maintain the drainage facilities implemented under application No. A/YL-KTN/515 and to submit records of the existing drainage facilities on site should be included.

Fire Safety

10.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no in-principle objection to the application 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 FSI to be installed should be clearly marked on the layout plans. Besides, the good practice guidelines for open storage sites in **Appendix V** should be adhered to.
- (c) Having considered the nature of the open storage use, the condition on provision of fire extinguisher(s) within 6 weeks from the date of the planning approval should be included in the planning permission. To address this condition, the applicant should submit a valid fire certificate (FS251) to his department for approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

10.1.10 Comments of the Chief Building Surveyor/NT West, Buildings Department (CBS/NTW, BD):

- (a) Before any new building works (including containers/ open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of BD should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they are UBW under the BO and should not be designated for use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's 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.
- (d) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (e) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Public Safety

10.1.11 Comments of the Commissioner of Police (C of P):

He has no comment on the application. The applicant is advised that sufficient security measures such as CCTV coverage, employment of security guard, flood lighting and barbed wire fence, etc. are expected to be installed at the Site as preventive of crime.

District Officer's Comments

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

His office has not received any local's comment and he has no comment

on the application.

10.2 The following Government departments have no comment on the application:

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

11. Public Comment Received During Statutory Publication Period

On 2.4.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 23.4.2019, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of construction materials (excluding soil, cement, chemical product and dangerous goods) at the Site within the “OU(Railway Reserve)” zone. The planning intention is primarily for reservation of land for railway development, i.e. the NOL. Although the proposed development is not in line with the planning intention of “OU(Railway Reserve)” zone, CE/RD2-2, RDO of HyD advised that the alignment and development programme of the NOL is still under review and he has no in-principle objection to the application from the development point of view of the NOL project. It is considered that approval of the application on a temporary basis of 3 years would not frustrate the long-term planning intention of the “OU(Railway Reserve)” zone.
- 12.2 The proposed development is considered not incompatible with the surrounding land uses predominated by residential structures/dwellings, cultivated agricultural land, storage/open storage yards, parking of vehicles and vacant/unused land. Furthermore, an area located to the southeast of the Site is zoned “I(D)” which is intended for rural industrial uses.
- 12.3 According to TPB PG-No. 13E, the Site falls within Category 2 areas. The following guidelines are relevant:

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
- 12.4 The application is generally in line with TPB PG-No. 13E in that there is no adverse comment from the concerned Government departments except DEP and no

local objection was received during the statutory publication period. The Site was subject to previous applications for similar temporary open storage use which were approved with conditions by the Committee in 2014 and 2016. All the approval conditions of these applications have been complied with. The current application is the same as the last approved application in terms of site area, total floor area and layout. As there is no major change in the planning circumstances since the previous planning approvals, sympathetic consideration could be given to the current application.

- 12.5 Although DEP does not support the application as there are residential structures/dwellings located in the vicinity of the Site (the closest one is about 15m to its north) (**Plan A-2**) and environmental nuisance is expected, there was no environmental complaint concerning the Site received by DEP in the past three years. To minimize the possible environmental nuisance, approval conditions restricting the operation hours and prohibiting the use of medium or heavy goods vehicles and workshop activities are recommended in paragraph 13.2 (a) to (d) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to undertake the relevant environmental mitigation measures and requirements as set out in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, DAFC, CTP/UD&L of PlanD, CE/MN of DSD and D of FS can be addressed by imposing the approval conditions recommended in paragraphs 13.2 (e) to (m) below.
- 12.6 All 13 similar applications for various temporary open storage uses within the same “OU(Railway Reserve)” zone were approved with conditions by the Committee since 2008. The applications were approved mainly on the consideration that the applications were generally in line with TPB PG-No. 13E (paragraph 7.2 and **Plan A-1** refer). In this regard, approval of the application is in line with the Committee’s previous decision.
- 12.7 No public comment was received during the statutory publication period.

13. Planning Department’s View

- 13.1 Based on the assessments made in paragraph 12, the PlanD considers that the proposed temporary open storage of construction materials (excluding soil, cement, chemical product and dangerous goods) could be tolerated for a period of 3 years.
- 13.2 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 17.5.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no operation between 1:00 p.m. and 6:00 p.m. on Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (e) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (f) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (g) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (h) the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the provision of boundary fencing on the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 17.11.2019;
- (j) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.8.2019;
- (k) the provision of fire extinguisher(s) with a valid fire certificate (FS 251) 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 28.6.2019;
- (l) the submission of 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 17.11.2019;
- (m) in relation to (l) above, the implementation of 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 17.2.2020;
- (n) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g) or (h) 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

- (o) if any of the above planning conditions (i), (j), (k), (l) or (m) 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 attached at **Appendix VI**.

13.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' consideration:

- (a) the proposed development is not in line with the planning intention of the "OU(Railway Reserve)" zone which is primarily for railway development. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate that the proposed development would not generate environmental nuisance on the surrounding areas.

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 approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. Attachments

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| Appendix I | Application Form received on 25.3.2019 |
| Appendix Ia | FI received on 7.5.2019 providing response to departmental comments |
| Appendix II | Relevant extract of Town Planning Board Guidelines for "Application for Open Storage and Port Back-up Uses" (TPB PG-No. 13E) |
| Appendix III | Previous applications covering the Site |
| Appendix IV | Similar applications in the same "OU(Railway Reserve)" zone on Kam Tin North OZP |

Appendix V	Good Practice Guidelines for Open Storage Sites
Appendix VI	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Vehicular Access Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**