

**APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-KTN/654

<u>Applicant</u>	: Messrs. TANG Yuk Yau, TANG Yuk Lin, TANG Kwai Ming and TANG Wing Kwong
<u>Site</u>	: Lot 378 RP in D.D. 110, Kam Tin, Yuen Long
<u>Site Area</u>	: About 91m 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>	: “Agriculture” (“AGR”)
<u>Application</u>	: Proposed Temporary Open Storage of Construction Materials for a Period of 3 Years

1. The Proposal

- 1.1 The applicants seek planning permission to use the application site (the Site) for proposed temporary open storage of construction materials for a period of 3 years. The Site is currently paved and vacant. (**Plans A-2 to A-4**).
- 1.2 The Site is the subject of one previous application No. A/YL-KTN/263 for temporary open storage of building materials and vehicle parts for a period of 3 years which was rejected by the Rural and New Town Planning Committee (the Committee) on 25.5.2007.
- 1.3 According to the applicant, no structure and parking space will be provided within the Site. The operation hours are from 9:00 a.m. to 5:00 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. The proposed development does not involve the use of vehicles exceeding 5.5 tonnes. The Site is accessible via a local track from Kam Tin Road. Plan showing the site location and access as submitted by the applicant is at **Drawing A-1**.

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

- (a) Application Form with planning statement and plans (Appendix I) received on 26.3.2019
- (b) Further Information (FI) received on 30.4.2019 and (Appendix Ia) 6.5.2019 in response to departmental comments

2. Justifications from the Applicant

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

- (a) The agricultural land in the vicinity has been long abandoned and there is lack of water source. The Site is not suitable for agricultural use.
- (b) The construction work and land resumption of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) affected a large proportion of land. As such, the remaining portion of land has low potential for agricultural development. To avoid waste in land resources, it is hoped that the Committee would give favourable consideration to the application for temporary open storage use.

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

The applicants are the sole “current land owners” of the respective lots. Detailed information would be deposited at the meeting for Member’s 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) are relevant to the 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/478) against an unauthorized development (UD) involving storage use (including deposit of containers). Enforcement Notice (EN) was issued on 21.11.2018 to the concerned parties requiring discontinuation of the UD. Subsequently, the site inspection revealed that the UD was discontinued upon the expiry of the EN. The Site would be kept under close monitoring for further action, if necessary.

6. Previous Application

The Site is subject to one previous application No. A/YL-KTN/263 for temporary open storage of building materials and vehicle parts for a period of 3 years covering a much larger area of about 22,341m². The application was rejected by the Committee on 25.5.2007 on the grounds that the development was not in line with the planning intention of the "AGR" zone; not compatible with the surrounding land uses; insufficient information to demonstrate that the proposed development would not generate adverse environmental, drainage and landscape impacts on the surrounding areas; the application did not comply with the Town Planning Board Guidelines for Open Storage and Port Back-up Uses No. 13D then in force where the site was under Category 3 areas in that there was no previous approval granted at the site, residential dwellings in close proximity would be susceptible to adverse environmental nuisances generated by the development and there were adverse comments from concerned departments; no information in the submission to demonstrate that other suitable sites within the "Industrial (Group D)" and "Open Storage" zone could not be identified for the use under application; and approval of the application would set an undesirable precedent. Details of the application are summarized in **Appendix III** and the location is shown on **Plan A-1**.

7. Similar Applications

7.1 There are a total of 28 similar applications (Nos. A/YL-KTN/338, 339, 341, 343, 355, 363, 364, 373, 375, 386, 392, 399, 405, 441, 442, 452, 517, 552, 553, 559, 578 and 648; and A/YL-PH/618, 682, 697, 700, 739 and 751) for various temporary open storage uses within the same "AGR" zone in the vicinity straddling the Kam Tin North OZP and Pat Heung OZP since the promulgation of the TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in **Appendix IV** and the locations of the sites are shown on **Plan A-1**.

Category 2 areas

7.2 13 applications (Nos. A/YL-KTN/338, 339, 341, 355, 364, 373, 399, 442, 452, 517, 553, 578 and 648) for various temporary open storage uses were approved with conditions by the Committee between 2010 and 2019 for similar reasons that the proposed developments were in line with TPB PG-No. 13E in that the relevant departments had no adverse comment and the environmental or landscape concerns could be addressed by appropriate approval conditions. However, Applications No. A/YL-KTN/338, 339, 341 and 373 were revoked on 15.11.2010 (for both A/YL-KTN/338 and 339), 29.11.2010 and 10.11.2012 respectively due to non-compliance with approval conditions.

Category 3 areas

7.3 Seven applications (Nos. A/YL-KTN/343, 363, 441 and 559 and A/YL-PH/618, 682 and 739) on two sites were approved with conditions by the Committee between 2010 and 2017 for the reasons that the original site of the developments was resumed for the XRL project and the applicant had spent efforts in identifying suitable site for continuous operation of his business for open storage (but only the application site was identified); not incompatible with the surrounding land uses

and the site was situated within the Category 3 areas next to the Category 2 areas where there were various existing open storage uses; and the concerns of the relevant government departments could be addressed by the appropriate approval conditions. However, given the unique background and circumstances, the approval of the applications should not be considered as precedent for other applications within the same Category 3 areas. Application No. A/YL-KTN/343 was revoked on 27.8.2011 due to non-compliance with the approval conditions.

- 7.4 Eight applications (Nos. A/YL-KTN/375, 386, 392, 405, 552 and A/YL-PH/697, 700 and 751) were rejected by the Committee or the Board on review between 2012 to 2017 mainly on the grounds that that the developments were not in line with TPB PG-13E in that the sites were within Category 3 areas and there were no previous planning approvals granted; not in line with the planning intention of “AGR” zone; there was insufficient information to demonstrate the developments would not cause adverse environmental, drainage, traffic and landscape impacts on the surrounding areas; and approval of the applications would set an undesirable precedent.

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

8.1 The Site is:

- (a) paved and vacant;
- (b) encroached on the control/protection boundary of the XRL; and
- (c) accessible via a local track from Kam Tin Road.

8.2 The surrounding areas are rural in character, mixed with open storage/storage yards, a residential dwelling/structure, a nullah and vacant/unused land;

- (a) to its east and southeast are sites with parking of vehicles and open storage yards subject to planning permissions under Applications No. A/YL-KTN/548 and 563 and A/YL-PH/739 and vacant/unused land;
- (b) to its immediate south and west is a vacant site previously used for the XRL project. To the further southwest are open storage yards subject to planning permissions under Applications No. A/YL-KTN/648 and 553; and
- (c) to its north across a nullah are open storage/storage yards, a residential dwelling/structure and vacant/unused land. The open storage/storage yards are suspected unauthorized developments subject to enforcement action by the Planning Authority.

9. Planning Intention

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are 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 Scheduled 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. The information provided in application indicates that no structure is proposed within the Site.
- (b) The Site is accessible from Kam Tai Road via Government Land (GL) and private land. 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 falls within Shek Kong Airfield Height Restriction Area (SKAHRA).
- (d) Should the application be approved, the lot owner(s) will need to apply to his office if any structures are to be erected on site. 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 LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, approval condition on 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.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. 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) His department does not and will not maintain any access (including the section of Kam Tai Road on the northern side of Kam Tin River) connecting the Site and Kam Tin 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):

The Site falls within the gazette railway scheme boundary of the XRL. As the operation of the XRL has been entrusted to the MTRCL in September 2018 and that the operation of the existing railway system is not under the jurisdiction of his office, he has no comments on the application from railway development viewpoint. However, with reference to the procedures in PNAP APP-24, the applicant is reminded to consult MTRCL with respect to operation, maintenance, safety and future construction of the existing railway network.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past three years.

- (b) The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (COP) issued by DEP.

Landscape

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

- (a) She has no objection to the application from the landscape planning perspective.
- (b) With reference to the aerial photo taken in 2018, the surrounding area of the Site is comprised of open storage sites, temporary structures, car parks and scattered tree groups. Considering that several storage sites have been approved within the same “AGR” zone and similar use could be found in proximity, the proposed use is considered not incompatible with existing landscape setting in the proximity.
- (c) According to the site visit conducted on 12.4.2019, the Site was a vacant land and covered with self-seeded vegetation. No existing tree was found within the Site. Significant landscape impact arising from the development is not anticipated.
- (d) Should the application be approved, in view that there is inadequate space for meaningful landscape, it is considered not necessary to impose landscape condition.

Agriculture

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

- (a) Upon site inspection, active agricultural activities are found in the vicinity and agricultural infrastructures are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) The Site is in the vicinity of a drainage channel. Should the application be approved, the applicant is advised to adopt necessary measures to avoid polluting or disturbing the adjacent watercourse during operation.

Drainage

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

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission and implementation of drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit revised 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. The applicant should be advised to adhere to the good practice guidelines for open storage in **Appendix V**.
- (c) Having considered the nature of the open storage, approval condition on the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to his satisfaction 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/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the 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.
- (c) 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.
- (d) 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.

District Officer's Comments

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

His office has not received any comments from locals upon close of consultation and he has no particular comments 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);
- (c) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD); and
- (d) Commissioner of Police (C of P).

11. Public Comments 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, five comments from World Wide Fund for Nature Hong Kong, Kadoorie Farm and Botanic Garden, Designing Hong Kong and two individuals were received (**Appendices VI-1 to VI-5**). The commenters object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the "AGR" zone; the Site involves suspected

unauthorized development and “destroy first, apply/develop later”; approval of the application would set a precedent for similar applications; the proposed use does not provide parking space and FSI and will cause pollutions; and no justification for approval in view of the rejected previous application.

12. Planning Considerations and Assessments

12.1 The application is for proposed temporary open storage of construction materials for a period of 3 years at “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 to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed use is not in line with the planning intention of the “AGR” zone and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation. Nevertheless, it is considered that approval of the application on a temporary basis of 3 years would not jeopardize the long-term planning intention of the “AGR” zone.

12.2 The proposed use is considered not incompatible with the surrounding land uses which are mixed with open storage/storage yards, parking of vehicles, vacant land previously used for the construction of the XRL, and a nullah.

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 current application is considered generally in line with TPB PG-No. 13E in that relevant departments, including C for T, DEP, CTP/UD&L of PlanD, CE/MN of DSD and D of FS, except DAFC, have no adverse comment on the application. It is noted that the Site is located in a cluster of open storage/vehicle park uses which is separated from the residential dwellings/structures and agricultural land in the north by a nullah (**Plan A-3**). To address any possible environmental nuisance, relevant approval conditions restricting the operation hours, types of vehicles and prohibiting workshop-related 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 site will be subject to enforcement action by the Planning Authority. In addition, the applicant will be advised to adopt the latest COP. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2 (e) to (j) below.

- 12.5 The Site is subject to a previous application (No. A/YL-KTN/263) covering a much larger area which was rejected in 2007. The application was considered under TPB PG-No. 13D where the site was under Category 3 areas and was rejected mainly on the grounds that there was no previous approval granted and concerned departments including DEP and CTP/UD&L of PlanD had objection to the application. Since the promulgation of TPB PG-No. 13E on 17.10.2008, there are 28 similar applications for various temporary open storage uses within the “AGR” zone in the vicinity. All of those within the Category 2 areas (13 applications) were approved with conditions by the Committee since 2010 as mentioned in paragraph 7 above. The 8 applications in the Category 3 areas were rejected between 2012 and 2017 mainly on the grounds that they did not comply with TPB PG-No.13E in that no previous planning approval had been granted at the sites.
- 12.6 Five public comments were received during the statutory public inspection period objecting to the application mainly on the grounds that the proposed use is not in line with the planning intention and will generate adverse environmental impact as stated in paragraph 11. In this regard, temporary approval would not jeopardise the long-term planning intention and DEP has no adverse comment on the application. The departmental comments as well as planning assessments and considerations above are also relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments in paragraph 11, the Planning Department considers that the proposed temporary open storage of construction materials 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 approval conditions and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00 p.m. and 9:00 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) 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;
- (d) 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;

- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of 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 17.11.2019;
- (g) in relation to (f) above, the implementation of 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 17.2.2020;
- (h) 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;
- (i) the submission of fire services 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;
- (j) in relation to (i) above, the provision of fire services installations 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;
- (k) if any of the above planning conditions (a), (b), (c), (d) or (e) 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;
- (l) if any of the above planning conditions (f), (g), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (m) 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 at **Appendix VII**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

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

Appendix I	Application Form with plans and supplementary information received on 26.3.2019
Appendix Ia	FI received on 30.4.2019 and 6.5.2019
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 s.16 application covering the application site
Appendix IV	Similar applications within the “AGR” zone in the vicinity on the approved Kam Tin North OZP and Pat Heung OZP
Appendix V	Good Practice Guidelines for Open Storage Sites
Appendices VI-1 to VI-5	Public Comments received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Site Access Plan
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**