

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/685

<u>Applicant</u>	: Mr. LI Zhi Hui represented by Metro Planning & Development Company Limited
<u>Site</u>	: Lots 382, 418 RP, 419 S.A ss.1 RP, 420 S.B RP (Part) and 420 S.C RP (Part) in D.D.107, Fung Kat Heung Road, Yuen Long
<u>Site Area</u>	: 1,120m ² (about)
<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>	: Temporary Open Storage of Tail Lift 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 tail lift for a period of 3 years. The Site is subject to a previous application (No. A/YL-KTN/534) for the same applied use which was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 26.8.2016. All approval conditions have been complied with and the planning permission lapsed on 27.8.2019. The Site is currently used for the applied use without valid planning permission (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the development involves two single/two-storey structures with a total floor area of about 445m² and maximum building height of 8m for open shed for storage of tail lift and site offices uses. A loading/unloading bay is provided for light goods vehicles not exceeding 5.5 tonnes within the Site. The operation hours are from 9:00 a.m. to 7:00 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays. No repairing, assembling, dismantling or workshop activity would be conducted within the Site. The Site is abutting Fung Kat Heung Road. The location plan, layout plan, landscape and tree preservation plan and drainage plan submitted by the applicant are shown on **Drawings A-1 to A-4**.

- 1.3 Compared with the previously approved application, the current application is for the same applied use but with an increase in site area from 1,052m² to 1,120m² (+68m²/+6.5%) and total floor area from 410m² to 445m² (+35m²/+8.5%).
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with attachments received on 9.10.2019 **(Appendix I)**
 - (b) Further information (FI) received on 12.11.2019 providing responses to departmental comments **(Appendix Ia)**
[exempted from publication]

2. Justifications from the Applicant

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

- (a) As the alignment of Northern Link (NOL) is yet to be finalised, a good number of open storage yards and other developments such as nursery and rural industrial workshops are found along San Tam Road. Temporary use of the Site in the interim will make economic use of scarce land resources and generate employment opportunities. The applicant is willing to retreat his site at the time when Government requires the Site.
- (b) The development is in line with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13E) and is compatible with the surrounding environment mostly occupied by open storage yards and rural industrial workshops and activities. With the compliance of all planning conditions of the previous planning permission, the applied use would not generate significant adverse impact to the surrounding environment. As the Site is small in size and there are compatible uses nearby, the development should be given sympathetic consideration.
- (c) There is no land zoned “Open Storage” on the Kam Tin North OZP. The land zoned for “Industrial (Group D)” (“I(D)”) has been filled up while there is a pressing demand for open storage land.
- (d) There is minimal traffic impact. Adequate manoeuvring space would be provided within the Site to prevent queueing up of traffic. Also, the development will not generate significant environmental and drainage impact.

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

The applicant is not the “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 notice at the Site and sending registered mail to the Kam Tin Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

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

5. Background

The Site is currently not subject to any active planning enforcement case. It is noted that the Site was granted with planning permission for temporary open storage of tail lift by the Committee on 26.8.2016 for a period of 3 years and the planning permission lapsed on 27.8.2019. Should there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

6. Previous Application

6.1 The Site is subject to one previous application (No. A/YL-KTN/534) for the same use submitted by a different applicant. Details of the previous application are summarized in **Appendix III** and its location is shown on **Plan A-1**.

6.2 The previous application covering most part of the Site was approved with conditions by the Committee on 26.8.2016 for a period of 3 years mainly for the reasons that the alignment and development programme of the proposed NOL had yet to be finalised and temporary approval would not frustrate the long term planning intention of the "OU(Railway Reserve)" zone; the development was not incompatible with the surrounding land uses; generally in line with TPB PG-No.13E in that relevant departments except the Director of Environmental Protection (DEP) had no adverse comment on the application and similar approvals of various temporary open storage uses within the same zone had been granted; and the environmental concerns could be addressed by appropriate approval conditions. All approval conditions have been complied with and the planning permission lapsed on 27.8.2019.

7. Similar Applications

7.1 There were a total of 16 similar applications 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 were approved with conditions by the Committee between 2008 and 2019 for similar reasons that the alignment and development programme 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; developments were not incompatible with the surrounding land uses; 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; and the environmental concerns could be addressed by appropriate approval conditions. However, the planning permissions for 6 applications were revoked due to non-compliance with approval conditions.
- 7.3 Application No. A/YL-KTN/673 for temporary open storage of construction materials for a period of 3 years to the immediate north of the Site will be considered in the same meeting.

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

- 8.1 The Site is:
- (a) currently used for the applied use without valid planning permission;
 - (b) abutting and directly accessible from Fung Kat Heung Road branching off from San Tam Road; and
 - (c) having its north-western concern transversed by 400kV overhead lines.
- 8.2 The surrounding areas are mixed with open storage yards, warehouses, scattered residential structures/dwellings, workshop and unused/vacant land:
- (a) to its immediate north is an open storage of construction materials (approved under Application No. A/YL-KTN/586). Further north are residential structures/dwellings;
 - (b) to its east are warehouse, open storage yards and residential dwellings on an area zoned “I(D)”;
 - (c) to its immediate south across Fung Kat Heung Road are open storage/storage yards (one approved under Application No. A/YL-KTN/591), warehouses, a vehicle repair workshop and a residential dwelling/structure; and
 - (d) to its immediate west are a public toilet and unused land. San Tam Road and San Tin Highway are located to its further west.

9. Planning Intention

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

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 Old Schedule Agricultural Lots 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 to Fung Kat Heung Road via Government Land (GL). His office provides no maintenance works 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 the application be approved, the lot(s) owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities 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 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 the traffic engineering point of view.

- (b) 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 TD. 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) Fung Kat Heung Road is not maintained by HyD.
- (b) His department is not/shall not be responsible for the maintenance of any access connecting the Site and San Tam Road.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads or exclusive road 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 boundary of the proposed 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 may be required to be vacated at the time for the construction of the NOL and would be 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.

10.1.5 Comments of the Chief Estate Surveyor/Railway Development, Lands Department (CES/RD, LandsD):

- (a) The Site falls within the “RDS-2014 NOL and Kwu Tung Station Limit of Area of Influence” and slightly encroaches

onto “RDS 2014 NOL and Kwu Tung Station Administrative Route Protection Boundary”.

- (b) He has no strong view on the application provided that the development would not pose obstacles to the acquisition of land for implementation of the NOL project and RDO, HyD has no objection on the application.

Environment

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

- (a) There was no environmental complaint received for the Site in the past three years.
- (b) Should the applicant be approved, 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” issued by DEP.

Nature Conservation

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

She has no comment on the application from the nature conservation point of view noting that the Site has been paved and used for the same use for a few years.

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 development from the public drainage point of view. He noted that the drainage proposal was generally identical to the one submitted under the previous application No. A/YL-KTN/534 which he had no adverse comment.
- (b) Should the application be approved, approval conditions requiring the implementation of the accepted drainage proposal and maintenance of the proposed drainage facilities 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/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
- (b) 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.
- (c) Before any new building works (including containers/open sheds as temporary buildings, demolition 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.
- (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.

Electricity

10.1.11 Comments of the Director of Electrical and Mechanical (DEMS):

The transmission overhead lines are running above a portion of the Site and also the Site is within the preferred working corridor of the 400kV extra high voltage overhead lines as stipulated in the Hong Kong Planning Standards and Guidelines (HKPSG). He has no objection in principle to the application subject to the following conditions pertaining to electricity supply safety and reliability, being strictly complied by the applicant and his contractors to the whole Site:

- (a) The applicant should refer to the requirements of minimum safety clearance, minimum vertical clearance and preferred working corridor of the concerned overhead lines as stipulated in Clauses 2.3.5, 2.3.6 and 2.3.14 under Chapter 7- Utility Services of the HKPSG and ensure they shall be maintained at any time during and after construction;
- (b) no scaffolding, crane and hoist shall be built or operated within 6m from the outermost 400kV conductors at all times. Warning notices should be posted at conspicuous locations to remind operators and workers of the Site boundary. CLP Power shall be consulted on the safety precautions required for carrying out works near the concerned overhead lines;
- (c) in any time during and after construction, CLP Power shall be allowed to get access to the working corridor area of the concerned overhead lines for carrying out any operation, maintenance and repair work including tree trimming;
- (d) the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation shall be observed by the applicant and his contractors when carrying out works in the vicinity of the electricity supply lines; and
- (e) as regards the electric and magnetic fields arising from the transmission overhead lines, the applicant should be

warned of possible undue interference to some electronic equipment in the vicinity, if any.

District Officer's Comments

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

He has not received any local comment on the application and has no comment from departmental point of view.

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

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

11. Public Comment Received During Statutory Publication Period

On 18.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from an individual (**Appendix VI**). The individual raised concern that the brownfield operation has been ongoing for some time, and on the progress of the NOL development and suggested to rezone the Site to a non-brownfield use if the NOL will not be realized.

12. Planning Considerations and Assessments

12.1 The applied use is for temporary open storage of tail lift for a period of 3 years in the "OU(Railway Reserve)" zone. The planning intention of the zone is primarily for reservation of land for railway development, i.e. the NOL. The applied use is not in line with the planning intention of the zone. Nevertheless, CE/RD 2-2, RDO of HyD advised that the alignment and 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 NOL. It is considered that approval of the application on a temporary basis would not frustrate the long-term planning intention of the "OU(Railway Reserve)" zone.

12.2 The development is considered not incompatible with the surrounding land uses mixed with open storage yards, warehouses, workshops and unused/vacant land. Also, an area to the east 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 relevant departments consulted including DEP, C for T, CE/MN of DSD and D of FS have no adverse comments on the application. To address possible environmental nuisance generated by the applied use, approval conditions restricting the operation hours and vehicle type and prohibiting workshop use at the Site are recommended in paragraphs 13.2 (a) to (e) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on-site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical concerns and requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraphs 13.2 (f) to (j).
- 12.5 One previous application (No. A/YL-KTN/534) for the same applied use was approved with conditions by the Committee on 26.8.2016 for the reasons as stated in paragraph 6.2 above. All approval conditions have been complied with and the planning permission lapsed on 27.8.2019. As compared with the previous application, the current application is for the same applied use with increase in site area from 1,052m² to 1,120m² (+68m²/+6.5%) and total floor area from 410m² to 445m² (+35m²/+8.5%). Also, sixteen similar applications for various temporary open storage uses were approved with conditions by the Committee within the same “OU (Railway Reserve)” zone since 2008. In this regard, approval of the application is in line with the Committee’s previous decision.
- 12.6 One public comment was received during the statutory publication period expressing view on the application as set out in paragraph 11 above. In this regard, the departmental comments as well as the planning assessments and considerations above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 above and having taking into account the public comment in paragraph 11, the Planning Department considers that the temporary open storage of tail lift 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 29.11.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference.

Approval Conditions

- (a) no operation between 7:00 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 implementation of the accepted drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or the Town Planning Board by 29.5.2020;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (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 10.1.2020;
- (i) the submission of fire service installations (FSIs) proposal within **6** months from the date of planning approval to the satisfaction to the Director of Fire Services or the Town Planning Board by 29.5.2020;
- (j) in relation to (i) above, the implementation of the FSIs proposal within **9** months from the date of planning approval to the satisfaction to the Director of Fire Services or the Town Planning Board by 29.8.2020;
- (k) if any of the above planning condition (a), (b), (c), (d), (e) or (g) 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
- (l) if any of the above planning condition (f), (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.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VII**.

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

the 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.

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 justification statement received on 9.10.2019
Appendix Ia	FI received 12.11.2019
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 part of 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	Public comment received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Location Plan

Drawing A-2	Layout Plan
Drawing A-3	Landscape and Tree Preservation Plan
Drawing A-4	Drainage Proposal 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
NOVEMBER 2019**