

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/748

- Applicant** : Mr. WU Wai Ming
- Site** : Lot 140RP in D.D. 113, Kam Tin South, Yuen Long
- Site Area** : About 143.8m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
[Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/13 at the time of submission of application]
- Zoning** : “Agriculture” (“AGR”)
[Same zoning on the approved Kam Tin South OZP No. S/YL-KTS/13 and the draft Kam Tin South OZP No. S/YL-KTS/14]
- Application** : Proposed Temporary Open Storage of Private Vehicles and Light Goods Vehicles 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 private vehicles and light goods vehicles for a period of 3 years. The Site is hard-paved and vacant (**Plans A-2 and A-4**). It is not the subject of any previous application.
- 1.2 According to the applicant, a total of 12 storage spaces for vehicles are provided at the Site and the operation hours are 24 hours daily. The plans showing the access arrangement and layout of the Site submitted by the applicant are shown on **Drawings A-1 and A-2**.

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

- (a) Application form with supplementary plans received on 4.7.2017 **(Appendix I)**
- (b) Further information (FI) received on 8.8.2017 providing response to departmental comments and public comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ia)**
- (c) FI received on 24.10.2017 providing response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ib)**
- (d) FI received on 7.2.2018 providing response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Ic)**
- (e) FI received on 14.2.2018 providing response to departmental comments
(accepted and exempted from publication and recounting requirements) **(Appendix Id)**

1.4 As requested by the applicant, the Committee agreed to defer consideration of the application on 25.8.2017 and 8.12.2017 to allow more time for the applicant to prepare further information (FI) to address the departmental comments. After the deferral requests, the applicant submitted FIs in response to departmental comments to support the application.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 9 of the Application Form in **Appendix I** and FIs in **Appendix Ia**. They can be summarized as follows:

- (a) The Site has been paved and is now not suitable for agricultural purpose. Favourable consideration should be given to the application in view of the Site's existing condition.
- (b) The vehicles will be driven and stored at the Site. No heavy vehicles will be used. The drivers will be cautious on the traffic and pedestrian safety.

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

The applicant is one of the “current land owner” and 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. 31) by obtaining consent from another concerned land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guideline

The Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13E) promulgated by the Town Planning Board on 17.10.2008 is relevant to the application. The Site falls within the Category 3 areas under the TPB PG-No. 13E. The relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The Site was the subject of an enforcement case involving storage use. Enforcement Notice (EN) was issued to the responsible persons on 13.6.2017. Compliance Notice for the EN was issued upon the discontinuance of the unauthorised developments (UDs) on 29.11.2017. Should there be sufficient evidence to prove that the use on site is an UD under the Town Planning Ordinance, appropriate enforcement action will be taken.

6. Previous Application

There is no previous application at the Site.

7. Similar Applications

7.1 There are two similar applications (Nos. A/YL-KTS/559 and 713) for temporary open storage use within the same “AGR” zone on the OZP since the promulgation of the TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in **Appendix III** whilst the location of these application sites are shown on **Plan A-1**.

7.2 Application No. A/YL-KTS/559 (for temporary open storage of machinery) and 713 (for temporary open storage of construction materials and machinery, office, staff restroom and store room) for a period of 3 years were rejected by the Board upon review on 17.8.2012 and by the Rural and New Town Planning Committee (the Committee) on 29.7.2016 respectively on the grounds that the development was not in line with the planning intention of the “AGR” zone and no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; the application did not comply with the TPB PG-No. 13E in that there was no previous approval granted at the

site and there were adverse departmental comments; the applicant failed to demonstrate that the development would not generate adverse environmental, drainage and/or landscape impacts on the surrounding areas; and approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone, and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

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

8.1 The Site is:

- (a) paved, fenced off and vacant; and
- (b) accessible via a local track leading from Kam Ho Road to its east.

8.2 The surrounding areas are rural in character mixed with open storage/storage yards, public car park, residential structures/dwellings, plant nursery and vacant/unused land. The open storages/storage yards and public car park are suspected unauthorized development subject to enforcement action by the Planning Authority (**Plan A-2**):

- (a) to its immediate east is Kam Ho Road and further east across Kam Ho Road are a nullah and the West Rail Pat Heung Maintenance Centre (**Plan A-1**);
- (b) to its immediate south is vacant land and further south are storage yards, unused land and a residential structure/dwelling (about 110m away). To its further southwest is a vegetated knoll zoned “Green Belt” (“GB”);
- (c) to its west are open storage/storage yards and further west is a public car park; and
- (d) to its immediate north is the elevated Pat Heung Road. To its further north across Pat Heung Road are unused land, plant nursey, storage yards and a residential structure/dwelling (about 110m away).

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 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. The information provided in the planning application indicates that no structure is proposed within the Site.
- (b) The Site is accessible to Kam Ho Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure, if any, shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should the application be approved, the lot owner(s) will need to apply to his office if any structure to be erected on site. Such application(s) will be considered by LandsD acting in the capacity of the landlord 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 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/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department is not and shall not be responsible for the maintenance of any existing access connecting the Site and Kam Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint 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” issued by DEP.

Landscape

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

- (a) He has no objection to the application from the landscape planning perspective.
- (b) The Site is situated to the east of the Tai Lam Toll Plaza and to the west of Pat Heung Maintenance Centre. The surrounding area is rural fringe in character occupied by mixture of undeveloped rural land, scattered village houses and non-agricultural use including storage facilities and workshops. The proposed temporary storage is considered not incompatible with the existing landscape setting. According to the aerial photo in 2011 and 2015 respectively, the Site was vacant with no

signs of vegetation. There were also no active agricultural activities observed in the vicinity.

- (c) Further to the site inspection conducted on 21.7.2017, the Site is paved and fenced without any landscape. It is considered that the proposed use will have no significant impact on the existing landscape.
- (d) Should the application be approved, approval condition on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board should be included.

Drainage

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

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

Nature Conservation and Agriculture

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

The Site falls within an area zoned "AGR". It is noted that the Site is currently paved. Nevertheless, the Site is well served with road access and possesses potential for agricultural uses such as plant nursery or greenhouse. As such, he does not support the application from the agricultural point of view.

Fire Safety

10.1.8 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 relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should also be clearly marked on the layout plans. The good practice guidelines for open storage (**Appendix IV**) should be adhered to.
- (c) Having considered the nature of the open storage, an approval condition on provision of fire extinguisher(s) within 6 weeks from the date of 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.

Electricity

10.1.9 Comments of the Director of Electrical and Mechanical Services (DEMS):

He has no particular comment on the application from the electricity supply safety aspect. However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer’s Comments

10.1.10 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 has no particular comment on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (c) Commissioner of Police (C of P); and
- (d) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD).

11. Public Comments Received During Statutory Publication Period

On 11.7.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 1.8.2017, three public comments were received from Kadoorie Farm & Botanic Garden Corporation (**Appendix V-1**), the resident representative of Ma On Kong Tsuen (**Appendix V-2**) and a member of the public (**Appendix V-3**). All of them object to the application mainly on the grounds of incompatibility with the planning intention of the “AGR” zone; no strong planning justification has been given in the submission for a departure from the planning intention even on a temporary basis; setting an undesirable precedent for similar applications in the area to legitimize unauthorized brownfield use and leading to decrease in agricultural land; contravene the government’s New Agricultural Policy; not compatible with the surrounding area; road and pedestrian safety concern; and no technical assessment submitted to demonstrate there are no adverse environmental and landscape impacts on the surroundings.

12. Planning Considerations and Assessments

12.1 The Site falls within Category 3 areas under the TPB PG-No. 13E. The following considerations in the Guidelines are relevant:

Category 3 areas: within these areas, “existing” and approved open storage and port back-up uses are to be contained and further proliferation of such uses is not acceptable. Applications would normally not be favourably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding 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.

- 12.2 The proposed temporary open storage of private vehicles and light goods vehicles is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land for agricultural purpose, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural uses such as greenhouse and plant nursery. Besides, no strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.
- 12.3 The surrounding land uses are a mixture of open storage/storage yards, residential structures/dwellings, a public car park and vacant/unused land. While there are some open storage/storage yards in the vicinity of the Site (**Plan A-2**), however, it is noted that they are suspected unauthorised developments subject to enforcement action by the Planning Authority.
- 12.4 The development is not in line with the TPB PG-No. 13E in that there is no previous approval for open storage use granted at the Site and that “existing” and approved open storage use should be contained within the Category 3 area and further proliferation of such uses is not acceptable. Besides, there is adverse comment from DAFC on the application. Hence, the current application does not warrant sympathetic consideration.
- 12.5 There are two similar applications (No. A/YL-KTS/559 and 713) for open storage use within the same “AGR” zone, which were rejected by the Board and the Committee on 17.8.2012 and 29.7.2016 respectively on similar considerations that the development was not in line with the planning intention of the “AGR” zone and no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; the application did not comply with the TPB PG-No. 13E in that there was no previous approval granted at the Site and there were adverse comments from the relevant government departments; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone. Rejection of the current application is in line with the previous decision of the Committee on similar applications.
- 12.6 Three public comments objecting to the application were received as stated in paragraph 11. In this regard, relevant government departments’ comments and planning assessments as stated above are relevant.

13. Planning Department's Views

13.1 Based on the assessment made in paragraph 12 and having taken into account the public comments as mentioned in paragraph 11, the Planning Department does not support the application for the following reasons:

- (a) the development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good agricultural land for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application does not comply with the TPB PG-No. 13E in that there is no previous approval granted at the Site and there is adverse departmental comment on the application; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

13.2 Alternatively, 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 16.3.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) 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;
- (b) no medium and 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;
- (c) the existing boundary fence on the Site shall be maintained at all times during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.9.2018;

- (f) in relation to (e) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.12.2018;
- (g) 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 16.9.2018;
- (h) in relation to (g) 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 16.12.2018;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) the provision of fire extinguisher(s) with a valid fire certificate (FS251) 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 27.4.2018;
- (k) the submission of fire service installation 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 16.9.2018;
- (l) in relation to (k) above, the provision of fire service 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 16.12.2018;
- (m) if any of the above planning conditions (a), (b), (c), (d) or (i) 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;
- (n) if any of the above planning conditions (e), (f), (g), (h), (j), (k) or (l) 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
- (o) upon the 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 attached at **Appendix VI**.

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 received on 4.7.2017
Appendix Ia	FI received on 8.8.2017 providing response to departmental comments and public comments
Appendix Ib	FI received on 24.10.2017 providing response to departmental comments
Appendix Ic	FI received on 7.2.2018 providing response to departmental comments
Appendix Id	FI received on 14.2.2018 providing response to departmental comments
Appendix II	Relevant extract of Town Planning Board Guideline for “Application for Open Storage and Port Back-up uses” (TPB PG-No. 13E)
Appendix III	Similar applications within the same “AGR” zone on the Kam Tin South OZP
Appendix IV	Good Practice Guidelines on Open Storage Sites
Appendices V-1 to V-3	Public comments received during the statutory publication period
Appendix VI	Advisory Clauses
Drawing A-1	Plan showing the access of the Site
Drawing A-2	Layout 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
MARCH 2018**