

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/840

- Applicant** : Chun Fai Construction Engineering Company Limited
- Site** : Lot 133 RP (Part) in D.D. 113 and adjoining Government land, Kam Tin, Yuen Long
- Site Area** : About 596m² (including about 100m² of Government land (17%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Open Storage of Construction Materials and Machinery, Office, Staff Rest Room and Store Room 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 and machinery, office, staff restroom and store room for a period of 3 years. The Site is zoned “AGR” on the Kam Tin South OZP and the applied use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied use without planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is subject to three previous applications for temporary vehicle repair workshop and open storage uses. All of them were rejected by the Rural and New Town Planning Committee (the Committee) between 2007 and 2018.
- 1.3 According to the applicant, the development involves 5 one-storey (2.4m high) structures with a total floor area of 63m² for office, staff restroom and store room uses. Within the Site, 3 car parking spaces and 3 loading/unloading spaces for light, medium and heavy goods vehicles are provided. The operation hours are from 8:00 a.m. to 6:00 p.m. Mondays to Saturdays, and there is no operation on Sundays and public holidays. The Site is accessible to

Kam Ho Road via a local track. The layout plan of the Site submitted by the applicant are shown on **Drawing A-1**.

- 1.4 Compared with the last rejected application No. A/YL-KTS/786, the current application is submitted by the same applicant for the same applied use, site area, layout and floor area, but with 2 additional loading/unloading spaces.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received on 24.12.2019 **(Appendix I)**
 - (b) Further Information (FI) received on 28.7.2020 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
 - (c) FI received on 23.11.2020 and 24.11.2020 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]
 - (d) FI received on 13.1.2021 in response to departmental comments **(Appendix Ic)**
[exempted from publication requirement]
- 1.6 At the request of the applicant, the Committee agreed to defer a decision on the application on 26.5.2020 and 18.9.2020 for two months respectively in order to allow time for the applicant to address departmental comments. Subsequently, the applicant has submitted FI in response to departmental comments. The application is scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

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

- (a) With regards to the previous applications at the Site, the applicant noted that there was no objection from traffic, drainage and fire safety aspects. There have been no complaints and adverse impacts on the surrounding area. Regarding the objections raised in the public comments in the previous application, the development would not generate large traffic flow and the need for open storage use increased in past years due to large infrastructure projects in Hong Kong. Also, the Site was not a piece of agricultural land when the applicant bought it in 2013 and the development would not destroy the rural and natural environment.
- (b) The applicant is willing to carry out necessary measures to address the potential adverse impacts on the surrounding areas. This application can serve as a temporary measure to address the need of construction industry.

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

The applicant is the sole “current land owner” of the private land portion of the Site. Detailed information would be deposited at the meeting for Member’s inspection. For the Government land portion, the “Owner’s Consent/Notification” Requirements are not applicable.

4. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No. 13F) promulgated by the Board on 27.3.2020 is relevant to the application. The Site falls within the Category 3 areas under the TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.

5. **Background**

The Site is currently not subject to any active planning enforcement action. Should there be sufficient evidence to prove that there is any unauthorized development at the Site, enforcement action would be followed.

6. **Previous Applications**

- 6.1 The Site is subject to three previous applications for temporary vehicle repair workshop and open storage. Details of the previous applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTS/410 for temporary vehicle repair workshop for a period of 3 years, with a larger area covering the eastern part of the Site and adjoining land, was rejected by the Committee in 2007 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; there was insufficient information in the submission to demonstrate that the development would have no adverse environmental and drainage impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.
- 6.3 Application Nos. A/YL-KTS/713 and 786 submitted by the same applicant for the same use as the current application were rejected by the Committee in 2016 and 2018 respectively, on the grounds that the development was not in line with the planning intention of the “AGR” zone; 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 on the application; the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and/or drainage impacts on the surrounding areas; and the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

7. Similar Applications

- 7.1 There are two similar applications for temporary open storage use within the same “AGR” zone on the OZP since the promulgation of the then 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 Applications Nos. A/YL-KTS/559 and 748 for temporary open storage of machinery and temporary open storage of private vehicles and light goods vehicles for a period of 3 years were rejected by the Board on review in 2012 and by the Committee in 2018 respectively mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone; 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 landscape impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications within the “AGR” zone.

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

- 8.1 The Site is:
- (a) paved, fenced, and used for the applied use without planning permission; and
 - (b) accessible via a local track from Kam Ho Road.
- 8.2 The surrounding areas are rural in character intermixed with open storage/storage yards, car park, residential structures/dwellings, plant nursery and vacant/unused land:
- (a) to its immediate east is an open storage yard, beyond which is a piece of vacant land fronting Kam Ho Road. 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 a densely vegetated knoll zoned “Green Belt” (“GB”). To its further south and southeast across the “GB” zone are open storage/storage yards and a residential dwelling/structure (about 90m away);
 - (c) to its west is a temporary public car park for private cars with planning permission; and
 - (d) to its north is Pat Heung Road. Across Pat Heung Road are a residential structure/dwelling (about 80m away), a plant nursery, a storage yard and vacant/unused land.

9. Planning Intention

The planning intention of the “AGR” zone is primarily 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 Government Land (GL) and 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.
- (b) No permission is given for occupation of GL (about 100m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) It is noted that the proposed structures in the planning application will include staff restroom. However, according to the established practice, application of Short Term Wavier, etc. of temporary structures for domestic/residential uses on private agricultural land will not be entertained. Hence, even if the Board approves the planning application, his office will not consider to approve/regularize any temporary structures to be erected/erected on the lot for domestic/residential uses.
- (d) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structure(s) 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. Applications for any of the above will be considered by LandsD acting in the capacity as the 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 rent 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 is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Ho Road.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Environment

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

- (a) There was no environmental complaint concerning at the Site received in the past three years.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application as there are sensitive receivers, i.e. residential dwellings/structures located to the north and south of the Site (80m and 90m respectively), and the development involves the use of heavy vehicles, 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 “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 reservation to the application from the landscape planning point of view.
- (b) With reference to the aerial photo taken in 2018, the Site is situated in an area of rural landscape character. The surrounding area of the Site comprised of clustered tree groups, vacant lands, temporary structures and open storages uses which are suspected unauthorized development since 2012. The development is considered not incompatible with existing landscape setting in the proximity.
- (c) According to the site visit conducted on 8.1.2020, the Site was fenced off and hard paved and in use for open storage. No existing tree was found within the Site. With reference to aerial photos taken in 2009 and 2012, the Site was vegetated in 2009 and vegetation clearance was noted on the Site in 2012. Although further significant adverse landscape impact arising from the applied use is not anticipated, approval of the application may encourage other similar site modification prior to planning permission, and resulting in irreversible changes to the existing landscape character in the area and may have potential risk of encroachment into the nearby “GB” zone.

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.

Agriculture and Nature Conservation

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

- (a) The Site is currently a cemented open storage area. Agricultural activities are active in the vicinity and

agricultural infrastructures such as road access and water source are also 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) Noting the Site is disturbed, he has no comments on the application from nature conservation perspective.

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 be clearly marked on the layout plans. The good practice guidelines for open storage (**Appendix V**) should be adhered to.
- (c) Moreover, 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) However, 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

10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) As there is no record of approval granted by the Building Authority (BA) for the existing structures at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) 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 BA 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.

- (c) His detailed comments on unauthorized building works and provision of access are at **Appendix VII**.

District Officer's Comments

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

He 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 objection to/ no comment on the application:

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

11. Public Comments Received During Statutory Publication Period

On 31.12.2019, the application was published for public inspection. During the three-week statutory publication period, four public comments from Kadoorie Farm and Botanic Garden Corporation, Designing Hong Kong Limited, World Wide Fund for Nature Hong Kong and an individual (**Appendices VI-a to VI-d**) were received. All of them object to the application mainly on the grounds that the application is not in line with the planning intention of the "AGR" zone and does not comply with TPB PG-No. 13E; the Site is subject to suspected "destroy first, develop later" case; the Site is subject to previous rejected applications and enforcement action; approval of the application will legitimate the unauthorized development and setting undesirable precedent; and the cumulative effect of approving such applications would degrade the rural environment of the area.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage of construction materials and machinery, office, staff rest room and store room in "AGR" zone. The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purpose, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The applied use is not in line with the planning intention of the "AGR" zone. DAFC does not support the

application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

- 12.2 The development is not entirely compatible with the surrounding areas which are rural in character and intermixed with residential structures/dwellings, vacant/unused land and a vegetated knoll on the immediate south.
- 12.3 The Site falls within Category 3 areas under the TPB PG-No. 13F. 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 (if required) 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.

- 12.4 The application is not in line with the TPB PG-No. 13F in that there is no previous approval for open storage use granted at the Site. Besides, there are adverse departmental comments on the application. Apart from DAFC, DEP does not support the application as there are sensitive receivers, i.e. residential dwellings/structures located to the north and south of the Site (80m and 90m respectively) and the development involves the use of heavy vehicles, environmental nuisance is expected. Also, CTP/UD&L of PlanD has reservation on the application as approval of the application may encourage other similar site modification prior to planning permission, and resulting in irreversible changes to the existing landscape character in the area and may have potential risk of encroachment into the nearby “GB” zone. Hence, the current application does not warrant sympathetic consideration.
- 12.5 The Site is subject to a previous application for temporary vehicle repair workshop and two previous applications for the same applied use as the current application which were all rejected by the Committee in 2007, 2016 and 2018 respectively on the grounds as stated in paragraphs 6.2 and 6.3 above. Compared with the last rejected application No. A/YL-KTS/786, the current application is for the same applied use, site area, layout and floor area. Also, there are two similar applications for open storage use within the same “AGR” zone which were rejected by the Committee or by the Board on review in 2012 and 2018 respectively on the grounds as stated in paragraph 7.2 above. Rejection of the current application is in line with the previous decisions of the Committee/the Board on previous and similar applications.

- 12.6 Four public comments were received during the statutory publication period objecting to the application mainly on the grounds as stated in paragraph 11 above. In this regard, the departmental comments as well as planning considerations and assessments as stated above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments 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 primarily 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;
- (b) the application does not comply with the TPB PG-No. 13F in that there is no previous approval granted at the Site and there are adverse departmental comments 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 22.1.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00p.m. and 8:00a.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 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 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 22.7.2021;

- (f) in relation to (e) 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 22.10.2021;
- (g) in relation to (f) above, the implemented drainage facilities on the Site 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 5.3.2021;
- (i) 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 22.7.2021;
- (j) in relation to (i) 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 22.10.2021;
- (k) if any of the above planning condition (a), (b), (c), (d) 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;
- (l) if any of the above planning condition (e), (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; and
- (m) 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 VII**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14.3 Alternatively, 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.

15. Attachments

Appendix I	Application form and plans received on 24.12.2019
Appendix Ia	FI received on 28.7.2020
Appendix Ib	FI received on 24.11.2020 and 23.11.2020
Appendix Ic	FI received on 13.1.2021
Appendix II	Relevant extract of TPB PG-No. 13F
Appendix III	Previous s.16 applications covering the Site
Appendix IV	Similar applications within the same “AGR” zone on the Kam Tin South OZP
Appendix V	Good Practice Guidelines for Open Storage Sites
Appendices VI-a to VI-d	Public comments received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Site Layout 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
JANUARY 2021**