RNTPC Paper No. A/YL-NSW/276 For Consideration by the Rural and New Town Planning Committee on 20.3.2020

APPLICATION FOR PERMISSION UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-NSW/276

<u>Applicant</u>: Team Harvest Limited represented by Aikon Development

Consultancy Limited

<u>Site</u> : Lot 1743 S.C RP in D.D. 107, Castle Peak Road, Nam Sang Wai,

Yuen Long

Site Area : About 39,000m²

<u>Lease</u> : Block Government Lease (demised for agricultural use)

<u>Plan</u>: Approved Nam Sang Wai Outline Zoning Plan (OZP) No.

S/YL-NSW/8

Zoning : "Open Storage" ("OS")

Application : Temporary Container Storage Yard for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary container storage yard for a period of 5 years. According to the Notes of the OZP for the "OS" zone, 'Container Storage Yard' is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site has been paved and fenced off, and is currently used for the applied use without valid planning permission.
- 1.2 The Site is the subject of six previous applications all for container storage yard (Nos. A/DPA/YL-NSW/18, A/YL-NSW/2, 70, 158, 194 and 234) (**Plan A-1**). The last application No. A/YL-NSW/234 submitted by a different applicant was approved by the Rural and New Town Planning Committee (the Committee) of the Board on 6.2.2015 for a period of 5 years until 6.2.2020. All approval conditions had been complied with.
- 1.3 As shown on **Plan A-2**, the Site is accessible via a local track through the ingress/egress at the northeastern corner of the Site. The Site is sub-divided into four areas by internal fencing of which three are used as container storage yards and the area at the northeastern part of the Site is designated as internal vehicular access and waiting area for container vehicles (**Drawing A-1**). As compared with

the last application No. A/YL-NSW/234, the current application mainly involves increase in covered area, number of structures and total floor area. Same as the last approval, no night-time operation between 11:00 p.m. and 7:00 a.m., no provision of car parking space or loading/unloading (L/UL) bay, and stacking height of containers not exceeding 5 units are proposed by the applicant. The 3m high barrier wall along the western and northwestern boundary of the Site would be maintained by the applicant. The minimum widths of the ingress/egress points of the three areas and the area designated for internal vehicular access/waiting area are 10m and 40m respectively to provide enough waiting/manoeuvring space for any queuing container vehicles within the Site and to avoid tailing back to Castle Peak Road – Tam Mi. A comparison of the major development parameters under the previous and current application is as follows:

Major Development	Last Application No. A/YL-NSW/234	Current Application No. A/YL-NSW/276	Difference
Parameters	(a)	(b)	(b) - (a)
Site Area (about)	39,000m ²	$39,000\text{m}^2$	No change
Covered Area (about)	2,655m ²	3,071.1m ²	+416.1m ² (+15.67%)
Number of Structures (for site office/ general storage uses) and Total Floor Area (about)	9 one to two-storey structures (2.59 – 6m high) with a total floor area of 2,807m ²	11 one to two-storey structures (2.6 – 6m high) with a total floor area of 3,293.5m ²	+2 no. +486.5m ² (+17.33%)

- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form received on 21.1.2020 (Appendix I)
 - (b) Supplementary planning statement received on (Appendix Ia) 21.1.2020
 - (c) Letter received on 21.1.2020 with replacement pages of the supplementary planning statement (Appendix Ib)
 - (d) Further Information (FI) received on 6.3.2020 (Appendix Ic) providing justifications for nil provision of internal transport facilities within the Site, anticipated trip generation and attraction and vehicular manoeuvring arrangements (exempted from publication)
 - (e) FI received on 16.3.2020 providing clarifications on anticipated trip generation and attraction and manoeuvring of vehicles with a set of photographic record showing conditions of the Site (exempted from publication) (Appendix Id)

2. <u>Justifications from the Applicant</u>

The justifications put forth by the applicant in support of the application are detailed in the supplementary planning statement, replacement pages and FIs at **Appendices Ia** to **Id**. They can be summarized as follows:

- (a) The Site is the subject of an approved s.12A application (No. Y/YL-NSW/3) to rezone the Site from "OS" to "Commercial" ("C") to facilitate development of a shopping mall cum hotel. Since the approval of the rezoning application by the Committee on 18.3.2016, corresponding amendment to the current OZP has yet to be carried out. Considering a fairly long processing time would normally be required for OZP amendment and the subsequent development procedures, it is considered that the approved rezoning application is unlikely to be implemented and in operation within the next five years. Temporary nature of the applied use could utilize the Site and would not be contrary to the implementation of the approved rezoning application.
- (b) The applied use at the Site is fully in line with the planning intention of the "OS" zone.
- (c) Considering the Site is located close to Lok Ma Chau crossing and that the current application is to continue the same use which was previously approved with no pond filling involved, sympathetic consideration should be given to the application.
- (d) The applied use is fully in line with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13E) since the Site falls within Category 1 areas. Based on the five previous planning approvals for the same use and that all approval conditions in the last approved application No. A/YL-NSW/234 were duly complied with by the applicant, the application is considered fully in line with TPB PG-No. 13E.
- (e) The Site is subject to five previous planning approvals (No. A/YL-NSW/2, 70, 158, 194 and 234) for the same use. There are no substantial changes in the planning circumstances. The nature of the current application in terms of approval period sought and the applied use is the same as that of the previously approved applications. Approval of the current application on a temporary basis is considered not incompatible with the planning intention of the "OS" zone and would not set an undesirable precedent.
- (f) There would be no change in terms of nature of the applied use and operation hours. The existing drainage provision and landscape treatment would be properly maintained at all times upon approval of the current application. No complaints have been received since the applied use has come into operation for more than a decade, and no infrastructural nor environmental impacts would be envisaged.
- (g) Considering the Site is intended for similar open storage uses and has been used for temporary container storage yard since 1994, and no adverse traffic impact has been induced during its operation, significant adverse traffic impact is not

envisaged. The approved traffic impact assessment under previous application (No. A/YL-NSW/194) demonstrated that the Site would only have insignificant traffic impact to the adjacent road. The main ingress/egress point is about 40m wide and the minimum width of ingress/egress of the three areas is 10m. Sufficient spaces within the Site have been allowed for ingress/egress point and internal vehicular access and buffer/waiting area to avoid tailing back to the Castle Peak Road – Tam Mi.

3. <u>Compliance with the "Owner's Consent/Notification" Requirements</u>

The applicant is not a "current land owner" but has complied with the requirements as set out in the TPB Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG- No. 31A) by giving notification to the "current land owner". Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

- 4.1 According to TPB PG-No. 12C, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarized as follows:
 - (a) The intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds.
 - (b) Within the WBA, for development or redevelopment which requires planning permission, an ecological impact assessment (EcoIA) would need to be submitted. Some local and minor uses (including temporary uses) are however exempted from the requirement of EcoIA.
 - (c) Applications for new open storage or container back-up uses including workshops within the WBA, whether temporary or permanent, would normally not be allowed in view of the adverse disturbances of such activities on birds, in particular for such uses involving filling of contiguous ponds. However, open storage or container back-up uses located close to the Lok Ma Chau crossing and without involving pond filling might be sympathetically considered by the Board in view of the genuine need to facilitate cross-boundary movements of goods in the area.

Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance (TPB PG-No. 13E)

4.2 According to TPB PG-No. 13E, the Site falls within Category 1 areas under the guidelines. The following criteria are relevant:

Category 1 areas: favourable consideration will normally be given to applications within these areas, subject to no major 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 should be submitted if the proposed uses, such as container trailer/tractor park and open storage of chemical products/dangerous goods etc., may cause significant environmental and traffic concerns.

5. Background

- 5.1 The Site is not subject to any active enforcement action.
- 5.2 On 18.3.2016, the Committee approved a s.12A application for rezoning the Site from "OS" to "C" to facilitate a proposed shopping mall cum 700-room hotel development. The relevant proposed amendments to the OZP would be submitted to the Committee for agreement at an opportune time having regard to the changing planning and development circumstances of the areas covered by the OZP prior to gazetting under section 5 of the Town Planning Ordinance upon reference back of the OZP for amendment by the Chief Executive in Council.

6. Previous Applications

- 6.1 The Site is the subject of 6 previous applications all for container storage yards, of which 5 applications were approved by the Committee or partially approved by the Board on review.
- 6.2 Application No. A/DPA/YL-NSW/18 covering a larger site for proposed container storage yard was rejected by the Board on review in 1994 on grounds that the proposed development would be affected by the imminent implementation of the proposed Route 3 (Country Park Section) project and implementation of the proposed Main Drainage Channels of Yuen Long and Kam Tin Stage I, Phase 2 respectively, and insufficient information had been included in the submission to demonstrate that the proposed development would not have adverse operational noise impacts on the nearby settlements and the proposed mitigation measures were insufficient to minimize such impacts.
- Amongst the 5 previously approved applications, except for applications No. A/YL-NSW/2 and 158 applying for container storage yards on permanent basis, 3 applications applied for the same use but on temporary basis for periods of 5 years. The two permanent applications were rejected by the Board on review in 1994 and 2005 respectively but were granted planning approvals for temporary periods of 5 years for the reasons that temporary approval period would facilitate monitoring of the situations (i.e. environmental and traffic impacts of the development) and control the operation.
- 6.4 The last application No. A/YL-NSW/234 for temporary container storage yard was approved by the Committee in 2015 for a period of 5 years, mainly on the grounds that the development was generally in line with the planning intention of the "OS" zone and the TPB PG-No. 13E in that no adverse comment from relevant departments and their technical concerns could be addressed through

implementation of approval conditions, and was not incompatible with the surrounding areas. The planning permission is valid until 6.2.2020 and all approval conditions had been complied with.

6.5 Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.

7. Similar Application

There is no similar application within the same "OS" zone on the OZP.

- 8. The Site and Its Surrounding Areas (Plans A-1 and A-2, aerial photo on Plan A-3 and site photos on Plans A-4a to A-4b)
 - 8.1 The Site is:
 - (a) accessible via a local track leading to Castle Peak Road Tam Mi;
 - (b) paved and fenced off, and is currently used for the applied use without valid planning permission; and
 - (c) located within the WBA of the Deep Bay Area.
 - 8.2 The surrounding areas rural in character intermixed with industrial and open storage uses, scattered residential dwellings and unused land:
 - (a) to its immediate north is a soy sauce factory and unused land;
 - (b) to its southeast across Castle Peak Road Tam Mi and Tsing Long Highway are unused land and ponds;
 - (c) to its immediate south is unused land; and
 - (d) to its immediate southwest are open storage yard and residential dwellings. To its west across Kam Tin River are ponds and unused land.

9. Planning Intention

The "OS" zone is intended primarily for the provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses which cannot be accommodated in conventional godown premises.

10. Comments from Relevant Government Departments

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
 - (a) The Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
 - (b) Lot 1743 S.C RP in D.D. 107 is covered by Short Term Waiver (STW) No. 2788 to permit structures erected thereon for the purpose of "Ancillary Use to Container Storage Yard".
 - (c) Should planning approval be given, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. 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 landlord or lessor at its sole discretion and there is no guarantee that such application 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 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) 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 LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
 - (c) Should the application be approved, the following condition should be incorporated:
 - no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period.
- 10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):
 - (a) The access arrangement to the Site from Castle Peak Road Tam Mi should be commented by Transport Department.

- (b) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and Castle Peak Road Tam Mi. Presumably, the relevant departments will provide their comments, if any.
- (c) 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.
- 10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

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

Environment

- 10.1.5 Comments of the Director of Environmental Protection (DEP):
 - (a) According to the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" ("COP"), he does not support the application as the Site is within 100m from the nearest sensitive uses (i.e. the nearest residential structures are located to the immediate west of the Site) (**Plan A-2**), and environmental nuisance is expected.
 - (b) The applicant is advised to follow the environmental mitigation measures as recommended in the latest "COP" in order to minimize the potential environmental impacts on the adjacent area.
 - (c) There were two environmental complaints received by DEP in 2017 and 2018 regarding waste disposal and wastewater discharge respectively.

Nature Conservation

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

As the development proposal only involves continuation of the same use in the same site area as previously approved, he has no comment on the application from nature conservation point of view.

Fire Services

- 10.1.7 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.
 - (c) His advisory comments are at **Appendix III**.

Building Matters

- 10.1.8 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 for the existing structures at the Site, he is not in the position to offer comments on their suitability for the use proposed in the application.
 - (b) His advisory comments are at **Appendix III**.

Drainage

- 10.1.9 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) Presumably, the applicant would maintain the same drainage facilities as those implemented under previous application (No. A/YL-NSW/234). The applicant should inform PlanD if the drainage arrangement has been changed.
 - (b) He noted from photos nos. 4, 7, 8, 10, 11 and 12 in Illustration 3 (**Appendix Ia**) that there are debris/fallen leaves within the drainage channel. The applicant should conduct clearance for photo re-taking.
 - (c) He has no objection in principle to the proposed development. Should the application be approved, conditions should be stipulated to request the applicant to (i) maintain the drainage facilities implemented under application No. A/YL-NSW/234; and (ii) submit records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board.

Others

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

The applicant shall 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 or in the vicinity of the Site. Based on the cable plans and the relevant drawings obtained, if there is underground cable and/or overhead line within or in the vicinity of the Site, the applicant shall carry out the measures detailed in **Appendix III**.

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 local comment on the application and he has no comment from departmental point of view.

- 10.2 The following Government departments have no comment on or no objection to the application:
 - (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD):
 - (b) Project Manager (West) (PM(W)), CEDD;
 - (c) Director of Leisure and Cultural Services (DLCS); and
 - (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
 - (e) Commissioner of Police (C of P).

11. Public Comment Received During Statutory Publication Period

On 7.2.2020, the application was published for public inspection. During the first three weeks of the statutory publication period, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary container storage yard for a period of 5 years. The Site falls within the "OS" zone, which is primarily for provision of land for appropriate open storage uses and to regularize the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses that cannot be accommodated in conventional godown premises. The applied use is a Column 2 use of the "OS' zone, and is considered not in conflict with the planning intention of the Site. The Site is bounded by Castle Peak Road Tam Mi, an "Industrial (Group D)" zone and an "Open Space" zone. It is considered not incompatible with the surrounding areas which are predominantly open storage yards, factory and unused land which are intermixed with scattered residential dwellings.
- 12.2 The Site falls within Category 1 areas under the TPB PG-No. 13E. The following considerations in the guidelines are relevant:

Category 1 areas: favourable consideration will normally be given to applications within these areas, subject to no major 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 should be submitted if the proposed uses, such as container trailer/tractor park and open storage of chemical products/dangerous goods etc., may cause significant environmental and traffic concerns.

- The application generally complies with TPB PG-No. 13E in that relevant 12.3 Government departments consulted including C for T, D of FS, CE/MN of DSD have no objection to or adverse comment on the application and no local objection was received. DEP does not support the application as there are sensitive uses in the vicinity of the Site (i.e. nearest residential structures are located to the immediate west of the Site) and environmental nuisance is expected. In this regards, to address the concerns on the possible environmental nuisances generated by the applied temporary use and to mitigate any potential environmental impacts on the surrounding areas, approval conditions restricting the operation hours proposed by the applicant, and requiring maintenance of existing boundary fencing, drainage facilities implemented under previous application No. A/YL-NSW/234, and submission and implementation of FSIs proposals are recommended in paragraphs 13.2 (a), (e) to (i) below. Any non-compliance with these approval conditions would result in revocation of the planning permission and unauthorized development on-site would be subject to enforcement action by the Planning Authority. Besides, the applicant should be advised to follow the latest "COP" issued by DEP to minimize the possible environmental impacts.
- 12.4 The Site falls within the WBA of the TPB PG-No. 12C and the guidelines specify that planning applications for temporary uses are exempted from the requirement of EcoIA. The nearest ponds are about 45m to the west of the Site. As the development involves continuation of the same use previously approved, DAFC has no comment on the application from nature conservation point of view. Furthermore, open storage or container back-up uses located close to Lok Ma Chau crossing and without involving pond filling might be sympathetically considered by the Board in view of the genuine need to facilitate cross-boundary transportation of goods in the area.
- 12.5 The Site is the subject of 5 previously approved applications for container storage yards. The last application No. A/YL-NSW/234 for temporary container storage yard was approved by the Committee on 6.2.2015 for a period of 5 years and all conditions had been complied with. Approval of the current application is in line with the previous decisions of the Board.
- 12.6 There is no public comment received during the statutory publication period.

13. Planning Department's Views

13.1 Based on the assessments made in paragraph 12, the Planning Department has <u>no</u> <u>objection to</u> the application.

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 5 years until 20.3.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 11:00 p.m. and 7:00 a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the stacking height of containers stored at any other location within the site should not exceed 5 units, as proposed by the applicant, at all times during the planning approval period;
- (d) the existing trees within the site shall be maintained at all times during the planning approval period;
- (e) the boundary fencing along the site should be maintained at all times during the planning approval period;
- (f) the drainage facilities implemented under application No. A/YL-NSW/234 shall be maintained at all times during the planning approval period;
- (g) the submission of records of the existing drainage facilities on site within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.6.2020;
- (h) 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 <u>20.9.2020</u>;
- (i) in relation to (h) 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 20.12.2020;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) or (f) 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
- (k) if any of the above planning conditions (g), (h) or (i) 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 III**.

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

the application fails to demonstrate that the proposed development would not have adverse environmental impacts.

14. <u>Decision Sought</u>

- 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 21.1.2020

Appendix Ia Supplementary Planning Statement received on 21.1.2020

Appendix Ib Letter and Replacement Pages received on 21.1.2020

Appendix Ic FI received on 6.3.2020
Appendix Id FI received on 16.3.2020
Appendix II Previous Applications

Appendix III Recommended Advisory Clauses

Plan A-1
Plan A-2
Plan A-3
Plans A-4a to A-4b
Layout Plan
Location Plan
Site Plan
Aerial Photo
Site Photos

PLANNING DEPARTMENT MARCH 2020