

RNTPC Paper No. A/YL-PH/821
For Consideration by
the Rural and New Town
Planning Committee
on 29.11.2019

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/821

- Applicant** : Mr. TANG Koon Yung
- Site** : Lots 2878 (Part), 2879 (Part), 2889 (Part), 2890 (Part), 2891 (Part), 2892 (Part), 2898 (Part) and 2900 (Part) in D.D. 111 and Adjoining Government Land, Pat Heung, Yuen Long, New Territories
- Site Area** : 1,426.12m² (about)
(including Government Land of about 45.16m² – about 3%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
- Zoning** : “Agriculture” (“AGR”) (about 72%)

“Residential (Group D)” (“R(D)”) (about 28%)
[maximum plot ratio of 0.2 and building height of 2 storeys (6m)]
- Application** : Proposed Temporary Open Storage of Scrap 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 proposed temporary open storage of scrap vehicles for a period of three years. The Site is not subject to any previous application and is vacant (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the development involves one 1-storey structure as resting place (3m in height) with a total floor area of about 248.8m². The operation hours are from 8:00 a.m. to 6:00 p.m. daily including public holidays. No vehicle exceeding 5.5 tonnes will be used in the development. The Site is accessible by a local track leading to Kam Tin Road. The layout plan submitted by the applicant is at **Drawing A-1**.

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

- (a) Application form with plans received on 3.10.2019 (Appendix I)
- (b) Further Information (FI) received on 21.11.2019 (Appendix Ia) clarifying the vehicle type used in the proposed development

2. Justifications from the Applicant

There is no justification put forth by the applicant in support of the application.

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

The applicant is not the “current land owners” of the private land portion of the Site 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 site notice and notifying Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ 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 on “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 are relevant to this application. The Site falls within Category 3 areas under TPB PG-No.13E. Relevant extract of the Guidelines is attached at **Appendix II**.

5. Background

The Site is subject to an on-going planning enforcement action (No. E/YL-PH/810) against an unauthorised development (UD) involving storage use. Enforcement Notice was issued on 2.5.2019 to the concerned parties requiring discontinuation of the UD. Subsequent site inspection revealed that the UD was discontinued. In order to restore the greenery and amenity of the area, the Site is also subject to reinstatement action.

6. Previous Application

The Site is not involved in any previous application.

7. Similar Applications

7.1 There are 29 similar applications for various temporary open storage uses within the same “AGR” and “R(D)” zones or straddling the adjoining “Village Type Development” (“V”) zone since the promulgation of the TPB PG-No. 13E on 17.10.2008. Details of these applications are summarized in **Appendix III** while their locations are shown on **Plan A-1**.

Sites within “R(D)” zone and/or with minor portion within “AGR” zone

7.2 Amongst the 29 similar applications, 22 applications fall within “R(D)” or straddle “R(D)” and “AGR” zones involving 6 sites. Except Application No. A/YL-PH/585, all of them were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2009 and 2019 mainly on the considerations that the temporary developments would not frustrate the long-term planning intentions of the “R(D)” and/or “AGR” zones; were not incompatible with the surrounding land uses; and generally complied with TPB PG-No. 13E in that previous approval for open storage use was granted. 8 application were revoked due to non-compliance with the approval conditions.

7.3 Application No. A/YL-PH/585 for temporary open storage of tires was rejected by the Committee in 2009 mainly on the grounds that the development did not comply with TPB PG-No. 13E in that there were local objections and adverse departmental comments on environmental and agricultural aspects; adverse environmental impact and increased fire hazards to the surrounding area; and no technical assessment was submitted to address potential impacts. Subsequent applications for open storage of construction materials, machinery and vehicles were approved at the same site.

Sites within “AGR” zone and/or with minor portion within “V” zone

7.4 The remaining 7 applications involving 5 sites were rejected by the Committee between 2009 and 2012 mainly on the grounds that the developments were not in line with the planning intentions of “AGR”/“V” zones; did not comply with TPB PG-No. 13E in that there was no previous planning approval granted to the site and there were adverse departmental comment and local objection against the applications; generated adverse impacts to the surrounding areas; and set an undesirable precedent.

8. The Site and Its Surrounding Areas (Plans A-2 to A-4)

8.1 The Site is:

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

8.2 The surrounding areas are rural in nature intermixed with open storage/storage yards, warehouse and vacant land (**Plan A-2**). Some of them are suspected unauthorized developments subject to enforcement action by the Planning Authority :

- (a) to the south and west of the Site are open storage/storage yards (some with planning permissions) and a warehouse;
- (b) to the north and east of the Site are vacant/unused land; and
- (c) about 100m and 80m to the west and southeast of the Site are “V” and “Conservation Area” zones respectively.

9. Planning Intentions

- 9.1 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.
- 9.2 The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

10. Comments from Relevant Government Departments

- 10.1 The following Government departments have been consulted and their views 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 Scheduled Agricultural Lots held under the Block Government Lease which contain the restriction that no structures are allowed to be erected without

the prior approval of the Government.

- (b) No permission has been given for occupation of Government land (about 45.16m² subject to verification) included in the Site. Any occupation of Government land without Government's prior approval is not allowed. With the implementation of the tightened arrangements for handling regularisation applications, his department will no longer accept application for regularisation of new or extension of unlawful occupation of Government land or erection of new structures which is found commenced on or after 28.3.2017.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should planning approval be given to the planning application, 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. 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. Furthermore, the applicant has to either exclude the Government land portion from the Site or apply for a direct grant Short Term Tenancy (STT) for use of the Site. Applications for any of the above will be considered by his department 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 premium or fee, as may be imposed by his department.

Traffic

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

- (a) There is insufficient information in the submission for the Transport Department to support the application. He has the following outstanding comments on the application from traffic engineering perspective which are not yet addressed by the applicant:
 - (i) the applicant should justify of no parking and loading/unloading provisions considering the Site

operation and commuting of staff;

- (ii) the applicant should clarify if vehicular traffic would be generated, given the proposed usage was storage of scrap vehicles. If so, trip generation/attraction should be provided considering the site operation;
 - (iii) the applicant should provide a detailed layout, indicating the clear width of site ingress/egress and aisle width; and
 - (iv) the applicant should demonstrate the smooth manoeuvring of vehicles to/from Kam Tin Road, along the local access and within the Site.
- (b) Should the application be approved, approval conditions on (i) submission of a traffic impact assessment; and (ii) 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 in the planning approval.
- (c) The Site is connected to the public road network via a local access road which is not managed by his department. The land status of that local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of that 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 Tin 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 is no environmental complaint concerning the Site received by DEP in the past three years.

- (b) Should the application be approved, the applicant should be advised to adopt the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” (the COP) issued by the DEP to minimise any potential impact.

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) Based on the aerial photo taken on 3.1.2018, the Site is situated in an area of rural landscape character comprising of scattered tree groups, open storages and abandoned farmlands. The proposed development is considered not incompatible with the surrounding environment.
- (c) According to the site visit on 25.10.2019, the Site is hard paved and vacant. A number of existing trees including *Ficus microcarpa*, *Ficus hispida* and *Roystonea regia* in very good to fair condition are found within the Site. Referring to the site layout plan (**Drawing A-1**), the proposed layout is not in direct conflict with the existing trees. Further significant adverse impact on landscape resources due to the proposed development is not anticipated.
- (d) In view that the Site is not abutting prominent public frontage and significant adverse landscape and visual impact due to the proposed development is not anticipated, landscape condition is not recommended should the Board approve the application.

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 proposed development from the public drainage point of view.
- (b) Should the application be approved, approval conditions

requiring the submission, implementation and maintenance of drainage proposal for the development should be included in the planning permission.

Building Matters

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

- (a) Before any new buildings 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 Building Authority should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulation 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (d) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at building plan submission stage.

Agriculture and Nature Conservation

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

- (a) Although agricultural activities are not active in the vicinity, agricultural infrastructures such as road access and water source are available. The Site can be used for agricultural activities such as greenhouses, plant nurseries etc. As the Site possesses potential for agricultural rehabilitation, he does not support the application from agricultural point of view.

- (b) Noting the Site is paved and disturbed, he has no comment on the application from nature conservation perspective.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit 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 (**Appendix IV**) should be adhered to.
- (c) Having considered the nature of the open storage, the 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 approval condition, the applicant should submit a valid fire certificate (FS 251) to his department for approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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 comment from locals upon close of consultation and he 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) Project Manager (West), Civil Engineering and Development

- Department;
- (c) Chief Engineer/Construction, Water Supplies Department; and
 - (d) Commissioner of Police.

11. Public Comments Received During Statutory Publication Period

On 11.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 6 public comments (**Appendices Va to Vf**) were received from Kadoorie Farm and Botanic Garden Corporation, the Hong Kong Bird Watching Society, World Wide Fund for Nature Hong Kong, Designing Hong Kong and 2 individuals. All of them object to the application on the following grounds:

- (a) The proposed development is not in line with the planning intentions of “AGR” and “R(D)” zones.
- (b) There are some rejected open storage applications in the vicinity and the rejection reasons including not complying with the TPB PG-No.13E, no information to demonstrate no adverse traffic, environmental, drainage and landscape impacts on the surrounding areas and setting undesirable precedent may be applicable to this case.
- (c) The Site was involved in unauthorised development and ‘destroy first, build later’ practice should not be encouraged.
- (d) Storage of scrap metals is a noxious operation that can leach toxin into the soil which is not appropriate for land designated for housing.
- (e) The proposed development will generate adverse traffic, environmental and drainage impacts on the surroundings and the adjacent agricultural land.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of scrap vehicles for a period of 3 years at a site zoned “AGR” (72%) and “R(D)” (28%). The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and for low-rise, low-density residential developments subject to planning permission from the Board. The proposed development is not in line with the planning intentions of the “AGR” and “R(D)” zones. DAFC does not

support the application from agricultural point of view as agricultural infrastructures such as road access and water source are available and the Site possesses potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis.

12.2 The surrounding area is intermixed with open storage/storage yards, warehouse and vacant/unused land (**Plan A-2**). However, some of them are suspected unauthorized development subject to enforcement action by the Planning Authority.

12.3 According to TPB PG-No. 13E, the Site falls within Category 3 areas. The following 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 within these areas 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. 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, planning permission could be granted on a temporary basis up to a maximum period of 3 years.

12.4 The application does not comply with the TPB PG-No. 13E in that there is no previous approval granted at the Site for open storage use and that further proliferation of such use is not acceptable. Also, C for T advises that there is insufficient information in the submission to support the application. Hence, the current application does not warrant sympathetic consideration.

12.5 There are 29 similar applications for various open storage uses within the same “AGR” and “R(D)” zones. 21 applications involving 6 sites were approved mainly based on the considerations of complying with TPB PG-No. 13E in that previous approval was granted. The other applications were rejected mainly on grounds of being not complied with TPB PG-No. 13E in that there was no previous planning approval granted to the sites and there were adverse departmental comments and local objections against the applications. The circumstances of the current application are similar to those of the rejected cases.

12.6 6 public comments received during the statutory public inspection period, all of

them object to the application as stated in paragraph 11 above. In this regard, relevant Government departments' comments as well as planning assessments and considerations as stated in paragraphs 12.1 to 12.5 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 proposed development is not in line with the planning intentions of the "AGR" and "R(D)" zones. The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The planning intention of the "R(D)" zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for low-rise, low-density residential developments subject to planning permission from the Town Planning Board. There is no strong planning justification in the submission for a departure from the planning intentions, even on a temporary basis;
- (b) the application does not comply 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) in that there is no previous planning approval for open storage use granted at the Site and there are adverse departmental comments on the proposed development; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for other similar applications within the "AGR" zone. The cumulative effect of approving such application 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 29.11.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) 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;
- (c) 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;
- (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 traffic impact assessment within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 29.5.2020;
- (f) 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;
- (g) 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 29.5.2020;
- (h) in relation to (g) 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 29.8.2020;
- (i) 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 29.5.2020;
- (j) in relation to (i) 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 29.8.2020;
- (k) in relation to (j) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (l) if any of the above planning condition (a), (b), (c), (d) or (k) 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;

- (m) if any of the above planning condition (e), (f), (g), (h), (i) or (j) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (n) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are at **Appendix 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 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 with Plans received on 3.10.2019
Appendix Ia	FI received on 21.11.2019 clarifying the vehicle type used in the proposed development
Appendix II	Relevant Extracts of Town Planning Board Guidelines No. 13E on “Application for Open Storage and Port Back-up Uses”
Appendix III	Similar Applications for Various Open Storage Uses within the Same “AGR” and “R(D)” Zones, or Straddling Partly within the Adjoining “V” zone on the Pat Heung Outline Zoning Plan
Appendix IV	Good Practice Guidelines for Open Storage Sites
Appendices Va to Vf	Public Comments
Appendix VI	Advisory Clauses
Drawing A-1	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan

Plan A-3
Plan A-4

Aerial Photo
Site Photos

PLANNING DEPARTMENT
NOVEMBER 2019