

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-SK/286

- Applicant** : Mr. LEE Wing Chiu
- Site** : Lot 1439 in D.D. 114, Shek Kong, Yuen Long
- Site Area** : About 1,506m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
- Zonings** : “Agriculture” (“AGR”)
- Application** : Proposed Temporary Open Storage of Construction Machinery and Construction Materials for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary open storage of construction machinery and construction materials at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “AGR” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘open storage of construction machinery and construction materials’ is neither a Column 1 nor Column 2 use within “AGR” zone. Notwithstanding this, temporary use or development of any land or building not exceeding a period of 3 years may be allowed with permission from the Town Planning Board (the Board). The Site is not subject to any previous application and is currently vacant and covered with grass.
- 1.2 According to the applicant, a single-storey (about 2.6m high) container-converted structure with a total floor area of about 14.6m² is proposed within the Site for storage of electrical appliances and meter box use (**Drawing A-1**). Besides, two non-fixed private car parking spaces and two non-fixed loading/unloading bays for medium goods vehicles will be provided on-site. The remaining area of the Site will be used for the said open storage purpose. The operation hours will be from 8:00a.m. to 7:00p.m. from Mondays to Saturdays. The Site is accessible from Kam Sheung Road via a local track.

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

Application form with lot plans received on 17.8.2020 (Appendix I)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix I**, and are briefly summarized as follows:

The Site is for temporary storage of construction machinery and construction materials upon the completion of construction works elsewhere. It leads to wastage and poses adverse environmental impact if those machineries and materials are discarded after use.

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

The applicant is one of the “current land owners” and has complied with the requirements as set out in the Town Planning Board (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 obtaining the consent of another “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines No. 13F 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 subject to planning enforcement action against Unauthorized Development (UD) involving storage use (**Plan A-2**). Reinstatement Notices (Case No.: E/YL-SK/217) were issued on 19.3.2020 requiring reinstatement of the concerned land. As subsequent site inspections revealed that the reinstatement requirements have not been fully complied with, further action may be considered.

6. Previous Application

There is no previous application in respect of the Site.

7. Similar Applications

7.1 There were eight similar applications for various temporary open storage uses on eight different sites located to the further west of the Site within the same “AGR” zone. Details of the applications are summarized in **Appendix III** and the locations of the sites are shown on **Plan A-1**.

7.2 These applications were all rejected by the Rural and New Town Planning Committee (the Committee) or by the Board on review between 1997 and 2011 mainly on the grounds that the developments were not in line with the planning intention of “AGR” zone; there was insufficient information in the submissions to demonstrate that the developments would not generate adverse environmental

and/or drainage impacts on the surrounding areas; they did not comply with the Town Planning Board Guidelines No. 13E for “Application for Open Storage and Port Back-up Uses”; and approval of the applications would set undesirable precedent for other similar applications to proliferate into the area, causing degradation of the surrounding environment.

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-4)

8.1 The Site is:

- (a) fenced off, vacant and covered with grass; and
- (b) accessible from Kam Sheung Road via a local track.

8.2 The surrounding areas of the Site are predominantly rural in character intermixed with residential structures/dwellings, open storage/storage yards, workshop/factory (some of them are suspected UDs subject to planning enforcement action by the Planning Authority), fallow farmland and vacant/unused land:

- (a) to its immediate north is a residential structure/dwelling (less than 10m away from the Site). To its further north within “AGR” zone are a cluster of open storage/storage yards and a workshop;
- (b) to its northeast and east across the local track are open storage/storage yards, a factory, residential structures/dwellings and unused land within “Residential (Group D)” (“R(D)”) zone; and
- (c) to its south and west are a few residential structures/dwellings, fallow farmland 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 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; and

- (b) should the planning approval be given to the planning application, the lot owner(s) will need to apply to DLO/YL of LandsD to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of 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 reservation on the application from traffic engineering perspective due to insufficient information, as the applicant fails to provide information on trip generation/attraction arising from the development with assessment on the traffic impact between Kam Sheung Road;
- (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; and
- (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 Lands Department. 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) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road; and
- (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) according to the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application since there are sensitive receivers in the vicinity (residential dwellings less than 10m away from the Site) and the proposed use involves the use of heavy vehicles and environmental nuisance is expected;
- (b) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by his department to minimise any potential environmental nuisances; and
- (c) there is no environmental complaint concerning the Site received by DEP in the past three years.

Agriculture and Nature Conservation

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

- (a) the Site falls within the “AGR” zone and is currently a vacant land. Although the 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, the application is not supported from agricultural point of view; and
- (b) noting the Site is a vacant land, he has no adverse comments on the application from nature conservation perspective.

Landscape

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

- (a) he has some reservations on the application from landscape planning perspective;
- (b) with reference to the aerial photo taken on 29.9.2019, the Site is situated in an area of rural landscape character comprising scattered tree groups, open storage, temporary structures and vacant land. Although the development is not entirely incompatible with the surrounding environment within the “AGR” zone, the existing temporary structures in the vicinity are suspected UDs subject to enforcement action as no application of

similar use within the “AGR” zone in proximity to the Site was approved; and

- (c) the Site is currently vacant and covered with grass. No existing tree is found within the Site. When comparing with the aerial photos taken in 2008 and 2009, it is apparent that the vegetation within the Site has been cleared prior to the application since 2008. Should the application be approved, it would set an undesirable precedent for similar development and encourage more unauthorized site alteration within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone.

Drainage

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

- (a) he has no objection in-principle to the development from public drainage point of view; and
- (b) should the application be approved, the conditions requiring the submission of a drainage proposal and the 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 approval.

Building Matters

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

- (a) before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on Site, prior approval and consent of the Building Authority (BA) should be obtained, otherwise they are unauthorised 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 the 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; and
- (c) his detailed comments are at **Appendix V**.

Fire Safety

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

- (a) he has no objection in-principle to the proposal subject to fire service installations being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, fire service installations are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations to his department for approval. In formulating the proposal, the applicant is advised to make reference to the requirements detailed in **Appendix V**;
- (c) having considered the nature of the open storage, an approval condition requiring the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS should be appended. To address this approval condition, the applicant should be advised to submit a valid fire certificate (FS 251) to his department for approval; and
- (d) the applicant is reminded that if the applied structure(s) is required to comply with the BO, 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 comments 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 adverse comment on the application:

- (a) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

11. Public Comments Received During the Statutory Publication Period

On 25.8.2020, the application was published for public inspection. During the three-week statutory publication period, a total of nine public comments from Designing Hong Kong Limited, Kadoorie Farm & Botanic Garden Corporation, World Wide Fund For Nature Hong Kong, Hong Kong Bird Watching Society and five individuals (**Appendices IV-1 to IV-9**) were received. They all raised objections to the application mainly on the grounds that the development is not in line with the planning intention of the "AGR"

zone; approval of this application would set an undesirable precedent to regularize unlawful developments through planning application; the local track connecting to Kam Sheung Road is a shared access and the usage of medium goods vehicles would severely affect pedestrian safety and damage their property; and the development would pose nuisance to the environment and ecology of the surrounding area.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary open storage of construction machinery and construction materials for a period of 3 years. The Site falls within the “AGR” zone on the approved Shek Kong OZP (**Plan A-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. DAFC does not support the application from agricultural point of view, considering that the Site possesses potential for agricultural rehabilitation and can be used for agricultural activities such as greenhouses, plant nurseries, etc. The applicant has not provided strong planning justifications in the submission to merit a departure from the planning intention of the “AGR” zone, even on a temporary basis.
- 12.2 The surrounding areas of the Site are predominantly rural in character intermixed with residential structures/dwellings, open storage/storage yards, workshop/factory, fallow farmland and vacant/unused land (**Plan A-2**). CTP/UD&L, PlanD has reservation on the application on the considerations that although the development is not entirely incompatible with the surrounding environment within the “AGR” zone, the existing open storage/storage yards and workshop/factory uses in the vicinity are suspected UDs subject to enforcement action; and the vegetation within the Site has been cleared prior to the application since 2008. Should the application be approved, it would set an undesirable precedent for similar development and encourage more unauthorized site alteration within the area. The cumulative impact of such approval would further degrade the landscape quality of the “AGR” zone.
- 12.3 The application does not comply with the TPB PG-No. 13F in that the Site falls within Category 3 areas where applications would normally not be favorably considered unless the applications are subject to previous planning approvals. It is noted that no previous planning approval has been granted to the Site and there are adverse departmental comments and local objections against the application.
- 12.4 Relevant Government departments consulted including DEP and C for T do not support/have reservation on the application. DEP does not support the application since there are sensitive receivers in the vicinity (residential dwellings than 10m away from the Site) and the proposed use involves the use of heavy vehicles, and environmental nuisance is expected. Besides, C for T also has reservation on the application as the applicant fails to provide sufficient traffic-related information to demonstrate that the development would not cause adverse traffic impact on Kam Sheung Road. Other relevant departments including D of FS, CE/MN of DSD, CE/C of WSD have no objection to/no adverse comments on the application.

- 12.5 The Site is not the subject of any previous application. There were eight similar applications for temporary open storage uses within the same “AGR” zone. All were rejected by the Committee or the Board on review between 1997 and 2011. The Board/Committee’s considerations on the above applications as stated in paragraph 7 are generally applicable to the current application. The rejection of this application is in line with the Committee’s previous decisions.
- 12.6 Regarding the nine public comments received during the statutory publication period as stated in paragraph 11, relevant Government departments’ comments and planning considerations set out in 12.1 to 12.4 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 as stated 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. It 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 of “AGR” zone, even on a temporary basis.
 - (b) the development does not comply the Town Planning Board Guidelines for Application for Temporary Open Storage and Port Back-up Uses (TPB PG-No. 13F) in that no previous planning approval has been granted to the Site and there are adverse departmental comments and local objections against the application;
 - (c) the applicant fails to demonstrate that the development would not generate adverse environmental and traffic impacts to the surrounding areas; and
 - (d) the approval of the application 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 9.10.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 7:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (c) no heavy goods vehicles exceeding 24 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 trip generation and attraction to/from the site with assessment on traffic impact to public road within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.4.2021;
- (f) the submission of a 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 9.4.2021;
- (g) in relation to (f) 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 9.7.2021;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of a 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 9.4.2021;
- (j) in relation to (i) above, the implementation of the 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 9.7.2021;
- (k) the provision of fire extinguisher(s) together 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 20.11.2020;
- (l) if any of the above planning condition (a), (b), (c), (d) or (h) 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), (i), (j) or (k) 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 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 V**.

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 lot plans received on 17.8.2020
Appendix II	Extract of the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13F)
Appendix III	Similar Applications
Appendices IV-1 to IV-9	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with similar applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**