

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/783

<u>Applicant</u>	: Mr. LEE King Chok represented by Top Bright Consultants Limited
<u>Site</u>	: Lots 123 (Part), 124 (Part), 125 (Part), 127 (Part) and Adjoining Government Land in D.D. 113, Kam Tin, Yuen Long
<u>Site Area</u>	: About 6,342 m ² (including about 1,058 m ² of Government Land)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Draft Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/14
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Warehouse for Storage of Drainage Pipes with Ancillary Site Office 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 warehouse for storage of drainage pipes with ancillary site office for a period of 3 years. The Site is not subject to any previous planning application. The Site is currently paved, fenced and is being used for the applied use without valid planning permission (**Plans A-2 and A-4a to b**).
- 1.2 According to the applicant’s submission, the development involves a total of 9 one to two-storeys (3m to 9.1m high) temporary structures with a total floor area of 2,984 m² for storage, warehouse, site office, canopy and toilet uses. There are 3 car parking spaces for visitors and staffs and 3 loading/unloading spaces for medium goods vehicles provided on-site. The operation hours are from 9:00 a.m. to 6:00 p.m. Mondays to Fridays, 9:00 a.m. to 1:00 p.m. on Saturdays and no operation on Sundays and public holidays. No workshop activities will be carried out on-site. The Site is accessible to Kam Ho Road via local track. The plans

showing the location, layout, landscape proposal and access of the Site submitted by the applicant is shown on **Drawings A-1 to A-4**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with supplementary statement and plans received on 6.4.2018 **(Appendix I)**
 - (b) Further Information (FI) received on 23.7.2018 providing response to departmental comments **(Appendix Ia)**
(accepted and exempted from publication and recounting requirement)
- 1.4 As requested by the applicant, the Committee agreed to defer consideration of the application on 1.6.2018 to allow more time for the applicant to prepare FI to address the departmental comments for a period of 2 months. The application submitted FI on 23.7.2018 providing responses to departmental comments to support the application.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary statement and the FI at **Appendices I to Ia**. They can be summarized as follows:

- (a) The applicant is a company for providing various valves, pipes and fittings serving both public and private sectors by supplying different types of drainage and sewage products. In view of demand of ongoing and future drainage infrastructure supplies in the New Territories, the applicant has located his business at the Site to serve local area.
- (b) The demand for agricultural activities at the Site and surrounding area is low. The Site has been paved for years and is unsuitable for agricultural purpose. The applied use for a temporary period of 3 years does not contravene the long-term planning intention of “AGR” zone.
- (c) The Site is compatible with the surrounding areas which are occupied by open storage yards, warehouses or parking lots and there will be insignificant environmental, traffic and drainage impact brought by the applied use.
- (d) The applied use will improve the condition of the Site and able to provide drainage infrastructure materials to Government departments for the implementation of the proposed three public housing sites in the vicinity.

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

The applicant is not a “current land owner” 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 a notice near the entrance of the Site and sending notice to the Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is the subject of a current planning enforcement action (No. E/YL-KTS/402) involving storage use. Enforcement Notice (EN) was issued to the responsible person on 13.4.2018 under s.23 (1) of the Town Planning Ordinance (TPO). The use of the Site for storage use without a valid planning permission constitutes an unauthorized development under the TPO. The Site inspection on 16.7.2018 revealed that the unauthorized development (UD) still continued upon expiry of the EN, prosecution action may be taken.

5. **Previous Application**

The Site is not subject to any previous application.

6. **Similar Application**

- 6.1 There is one similar application (No. A/YL-KTS/521) for temporary warehouse for storage of exhibition materials for a period of 3 years within the same “AGR” zone on the OZP. Details of the application are summarized in **Appendix II** whilst the location of the application site is shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTS/521 for temporary warehouse for storage of exhibition materials for a period of 3 years was rejected by the Town Planning Board (the Board) upon review on 27.5.2011 mainly on the grounds that the development was not in line with the planning intention of the “AGR” zone and no strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis; the development was not compatible with the surrounding areas which were predominantly rural in character; 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, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone, and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

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

7.1 The Site is:

- (a) fenced, paved and used for the applied use without valid planning permission; and
- (b) accessible via a local track from Kam Ho Road.

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

- (a) To its immediate northeast is unused land zoned “Green Belt” (“GB”);
- (b) to its east are some storage yards and residential dwellings/structures (the nearest about 40m to the east). To its south is vacant/unused land; (**Plan A-1**);
- (c) to its west and northwest are vacant/unused land and open storage yards and warehouses without planning permission.

8. Planning Intention

The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

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

Land Administration

9.1.1 Comments of the District Lands Officer, Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises Old Schedule Agricultural Lots 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 Government Land (GL) (about 1,058m² subject to verification) included in the Site. Any occupation of GL without Government's prior approval is not allowed.
- (c) Part of the Site falls within Burial Ground No.YL/32 (**Plan A-2**).
- (d) The Site is accessible to Kam Ho Road via GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (e) 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.
- (f) Should planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Furthermore, the applicant has to either exclude all the GL portion from the Site or apply for a formal approval which excludes the GL portion falling within the burial ground prior to the actual occupation of the GL. Such application(s) 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 premium or fee, as may be imposed by the LandsD.

Traffic

9.1.2 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 (TD). 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.

9.1.3 Comments of the Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD):

- (a) His department does not and will not maintain any access connecting the Site and Kam Ho Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was 1 substantiated environmental complaint received in 2015 regarding water aspect. According to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he does not support the application, as residential structures/dwellings are found to the east (the nearest about 40m away (**Plan A-2**)), 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 latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP.

Landscape

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

- (a) He has strong reservations on the application from the landscape planning perspective.
- (b) The Site is situated to the east of the Tai Lam Toll Plaza and to the west of West Rail Pat Heung Maintenance Centre along Kam Ho Road. The surrounding area is in rural fringe landscape character occupied by mixture of intact vegetated rural land, scattered village houses and non-agricultural uses such as car parks and workshops, open storage yards and temporary structures. Although the Site is surrounded by similar land use, they are suspected unauthorized uses. Given the extensive scale of the Site (6,342m²) and in close proximity to adjacent “GB” and “Conservation Area” (“CA”) zone (**Plan A-1**), the applied use is considered incompatible with existing rural landscape context.

- (c) With reference to the aerial photos, the Site was vegetated in 2010 and vegetation clearance was noted on site in 2012. According to the site inspection taken on 25.4.2018, vegetation within the Site is already cleared with only insignificant landscape left and the applied warehouse is already in place and under operation. Although further adverse impact on landscape resources due to the applied use is not expected, approval of the application may encourage other similar development first application later, resulting in irreversible changes to the existing landscape character in the area and potential risk of encroachment into the nearby “CA” zone.
- (d) Should the application be approved, approval condition on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board should be included.
- (e) His detail comment is at **Appendix III**

Drainage

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

- (a) He has no objection in principle to the application.
- (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

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

Agricultural activities in the vicinity of the Site are very active. Agricultural infrastructures such as water supply and road access were available. The Site possesses potential for agricultural rehabilitation and can be used for greenhouse cultivation or plant nursery. As such, the application is not supported from agricultural point of view.

Fire Safety

9.1.8 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.
- (c) 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

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

- (a) As there is no record of approval by the Building Authority for the existing structures at the Site, his department is not in a position to offer comments on their suitability for the applied use in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's 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.
- (d) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in

accordance with the BO.

- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

District Officer's Comments

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

His office has not received any comments from locals upon close of consultation and has no particular comment on the application.

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

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

10. Public Comments Received During Statutory Publication Period

10.1 On 13.4.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 4.5.2018, two public comments from Kadoorie Farm and Botanic Garden Corporation and a member of the public (**Appendices IV-1 to IV-2**) objecting the application were received. The objection is mainly on the grounds of not in line with the planning intention of the "AGR" zone; no strong planning justification has been given in the submission for a departure from the planning intention even on a temporary basis; approval of the application will set an undesirable precedent and the cumulative effect of approving such similar application would result in a general degradation of the environment of the area; the application appears to legitimize an on-going unapproved use; storage should accommodate in custom built industrial/storage facilities; and the same "AGR" zone has previous rejected application for similar use.

11. Planning Considerations and Assessment

- 11.1 The applied temporary warehouse for storage of drainage pipes with ancillary site office is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/ fish ponds for agricultural purpose, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from the agriculture point of view as the Site possesses potential for agricultural rehabilitation and can be used as greenhouse cultivation or plant nursery. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.
- 11.2 The surrounding area is rural in character predominated by vacant/unused land, residential structures/dwellings, warehouses and open storage/ storage yards. Although there are warehouses and open storage/storage yards in the vicinity, they are mostly suspected unauthorized developments subject to enforcement action by the Planning Authority. CTP/UD&L of PlanD has strong reservation on the application and advised that given the extensive scale of the Site (6,342m²) and in close proximity to adjacent “GB” and “CA” zone, the applied use is considered incompatible with existing rural landscape context. Also, approval of the application may encourage other similar development first application later, resulting in irreversible changes to the existing landscape character in the area and potential risk of encroachment into the nearby “CA” zone. DEP also does not support the application as there are sensitive receivers, i.e. residential dwellings/structures are located to the east (the nearest about 40m away) of the Site, and environmental nuisance is expected.
- 11.3 No previous planning approval has been given at the Site. There is one similar application within the same “AGR” zone (No. A/YL-KTS/521) which was rejected by the Board on review on 27.5.2011 as stated in paragraph 6 above. 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.
- 11.4 Two public comments objecting the application were received during the statutory publication period. Both public comments object to the application as set out in paragraphs 10.1 above. In this regard, planning considerations and assessments as stated above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments as mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:

- (a) the development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the applicant failed to demonstrate that the development would not generate environmental nuisance and adverse landscape impacts on the surrounding area; 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.

12.2 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 7.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation between 1:00 p.m. to 6:00 p.m. on Saturdays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) 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;
- (e) 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;
- (f) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (g) the submission of landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 7.3.2019;

- (h) in relation to (g) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 7.6.2019;
- (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 7.3.2019;
- (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 7.6.2019;
- (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) the submission of fire service installation proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 7.3.2019;
- (m) in relation to (l) 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 7.6.2019;
- (n) if any of the above planning conditions (a), (b), (c), (d), (e), (f) 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;
- (o) if any of the above planning conditions (g), (h), (i), (j), (l) or (m) 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
- (p) 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**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

- 13.2 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.
- 13.3 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.

14. Attachments

Appendix I	Application form received on 6.4.2018
Appendix Ia	Further Information (FI) received on 23.7.2018 providing response to departmental comments
Appendix II	Similar application within the same “AGR” zone on the Kam Tin South OZP
Appendix III	Detailed comments from UD&L of PlanD
Appendices IV-1 to IV-2	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Site Plan
Drawing A-2	Access Plan of the Site
Drawing A-3	Layout Plan
Drawing A-4	Landscape Proposal
Plan A-1	Location Plan with Similar Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a – A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**