

RNTPC Paper No. A/YL-PH/865
For Consideration by
the Rural and New Town
Planning Committee
on 8.1.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PH/865

<u>Applicant</u>	: Mr. Tang Wai Hang
<u>Site</u>	: Lot 1479 S.B in D.D. 111 and adjacent Government Land, Leung Uk Tsuen, Kam Tin Road, Pat Heung, Yuen Long
<u>Site Area</u>	: 306.13m ² (including Government Land of 18.13m ² (5.9%))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Temporary Open Storage (Private Cars and Vans Prior to Sale) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application Site (the Site) for temporary open storage (private cars and vans prior to sale) for a period of 3 years. The Site falls within an area zoned “AGR” on the Pat Heung OZP and the applied use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is currently used for the applied use without valid planning permission.
- 1.2 The Site involves nine previous applications. The latest application No. A/YL-PH/783 for temporary shop and services (car beauty) for a period of 3 years submitted by an applicant different from the current application was approved with conditions by the Rural and New Town Planning Committee (the

Committee) on 15.6.2018. The planning permission was revoked on 15.9.2020 due to non-compliance with approval conditions.

- 1.3 According to the applicant, the applied use involves a one-storey (2.44m) container with a total floor area of not more than 15m² for storage. Seven private car and three light goods vehicle parking spaces are provided. The operation hours are from 9:00am to 6:00pm Monday to Saturday. There is no operation on Sunday and public holiday. The Site is directly accessible from Kam Tin Road. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with plans received on 11.11.2020 (**Appendix I**)
 - (b) Further Information (FI) received on 4.1.2021 in (**Appendix Ia**) response to departmental comments
(exempted from publication requirement)

2. **Justifications from the Applicant**

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

- (a) There are similar uses nearby, and the development will help complement and facilitate the development of similar businesses in the area.
- (b) The development is temporary in nature, and thus will not affect the long-term development of the Site.
- (c) The development will not involve vehicles more than 3.3 tonnes. No adverse drainage, environmental and traffic impacts are anticipated.

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

The applicant is not the “current land owner” 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 sending registered mail to the Pat Heung Rural Committee. 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.13F) promulgated by the Board on 27.3.2020 are relevant to this application. The Site falls within Category 2 areas under TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix II**.

5. **Background**

The Site is not subject to any active planning enforcement case. The current use may constitute an Unauthorized Development (UD) under the Town Planning Ordinance. Should there be sufficient evidence to prove an UD on the Site, enforcement action would be instigated.

6. **Previous Applications**

6.1 The Site involves nine previous applications for temporary open storage and shop and services uses all submitted by applicants different from the current application. Eight of them were approved and one was rejected. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1b**.

Temporary Open Storage

6.2 Applications No. A/YL-PH/345, 443, 535, 603, 658, 680 and 724 for open storage uses of private cars and lorries / vans were approved with conditions by the Committee between 2000 and 2016 mainly for similar reasons that the developments were generally in line with the Town Planning Board Guidelines on Application for Open Storage and Port Back-up Use in that previous approval for open storage use was granted; relevant Government departments consulted generally had no adverse comments on the application; and departmental comments could be addressed by approval conditions. However, three applications (No. A/YL-PH/658, 680 and 724) were revoked between 2013 and 2017 due to non-compliance with approval conditions. The last application No. A/YL-PH/724 was revoked on 22.12.2017 due to non-compliance of approval conditions on the provision of run-in/out to/from Kam Tin Road and the implementation of the tree preservation proposal.

6.3 Application No. A/YL-PH/770 for temporary open storage of private cars and lorries was rejected by the Committee in 2018 mainly on the grounds that the previous planning permissions granted were revoked due to non-compliance with approval conditions, and approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning applications for temporary uses, thus nullifying statutory planning control.

Temporary Shop and Services

- 6.4 Application No. A/YL-PH/783 for temporary shop and services (car beauty) was approved with conditions by the Committee in 2018 mainly for reasons that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding areas; and relevant Government departments consulted had no adverse comments on the application. However, the planning permission was revoked in on 15.9.2020 due to non-compliance with approval conditions on submission and implementation of run-in / out proposal.

7. Similar Applications

- 7.1 There were 22 similar applications for various open storage uses for a period of 3 years within the same “AGR” zone on the OZP since the promulgation of the then TPB PG-No. 13E on 17.10.2008. Seventeen cases were approved and five cases were rejected. Details of the applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1a**.

Seventeen Approved Applications

- 7.2 Applications No. A/YL-PH/635, 659, 667, 683, 719, 782, 740 and 834 were approved with conditions by the Committee between 2013 and 2020 mainly for the reasons that the development would not frustrate the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding land uses; it complied with the TPB PG-No. 13E / 13F in that there were previous planning approvals; relevant departments generally had no objection to the application; and requirement of concerned departments could be addressed by approval conditions.
- 7.3 Applications No. A/YL-PH/608, 616, 666, 686, 701, 733, 756, 803 and 805 on two sites were approved with conditions by the Committee between 2011 and 2019. Applications No. A/YL-PH/608 and 616 were approved for the reasons that the original site of the applied use had been affected by the Hong Kong Section of the Guangzhou–Shenzhen–Hong Kong Express Rail Link (XRL) project and the applicant had made effort but no other suitable site was identified; the nearby areas were zoned “Open Storage” (“OS”) and the relevant departments generally had no objection to the application or the concern could be addressed by approval condition. The subsequent applications at these two sites were approved for similar reasons that the applications generally complied with TPB PG-No. 13E in that previous approval was given.

Five Rejected Applications

- 7.4 Applications No. A/YL-PH/645, 678 and 687 at about the same site, A/YL-PH/698 (partly on “Village Type Development” (“V”) zone) and Application No. A/YL-PH/752 for various temporary open storage uses were rejected by the Committee between 2012 and 2017 on similar grounds that the proposed development was not in line with the planning intention of the “AGR” zone; the application did not comply with the TPB PG-No.13E in that the proposed development was not compatible with the surrounding land uses, there was no previous approval granted at the site, and there were adverse departmental comments on the application; the applicant failed to demonstrate that the proposed development would not generate adverse environmental/drainage impacts on the surrounding areas; and the approval of the application would set an undesirable precedent.

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

8.1 The Site is:

- (a) currently paved, occupied by a structure and a shed and used for the applied use without valid planning permission; and
- (b) directly accessible from Kam Tin Road.

8.2 The surrounding area is rural in character intermixed with open storage / storage yards, car service, workshop, residential structures / dwellings and vacant / unused land:

- (a) to its south and west in the “AGR” zone, and east in the adjacent “V” zone are open storage yards, residential structures / dwellings (the nearest about 10m to the south and west) and vacant land; and
- (b) to the north across Kam Tin Road in the “OS” zone are open storage / storage yards, car service, workshop, residential structures / dwellings and vacant / unused land.

9. Planning Intention

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

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises Government Land (GL) and an Old 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) No permission is given for occupation of GL (about 18.13m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government's prior approval is not allowed.
- (c) Within the Site, Lot 1479 S.B is covered by Short Term Waiver (STW) No. 4652, permitted for temporary open storage (private car and vans).
- (d) Should the application be approved, 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. Furthermore, the applicant has to either exclude the GL from the Site or obtain a formal approval prior to the actual occupation of the GL. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by the LandsD.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.

- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto / from public road at any time during the planning approval period should be included.

10.1.3 Comments of the Chief Highway Engineer/NT West, Highway Department (CE/NTW, HyD):

- (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Road.
- (b) If the proposed run-in / out is agreed by Transport Department, the applicant should provide the run-in/out at Kam Tin Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement.
- (c) 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) There was no environmental complaint concerning the Site received in the past 3 years.
- (b) The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP.

Landscape

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

- (a) She has no objection to the application from the landscape planning perspective.
- (b) Referring to the aerial photo dated 18.2.2020, the Site is situated in an area of rural landscape character comprising scattered tree

groups, temporary structures and open storage. Village houses are concentrated within the “V” zone to the east of the Site. The applied use is not incompatible with the surrounding landscape setting.

- (c) According to the site visit dated 26.11.2020, the Site is in operation. 7 existing trees of *Ficus Microcarpa* (細葉榕) are found within the Site. Referring to the submitted layout plan, the development is not in direct conflict with the existing trees within the Site. Significant adverse landscape impact arising from the development to the landscape resources within the Site is not anticipated.
- (d) The applicant is reminded that approval of the planning application under the Town Planning Ordinance does not imply approval of tree preservation / removal scheme under the Lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Agriculture and Nature Conservation

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

- (a) The Site falls within the “AGR” zone and is currently paved and used for open storage. Although agricultural activities are not active in the vicinity, agricultural infrastructures such as road access are available. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
- (b) Noting the Site has been paved, he has no comment on the application from nature conservation point of view.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.

- (b) Should the application be approved, approval conditions on the submission of a drainage proposal, and implementation and maintenance of the drainage proposal for the development should be included.

Fire Safety

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

- (a) He has no in-principle objection 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. Good practice guidelines for open storage should be adhered to (**Appendix V**).
- (c) Having considered the nature of the open storage, the approval condition on the provision of fire extinguisher(s) within 6 weeks from the date of planning approval to his satisfaction shall be added. To address this condition, the applicant should be advised to submit a valid fire certificate (FS 251) for his approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

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

- (b) The applicant's attention is drawn to the following points:
- (i) if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application;
 - (ii) 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;
 - (iii) before any new building works (including containers / open sheds as temporary buildings, demolition and land filling etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise, they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO;
 - (iv) 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;
 - (v) 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 the building plan submission stage;
 - (vi) any temporary shelters or converted containers for office, storage, washroom or other uses are considered temporary buildings and are subject to the control of Part VII of the B(P)R; and
 - (vii) detailed checking under the BO will be carried out at building plan submission stage.

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 comment on the application:

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

11. Public Comments Received During Statutory Publication Period

On 20.11.2020, the application was published for public inspection. During the three-week statutory publication period, two public comments from individuals were received (**Appendices VI-1 and VI-2**). The comments object to the application mainly on the grounds that the development would increase traffic flow and affect pedestrian safety and living quality; and the Site is subject to a history of failures to comply with approval conditions.

12. Planning Considerations and Assessments

12.1 The application is for temporary open storage (private cars and vans prior to sale) for a period of 3 years at the "AGR" zone. 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. Although the applied use is not in line with the planning intention of the "AGR" zone and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation, it is considered that approval of the application on a temporary basis would not jeopardize the long-term planning intention of the "AGR" zone.

12.2 The development is considered not incompatible with the surrounding land uses which are rural in character intermixed with open storage / storage yards, residential structures / dwellings and vacant / unused land. Also, the Site abuts Kam Tin Road and vehicles do not need to pass through any residential dwellings / structures.

- 12.3 According to TPB PG-No. 13F, the Site falls within Category 2 area. The following considerations in the guidelines are relevant:

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departmental and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

- 12.4 The application is generally in line with the TPB PG-No. 13F in that there is generally no adverse comment from concerned departments, including C for T, DEP, CE/MN of DSD and D of FS. To minimize any potential environmental nuisance, approval conditions restricting the operation hours and vehicle type and prohibiting workshop activities are recommended in paragraphs 13.2(a) to (d) below. The applicant will also be advised to follow the latest 'Code of Practice on Handling the Environmental Aspects of Open Storage and Temporary Uses'. The technical requirements of C for T, CHE/NTW of HyD, CE/MN of DSD and D of FS can be addressed by imposing approval conditions recommended in paragraphs 13.2(e) to (m) below.
- 12.5 The Site is subject to nine previous applications. The former eight applications were for temporary open storage of private car and lorries/vans, and all were approved by the Committee between 2000 and 2016 except Application No. A/YL-PH/770 which was rejected by the Committee in 2018 due to repeated non-compliance of approval conditions in previous planning approvals as detailed in paragraph 6 above. The last previous application for temporary shop and services (car beauty) was approved by the Committee in 2018 but the planning permission was revoked in 2020 due to non-compliance of approval conditions. There are also 17 similar applications within the same "AGR" zone approved by the Committee. For the rejected similar applications, they are subject to different circumstance including not complying with TPB PG-No. 13E. While the current application is submitted by an applicant different from all the previous applications, in view that the Site has been used for similar operation and is subject to repeated revocation of planning approvals due to non-compliance with approval conditions, the applicant will be advised that should he fail to comply with the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration would not be given by the Committee to any further similar applications.
- 12.6 Two public comments were received during the statutory publication period objecting to the application as stated in paragraph 11 above. In this regard, relevant government departments' comments and planning considerations and assessments as set out 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 considers that the temporary open storage (private cars and vans prior to sale) could be tolerated for a period of 3 years.
- 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 3 years until 8.1.2024. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no 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 dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of a run-in/out proposal at Kam Tin Road within **6** months from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by 8.7.2021;
- (g) in relation to (f) above, the implementation of the run-in/out proposal at Kam Tin Road within **9** months from the date of planning approval to the satisfaction of the Director of Highways and the Commissioner for Transport or of the Town Planning Board by 8.10.2021;

- (h) 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 8.7.2021;
- (i) in relation to (h) above, the implementation of the 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 8.10.2021;
- (j) in relation to (i) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (k) the provision of fire extinguisher(s) with a valid fire certificate (FS251) 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 19.2.2021;
- (l) 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 8.7.2021;
- (m) in relation to (l) 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 8.10.2021;
- (n) if any of the above planning condition (a), (b), (c), (d), (e) or (j) 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 condition (f), (g), (h), (i), (k), (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 VII**.

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

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, even on a temporary basis.

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 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 with plans received on 11.11.2020
Appendix Ia	FI received on 4.1.2021
Appendix II	Relevant extract of TPB PG-No. 13F
Appendix III	Previous applications covering the Site
Appendix IV	Similar applications within the same “AGR” zone on the Pat Heung OZP
Appendix V	Good practice guidelines for open storage sites
Appendices VI-1 and VI-2	Public comments received during the statutory publication period
Appendix VII	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with Similar Applications

Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4 and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**