

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-LFS/329

- Applicant** : Mr. KONG Chun Sing represented by Metro Planning and Development Company Limited
- Site** : Lots 1730 (Part), 1731 (Part), 1732, 1733 (Part), 1735 (Part), 1736 (Part), 1737 and 1738 (Part) in D.D. 129 and Adjoining Government Land, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : 1,960 m² (about) (including Government Land (GL) of about 161 m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan No. S/YL-LFS/9
- Zonings** : "Recreation" ("REC") (98.6%) and "Residential (Group E)" ("R(E)") (1.4%)
- Application** : Temporary Open Storage of Construction Materials 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 of construction materials for a period of 3 years (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years within the zones requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP.
- 1.2 The Site is related to one previous application No. A/YL-LFS/59 for temporary open storage of marble with ancillary workshop, which was rejected by the Rural and New Town Planning Committee (the Committee) on 24.11.2000. The Site is currently vacant.
- 1.3 The Site is accessible from Deep Bay Road via a local track (**Drawing A-1**). There is an ingress/egress point located at the eastern side of the Site (**Drawing A-2**). According to the site layout at **Drawing A-2**, the open area of the Site is intended for open storage of construction materials. One single-storey (3.5m) temporary structure with a total floor area of about 20m² is proposed for electricity meter room use. According to the applicant, there will be no operation on-site from 6:00 p.m. to 8:00 a.m. and on Sunday and public holidays. The proposed development is an extension to a saw mill. The proposed landscape and tree preservation plan and proposed drainage plan is shown at **Drawings A-3 and**

A-4 respectively.

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

- (a) Application Form received on 13.9.2018 (Appendix I)
- (b) Supplementary Planning Statement with a location plan, proposed vehicular access plan, proposed layout plan, proposed landscape and tree preservation plan and proposed drainage plan (Appendix Ia)
- (b) Letter from the applicant dated 4.10.2018 in response to Transport Department's comments (Appendix Ib)

2. Justifications from the Applicant

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

- (a) The proposed development is deemed an extension to the contiguous saw mill with warehouse for storage of construction material and timber which is an Existing Use (EU) which deserves sympathetic consideration.
- (b) The proposed development is temporary and would not jeopardize the long term planning intention of the "Recreation" zone.
- (c) The proposed development is clean and tidy.
- (d) No alternative site for the proposed use due to shortage of land for open storage of construction material and timber in Ha Tsuen and Lau Fau Shan.
- (e) The proposed development is compatible with the surrounding environment with open storage uses, workshops and warehouses.
- (f) The applicant submits a landscape proposal, drainage proposal and a trip generation estimation to support his application. In view of the nature, scale and form of the proposed development, it would not generate significant environmental and traffic impacts to surrounding environment.

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. 31) by posting site notice and sending notification letter to the Ping Shan Heung Rural Committee. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

On 17.10.2008, the Board promulgated the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E). The Site falls within Category 2 (1.4%) and Category 3 (98.6%) areas under the Guidelines (**Plan A-2a**). Relevant extracts of the Guidelines are attached at **Appendix II**.

5. Background

The Site is subject of an active enforcement case (No. E/YL-LFS/466 - UD: storage use) (**Plan A-2**). Central Enforcement and Prosecution of Planning Department's (CEP of PlanD) is collecting evidence against the Unauthorized Development (UD) and will take necessary enforcement/prosecution action against the concerned parties under the Town Planning Ordinance subject to sufficient evidence collected.

6. Previous Application

6.1 The Site is related to one previous application No. A/YL-LFS/59 for temporary open storage of marble with ancillary workshop, which was rejected by the Committee on 24.11.2000 for the reasons of not in line with the planning intention, not compatible with the surrounding areas, no spare capacity to allow further proliferation of open storage activities and no information to demonstrate that the development would not have adverse environmental and drainage impacts on the surrounding areas.

6.2 Compared with the last application, the current application is submitted by a different applicant on a larger site (+1,340m²) with different layout. Details of the application are summarized at **Appendix III** and its location is shown on **Plan A-1**.

7. Similar Applications

There are 10 similar applications (Nos. A/YL-LFS/186, 211, 232, 250, 255, 260, 272, 283, 293 and 326) for temporary open storage uses covering 3 sites within the same "REC" zone on the OZP since the promulgation of TPB PG-No. 13E on 17.10.2008. 9 of these applications covering 2 sites were approved with conditions by the Committee with the considerations that the applied uses (temporary open storage of marble and/or construction materials with ancillary facilities) were subject to previous planning approvals, not incompatible with the surrounding uses and were generally in line with the TPB PG-No. 13E. One application (No. A/YL-LFS/326) was rejected on 21.9.2018 mainly on the grounds that the applied uses (temporary open storage of construction machinery) were not in line with the planning intention of the "REC" zones and the TPB-PG No. 13E; and undesirable precedent for other development within the "REC" zone. Particulars of these applications and the decisions of the Committee are summarized at **Appendix IV**. The locations of these application sites are shown on **Plan A-1**.

8. **The Site and Its Surrounding Areas** (Plan A-1 to Plan A-4b)

8.1 The Site is:

- (a) currently vacant; and
- (b) accessible via a local track connecting to Deep Bay Road.

8.2 The surrounding areas have the following characteristics:

- (a) predominately fallow agricultural land, vacant land, open storage yards, and some residential structures (the nearest one is 80m away from the Site);
- (b) in the vicinity are open storage yards and parking of vehicles, which are suspected unauthorized development (UD) and a logistic centre under a valid planning application No. A/YL-LFS/297; and
- (c) a wood factory adjacent to the Site, which may be tolerated under the Town Planning Ordinance.

9. **Planning Intentions**

9.1 The planning intention of the “REC” zone is primarily for recreational developments for the use of the general public. It encourages the development of active and/or passive recreation and tourism/eco-tourism. Uses in support of the recreational developments may be permitted subject to planning permission.

9.2 The planning intention of the “R(E)” zone is intended primarily for phasing out of existing industrial uses through redevelopment for residential use on application to the Board. Whilst existing industrial uses will be tolerated, new industrial developments are not permitted in order to avoid perpetuation of industrial/residential interface problem.

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.
- (b) No permission is given for occupation of Government land (GL) of

about 161m² in area (subject to verification) included in the Site. The act of occupation of GL without Government's prior approval is not allowed.

- (c) The Site is accessible from Deep Bay Road through both GL and private land. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should the application be approved, the lot owners will need to apply to her office to permit the structures to be erected or regularize any irregularity 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. No construction of New Territories Exempted Building(s) will be considered or allowed. Furthermore, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Applications for any of the above will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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

10.1.2 Comments of the Assistant Commissioner for Transport /New Territories, Transport Department (AC for T/NT, TD):

- (a) On the basis of the available information submitted by the applicant, the applicant could not demonstrate that the applied use would not pose adverse traffic impact to Deep Bay road which is a single track road.
- (b) On the light of the above, TD does not support the application from traffic engineering point of view.

10.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to the nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and Deep Bay Road.

Environment

10.1.4 Comment of the Director of Environmental Protection (DEP):

- (a) She does not support the application as the Site would generate traffic of heavy vehicles and there are sensitive uses (residential dwellings) in the vicinity of the Site (the closest one being about 80m away to its southwest) (**Plan A-2**). Environmental nuisance is expected.
- (b) There is no substantiated environmental complaint concerning the Site received over the past 3 years.
- (c) 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 Environmental Aspects of Temporary Uses and Open Storage Sites" ("COP").

Landscape

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

- (a) The Site is located to the south of Deep Bay Road and it lies mainly in "REC" zone and partly in "R(E)" zone. Part of the Site was submitted for planning application under Application No. A/YL-LFS/59 for temporary open storage of marble with ancillary workshop and the application was rejected by the TPB in 2000. The current application seeks planning permission for similar use for a larger site.
- (b) With reference to the site visit conducted by his office on 12.9.2018, it is observed that the Site is mainly hard paved area. Only one large mature tree with approx. 2m DBH is found at the north-eastern corner of the Site. The applied use appears to be already in operation. The Site is situated in an area of rural landscape character but disturbed by a few open storage yards. The proposed use is not compatible with the planned landscape character.
- (c) Having reviewed the submitted information, it is noted that the proposed drainage plan would be in conflict with the existing large mature tree. The Applicant is advised to setback the open storage area from the dripline of the tree to prevent causing damage to the root zone
- (d) Based on the above, he has reservations on the application from the landscape planning perspective
- (e) Since there is no major public frontage along the boundary and the site is surrounded by dense vegetation providing tolerable screening. It is opined the condition to maintain the existing screen planting (the large mature tree in particular) in good

condition for the duration of the approval period is adequate and appropriate.

- (f) The applicant is reminded to approach relevant authority / government department(s) direct to obtain the necessary approval on tree works such as felling, transplanting or pruning under lease.
- (g) There are quite a lot of dieback twigs observed on the existing large mature tree which may indicate the sign of root damage. Some construction materials and debris are also found within the dripline of the tree. The applicant is reminded of the importance of undertaking proper tree care for the existing tree. Useful information published by the GLTM Section, DEVB on general tree maintenance and tree risk management is available for reference in the following links:
護養樹木的簡易圖解:
http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf
樹木管理手冊:
https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html
樹木風險評估及管理安排:
https://www.greening.gov.hk/tc/tree_care/tra_arrangements.html
護養樹木 保障安全:
http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Chinese_Leaflet_Big_font_size_v1_2012_03_29.pdf
減低樹木風險的樹木護養簡易圖解 :
[http://www.greening.gov.hk/filemanager/content/pdf/tree_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk\(eng\).pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk(eng).pdf)

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 application from a drainage point of view.
 - (b) Should the application be approved, he suggests to impose a condition requiring the applicant to implement and maintain the proposed drainage facilities to the satisfaction of his Division.
 - (c) The applicant is reminded that the development should neither obstruct overland flow nor adversely affect existing stream course, natural streams, village drains, ditches and the adjacent areas.
 - (d) The applicant should consult DLO/YL and seek consent from the relevant owners for any works to be carried out outside his lot boundary before commencement of the drainage works.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire services 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. In addition, the applicant should also be advised on the followings points:
 - i. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - ii. The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
 - iii. Attached good practice guidelines for open storage should be adhered to (**Appendix V**).
- (c) Moreover, having considered the nature of the open storage, the following approval condition shall be added:

“The provision of fire extinguisher(s) within 6 weeks from the date of planning approval to the satisfaction of D of FS.”
- (d) To address this approval condition, the applicant is advised to submit a valid fire certificate (FS 251) to his Department for approval.
- (e) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

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) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person (AP) 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 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 application 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 Regulations 5 and 41D of the Building (Planning) Regulations respectively.
- (d) 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 Building (Planning) Regulations at the building plan submission stage.

Others

- 10.1.9 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/Construction, WSD):

He has no objection to the application. For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to WSD's standards.

District Officer's Comments

- 10.1.10 Comment of the District Officer/Yuen Long, Home Affairs Department (DO/YL, HAD):

His office has not received any comment from the locals on the application.

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

- (a) Project Manager (West), CEDD (PM/W, CEDD);
- (b) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure and Cultural Services (DLCS); and
- (f) Commissioner of Police (C of P)

11. Public Comments Received During Statutory Publication Period

On 21.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 12.10.2018, two public objections (**Appendices VIa to VIb**), including one from a YLDC member and one from an individual member from the public, were received for the reasons of the unapproved brownfield land use and the unchanged circumstances since the last rejected application (No. A/YL-LFS/59).

12. Planning Considerations and Assessments

12.1 The Site is mainly zoned “REC” which is intended primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. The applied use is not in line with the planning intention of the “REC” zone. There is no strong planning justification in the submission to merit a departure from such planning intention, even on a temporary basis.

12.2 The applied use is not compatible with the surrounding areas which are predominantly rural in character and comprising mainly fallow agricultural lands in the vicinity (**Plan A-2**). CTP/UD&L has reservations to the application from the landscape planning perspective as the Site is situated in an area of rural landscape character disturbed by open storage yards. He considers the applied use is not compatible with the planned landscape character.

12.3 The Site mainly falls within Category 3 areas under the TPB PG-No. 13E. The following considerations in the Guidelines are relevant:

Category 3 areas: applications 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 to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding 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 departments and local residents can be addressed through the implementation of approval conditions.

12.4 The applied use does not meet the TPB Guidelines TPB PG-No. 13E in that no previous planning approvals for similar open storage uses have been granted for the Site and there are adverse comments from DEP and AC for T/NT of TD and reservation from CTP/UD&L of PlanD. DEP does not support the application as there are sensitive receivers in the vicinity (the nearest residential structure is about 80m away from the Site) and environmental nuisance is expected. AC for T/NT of TD does not support the application from traffic engineering point of view that the applicant could not demonstrate the applied use would not pose adverse traffic impact to Deep Bay road which is a single track road. As such, the applicant fails to demonstrate that the applied use would not have adverse environmental, traffic and landscape impacts.

12.5 For previous application of the Site, one application (No. A/YL-LFS/59) for temporary open storage of marble with ancillary workshop was rejected by the Committee on 24.11.2000. For similar applications in the same “REC” zone, there have been no cases approved by the Committee, in which they have no previous approvals before (i.e. Nos. A/YL-LFS/59 and 326). For the 9 approved cases (Nos. A/YL-LFS/186, 211, 232, 250, 255, 260, 272, 283 and 293) for 2 sites, sympathetic considerations were given in view of their previous approval history, among other considerations for their approvals. As such, to reject the current

application is in line with previous Committee's decisions.

12.6 Two public objections were received mainly on grounds as stated in paragraph 11 above. The planning considerations and assessments in the above paragraphs are relevant.

13. Planning Department's Views

13.1 Based on the assessment made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11 above, , the Planning Department does not support the application for temporary open storage of construction materials for the following reasons:

- (a) the proposed development is not in line with the planning intention of the "REC" zone which is intended primarily for recreational developments for the use of the general public and encourages the development of active and/or passive recreation and tourism/eco-tourism. There is no strong planning justification to merit a departure from such planning intention, even on a temporary basis;
- (b) the proposed development is not in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that the applicant fails to demonstrate that the proposed development would not generate adverse environmental, landscape and traffic impacts; and
- (c) approval of the application, even on a temporary basis, would set an undesirable precedent for applications for other similar developments within the "REC" zone.

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 2.11.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 6:00 pm and 8:00 am, 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 workshop activity, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (d) no vehicle over 10m long is allowed to enter/ exit or to be parked/stored on the Site at any time during the planning approval period;
- (e) no vehicle queuing back to or reverse onto/from the public road is allowed at any time during the planning approval period;

- (f) the existing screen planting on the Site shall be maintained at all time during the planning approval period
- (g) the implementation of the accepted 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 **2.8.2019**;
- (h) in relation to (g) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (i) the provision of fire extinguisher(s) and the submission of a valid fire certificate (FS251) within 6 weeks from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **14.12.2018**;
- (j) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **2.5.2019**;
- (k) in relation to (j) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of Director of Fire Services or of the Town Planning Board by **2.8.2019**;
- (l) provision of fencing of the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **2.5.2019**;
- (m) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (h) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (n) if any of the above planning conditions (g), (i), (j), (k) or (l) 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

Advisory clauses

The recommended advisory clauses are attached at **Appendix VII**.

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 reasons for rejection should be given to the applicant.

15. Attachments

Appendix I	Application Form received on 13.9.2018
Appendix Ia	Supplementary Planning Statement with a location plan, proposed vehicular access plan, proposed layout plan, proposed landscape and tree preservation plan and proposed drainage plan
Appendix Ib	Letter from the applicant dated 4.10.2018 in response to Transport Department's comments
Appendix II	Relevant Extracts of Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No. 13E)
Appendix III	Previous s.16 Application covering the Site
Appendix IV	Similar Applications within the same "REC" zone on the Approved Lau Fau Shan and Tsim Bei Tsui OZP since the Promulgation of TPB PG-No. 13E on 17.10.2008
Appendix V	Good Practice Guidelines for Open Storage issued by the Fire Services Department
Appendix VIa to VIb	Public Comments
Appendix VII	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan
Plan A-2 to 2a	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2018**