

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-PN/64

- Applicant** : Topgold Holdings Limited represented by Aikon Development Consultancy Limited
- Site** : Lot 8 (Part) in D.D. 135 and adjoining Government Land (GL), Sheung Pak Nai, Yuen Long, New Territories
- Site Area** : 2,419 m² (about) (including GL of about 124.5m² or 5.1%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
- Zoning** : “Agriculture” (“AGR”) (about 98.6%) and area shown as ‘Road’ (about 1.4%)
- Application** : Temporary Service Area (including Vehicular Access, Manoeuvring Space, Car Parking and Loading and Unloading Bay) 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 service area (including vehicular access, manoeuvring space, car parking and loading and unloading bay) for a period of 3 years. The applicant claims that the applied use at the Site is intended to support the operation of storage use at an adjoining site to the immediate south of the Site (**Drawing A-1, Plans A-2 and 4b**)¹. The Site falls mainly within an area zoned “AGR” on the OZP (**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 3 years 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. The Site is currently hard paved, fenced off, and occupied for the applied use without valid planning permission (**Plans A-2, A-4a and A-4b**).

¹ The applicant claims that the storage use on the adjoining site existed before the gazette of the Sheung Pak Nai and Ha Pak Nai Interim Development Permission Area Plan dated 14.9.1990 and is hence regarded as tolerated use.

- 1.2 The Site involves 2 previous applications for temporary racing circuit and temporary hobby farm uses (**Plan A-1**). The last application (No. A/YL-PN/35) covering the Site and its adjoining area for proposed temporary place of recreation, sports or culture (hobby farm) was approved by the Rural and New Town Planning Committee (the Committee) of the Board in 2012 for a period of 3 years. The planning permission was subsequently revoked on 18.2.2014 due to non-compliance with time-limited approval conditions on provision of fencing, drainage, fire safety and landscape aspects.
- 1.3 The Site is accessible from Nim Wan Road (**Plan A-3a and Drawing A-1**). As shown on the layout plan at **Drawing A-1**, there are three heavy goods vehicle parking spaces/ loading and unloading bays to support the operation of two storage operators adjoining the Site. The applicant claims that the two storage operators adjoining the Site to the south are tolerated use under the OZP. The remaining area of the Site would be utilized as vehicular access, vehicle manoeuvring space and landscape area. The operation hours are from 8:00 a.m. to 6:00 p.m. from Mondays to Saturdays. There is no operation on Sundays and public holidays.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with attachments received on 24.11.2020 (**Appendix I**)
 - (b) Further Information (FI) received on 6.1.2021 responding to departmental comments [*exempted from publication requirements*] (**Appendix Ia**)
 - (c) FI received on 8.1.2021 clarifying the applied use [*exempted from publication requirements*] (**Appendix Ib**)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the attachments of the Application Form (**Appendix I**). They can be summarized as follows:

- (a) There is operation need for the storage use of the adjoining site in using heavy goods vehicles.
- (b) The applied use solely supports the operation of the tolerated use adjoining the Site without new developments or structures.
- (c) The applied use would not induce additional traffic impacts.
- (d) The applicant proposes to minimize impacts of the applied use by providing landscape areas at the Site.

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

The applicant is the “current land owner” of the private land at the Site. For the GL portion, 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) is not applicable. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

A major portion of the Site (**Plan A-2**) is currently subject to an on-going planning enforcement action (No. E/YL-PN/56) against an unauthorised development (UD) involving storage use (including deposit of containers). Enforcement Notices were issued on 20.1.2020 and 18.9.2020 respectively to the concerned parties requiring discontinuation of the UD.

5. Previous Applications

- 5.1 The Site is involved in 2 previous applications (No. A/YL-HT/414 and A/YL-PN/35) for temporary racing circuit and temporary hobby farm uses respectively. Details of these previous applications are in **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 Application No. A/YL-HT/414 covering a very large area of 52 ha with 79% of the site falling within the “Green Belt” (“GB”) and “AGR” zones of the then Ha Tsuen OZP and 21% within the “AGR” zone of the Sheung Pak Nai and Ha Pak Nai OZP, for temporary racing circuit for a period of 3 years, was rejected by the Committee in 2005. The reasons were not in line with the planning intentions, insufficient information to demonstrate that it would not have adverse impacts on the Site and the adjacent areas, and setting an undesirable precedent.
- 5.3 Application No. A/YL-PN/35, covering a larger site (about 5,725m²), for proposed temporary place of recreation, sports or culture (hobby farm) for a period of 3 years was approved by the Committee in 2012 on the considerations that the long-term planning intention of the area would not be frustrated, no adverse traffic, environmental and drainage impacts and similar approvals had been given. However, the planning permission was revoked on 18.2.2014 due to non-compliance with time-limited approval conditions on provision of fencing, drainage, fire safety and landscape aspects.
- 5.4 Comparing to the last application, the current application was submitted by a different applicant for a different use and on a smaller site.

6. Similar Applications

- 6.1 Within the same “AGR” zone, there are three similar applications (No. A/YL-PN/30, 38 and 41) for storage use since 17.10.2008. Details of these applications are summarized at **Appendix III** and the locations of these application sites are shown on **Plan A-1**.
- 6.2 The three similar applications (No. A/YL-PN/30, 38 and 41) at three sites for various temporary open storage and/or warehouse uses for a period of 3 years each were rejected by the Committee between 2011 and 2015 on the grounds of not in line with planning intention, incompatible with surrounding rural environment, not complying with the then TPB PG-No. 13E and/or TPB PG-No. 10 and setting of an undesirable precedent.

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

7.1 The Site is:

- (a) currently hard paved, fenced off and occupied for the applied use without valid planning permission; and
- (b) accessible from Nim Wan Road (**Plans A-2 and A-3a**).

7.2 The surrounding areas have the following characteristics:

- (a) to its immediate east and south are warehouses without valid planning permission. To its south are some residential dwellings and unused land. To its further south is Tsing Shan Firing Range;
- (b) to its southwest is a pond. To its further west across Nim Wan Road is another pond for temporary fishing ground with valid planning permission; and
- (c) to its immediate north is a sitting-out area, a storage area and unused land. To its further north across Nim Wan Road are some residential dwellings which are about 49m from the Site, vacant land, storage area, vegetable marketing co-operative society, a latrine, shrubland and a site for an electricity transformer room with valid planning permission.

8. Planning Intention

The planning intention of the “ARG” 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) Lot 8 (Part) in D.D. 135 is covered by a Short Term Waiver (STW) No. 756 for shop (commercial) use.
- (c) No permission is given for occupation of the GL included in the Site (about 124.5m² subject to verification). The act of occupation of GL without Government’s prior approval is not allowed. In addition, according to the established practice, application of Short Term

Tenancy for the purpose of vehicular access will not be entertained, even if the planning application is approved by the Board.

- (d) Should planning approval be given to the application, the STW holders will need to apply to his office for modification of the STW conditions where appropriate. 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. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application(s) of any of the above will be considered by LandsD acting in the capacity of 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/are approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Environment

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

- (a) DEP does not support the application as the application involves the use of heavy goods vehicles and there are sensitive receivers of residential use in the vicinity (with the nearest one situated about 49m to the north) (**Plan A-2**), thus 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 (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.
- (c) There is no substantiated complaint pertaining to the Site received in the past 3 years.

Traffic

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

- (a) The applied use at the Site would involve access of heavy goods vehicles through Nim Wan Road and Deep Bay Road which are single track roads.
- (b) The proposed temporary vehicular access, manoeuvring space and car parking spaces are of total area of 2,419 m². Transport Department (TD) is of the view that the proposed area of 2,419m² is more than sufficient for regularizing the access arrangement for adjacent warehouses. The excessive area may generate additional traffic flow to adjacent public roads.
- (c) The warehouse operators shall also consider using light goods vehicles instead of heavy goods vehicles as the transport tool to facilitate the adjacent warehouses.
- (d) If there is additional traffic flow to adjacent public roads, the applicant is requested to justify that the nearby public road network has adequate

capacity to accommodate the traffic induced by the applied use. In particular, the traffic impact on Nim Wan Road and Deep Bay Road should be well assessed as a result of the applied use, since it is highly likely that vehicles in opposite directions need to negotiate with each other where passing bay is not available.

- 9.1.4 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):
- (a) The access arrangement should be commented by TD.
 - (b) If the proposed access arrangement is agreed by TD, a proper run-in/out or road connection to Nim Wan Road should be constructed to the satisfaction of TD and HyD.
 - (c) The Site may have interfaces with EPD's technical study on upgrading Nim Wan Road.
 - (d) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
 - (e) HyD shall not be responsible for the maintenance of any access connecting the Site and Nim Wan Road.

Agriculture

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

The Site falls within the "AGR" zone and area shown as 'Road' and is currently a paved vacant land. The agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also 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.

Landscape

- 9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
- (a) The Site, adjoining Nim Wan Road, falls within mainly on "AGR" zone and a minor portion in an area shown as 'Road' on the OZP. The Site is subject to two previous applications No. A/YL-HT/414 and A/YL-PN/35 for temporary racing circuit and temporary hobby farm uses. The last application No. A/YL-PN/35 was revoked due to non-compliance with approval conditions including the landscape condition. The current application seeks planning approval for temporary vehicular access, manoeuvring space, car parking and loading and unloading bay use for a period of 3 years.
 - (b) With reference to the aerial photo of 2020, the Site is hard paved and

used as an open storage yard. Some existing trees are observed to the north outside the Site and a wooded knoll to the south of the Site. Existing temporary structures are found to the east and immediate south of the Site, while village houses are found to the immediate north and further north of the Site. The Site is situated in an area of rural landscape character predominated by wooded areas and fish ponds. The extensive hard paving within the Site is incompatible with the landscape character of the surrounding area.

- (c) According to the aerial photos from 2008 (**Plan A-3b**) to 2020, the Site was originally covered with dense vegetation. However, vegetation clearance, hard paving and open storage had been observed at the Site over the years. Significant landscape impact has taken place. Approval of the application would encourage other similar applications to blanket clear the Site prior to obtaining planning approval. The cumulative effect of which would result in general degradation of landscape quality of the surrounding environment. Hence, he has reservation on the application from landscape planning perspective.
- (d) In consideration that the Site is not facing any prominent public frontage and there are existing trees along Nim Wan Road, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

Drainage

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

- (a) He has no objection in principle to the application from drainage point of view.
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest a condition should be stipulated in the approval letter requiring the applicant to submit a drainage proposal, to implement and to maintain the proposed drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.

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 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. The applicant should note his detailed comments on the submission of FSIs proposal at **Appendix V**.

Water Supplies

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

- (a) He has no objection to the application.
- (b) The applicant should be reminded of the detailed comments at **Appendix V**.

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 comment from the locals on the application.

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

- (a) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (b) Chief Engineer/Land Works, CEDD (CE/LW, CEDD);
- (c) Project Manager(West), CEDD (PM/W, CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Antiquities and Monuments Office, Development Bureau (AMO, DEVB);
and
- (f) Commissioner of Police (C of P).

10. Public Comments Received During Statutory Publication Period

10.1 On 1.12.2020, the application was published for public inspection. During the statutory public inspection period, 25 public comments from World Wide Fund Hong Kong (WWF), Kadoorie Farm and Botanic Garden (KFBG) and 23 individuals were received (**Appendix IV**). WWF, KFBG and 10 individuals raised objection to the application while 13 individuals support the application.

10.2 The objection grounds are summarized as follows:

- (a) the application is not in line with the planning intention of the "AGR" zone;
- (b) the Board should not encourage 'destroy first, develop later' approach;
- (c) Deep Bay Road and Nim Wan Road are single track roads. The applied use would induce adverse traffic impact to the surrounding areas; and
- (d) the applied use would induce adverse environmental impacts to the surrounding residential settlements.

10.3 The supporting grounds are summarized as follows:

- (a) the storage use adjacent to the Site has been in operation for many years. The applied use would not induce additional traffic and environmental impacts to the surrounding areas;
- (b) the applied use could provide sufficient manoeuvring space and parking space for the storage use to ensure road safety at Nim Wan Road;
- (c) the proposed landscape area could improve the environment of the surrounding area; and
- (d) the applied use is temporary in nature which would not frustrate the long term land use of the “AGR” zone.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary service area (including vehicular access, manoeuvring space, car parking and loading and unloading bay) for a period of 3 years at the Site zoned “AGR” on the OZP. The “AGR” zone is intended 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. The applied use, which is to serve the storage use at the adjoining site, is not in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural points of view as the Site has potential for agricultural rehabilitation. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.
- 11.2 The Site is situated in an area of rural landscape character predominated by wooded areas and fish ponds. The extensive hard paving within the Site is incompatible with the landscape character of the surrounding area (**Plans A-2 and A-3a**). The approval of the application would set an undesirable precedent to encourage other similar applications with site modification prior to planning permission is obtained. The cumulative impact of which would result in a general degradation of the surrounding rural environment. In this regard, CTP/UD&L, PlanD has reservation on the application from the landscape planning perspective.
- 11.3 DEP does not support the application as it involves the use of heavy goods vehicles and there are sensitive receivers of residential use in the vicinity of the Site, with the nearest one located about 49m to its north (**Plan A-2**), and environmental nuisance is expected. C for T also raised traffic concerns of the applied use involving the use of heavy goods vehicles on Nim Wan Road and Deep Bay Road which are single track roads. The applicant has yet to address C for T’s concerns. In this regard, the applicant fails to demonstrate that the applied use would not have adverse environmental and traffic impacts on the surrounding areas.
- 11.4 There is no adverse comment from other concerned Government departments, including DSD and D of FS. Significant adverse drainage and fire safety impacts on the surrounding area are not expected.
- 11.5 While there were one approved and one rejected previous applications at the Site, they were for different uses (i.e. temporary hobby farm and temporary racing circuit

respectively) covering larger sites, the considerations thereof are of not much relevance to the current application which is for temporary service area to support a storage use. The Committee has previously rejected three similar applications (No. A/YL-PN/30, 38 and 41) at three sites for various temporary open storage or warehouse uses between 2011 and 2015 on the grounds of not in line with planning intention, incompatible with surrounding rural environment, not complying with the then TPB PG-No. 13E and/or TPB PG-No. 10 and setting of an undesirable precedent. Rejection of the application is in line with the previous decision of the Committee.

- 11.6 There are 25 public comments received (**Appendix IV**), in which 12 objecting to and 13 supporting the application on the grounds as summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 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 mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) the applied use is not in line with the planning intention of the “AGR” zone. The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis; and
- (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape, environmental and traffic impacts on the surrounding areas.

- 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 22.1.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation from 6:00 p.m. to 8:00 a.m. on Mondays to Saturdays, 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) the existing boundary fencing should be maintained at all times during the planning approval period;
- (d) the submission of a run-in/out proposal for the Site within **6 months** from the date of planning approval to the satisfaction of the Commissioner for

Transport and the Director of Highways or of the Town Planning Board by 22.7.2021;

- (e) in relation to (d) above, the provision of a run-in/out within **9 months** from the date of planning approval to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board by 22.10.2021;
- (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 22.7.2021;
- (g) in relation to (f) 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 22.10.2021;
- (h) in relation to (g) above, the implemented drainage facilities 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 Director of Fire Services or of the Town Planning Board by 22.7.2021;
- (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 Director of Fire Services or of the Town Planning Board by 22.10.2021;
- (k) if any of the above planning conditions (a), (b), (c) 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;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (m) upon expiry of the planning permission, the reinstatement of the Site to 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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

13.3 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.

14. Attachments

Appendix I	Application form and attachments received on 24.11.2020
Appendix Ia	FI received on 6.1.2021
Appendix Ib	FI received on 8.1.2021
Appendix II	Previous s.16 Applications covering the Site
Appendix III	Similar Applications
Appendix IV	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a and 3b	Aerial Photos
Plans A-4a and 4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2021**