

RNTPC Paper No. A/YL-NSW/277
For Consideration by
the Rural and New Town
Planning Committee
on 26.5.2020

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL
FOR TEMPORARY USE
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

APPLICATION NO. A/YL-NSW/277

- Applicant** : Rich Throw Limited represented by Mr. LI Fu Chuen
- Site** : Lots 3730 S.E (Part), 3733 (Part), 3734 S.A (Part), 3734 S.B ss.1, 3734 S.B RP (Part), 3734 RP (Part) and 3535 RP (Part) in D.D. 104, Pok Wai, Nam Sang Wai
- Site Area** : 320 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Nam Sang Wai Outline Zoning Plan (OZP) No. S/YL-NSW/8
- Zoning** : “Village Type Development” (“V”)
[Restricted to maximum building height of 3 storeys (8.23m)]
- Application** : Renewal of Planning Approval for Temporary Private Swimming Pool and Garden Use for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for a temporary private swimming pool and garden use for a period of 3 years. According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years within “V” zone require 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 being used for the applied uses under an approved application (No. A/YL-NSW/253) of which the planning permission is valid until 15.4.2020¹.
- 1.2 The Site is subject to 6 previous applications, all for the same temporary private swimming pool and garden use (**Plan A-1**). The last approved application No. A/YL-NSW/253 submitted by the current applicant was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 7.4.2017 for a period of 3 years until 15.4.2020. All approval conditions, including the submission of records of the existing drainage facilities, submission and implementation of fire service installations (FSIs)

¹ The current application was received on 18.2.2020, i.e. before the lapse of the planning permission.

works were complied with.

- 1.3 The layout plan of the development is at **Drawing A-1**. According to the applicant, the swimming pool and the ancillary plant room were built in 2007 and there has been no change in the building structures since then. The development parameters are identical to the last approved application with site area of 320m², a total floor area of 147.65m² (including 144.5m² for the swimming pool of 1.3m deep and 3.15m² for the 1-storey plant room), and the remaining area (172.35 m²) used as garden (**Drawing A-1, Plans A-2 and A-4b**).
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form received on 18.2.2020 **(Appendix I)**
 - (b) Further Information (FI) dated 19.3.2020 providing clarification **(Appendix Ia)** of background information and a replacement page of justification
- 1.5 In light of the special work arrangement for Government departments due to the novel coronavirus infection, the meeting originally scheduled for 3.4.2020 (the previous application was valid up to 15.4.2020) for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are in the Application Form and FIs at **Appendices I and Ia** respectively, which are summarized as follows:

- (a) The applicant is the owner of the swimming pool and the ground and first floors of Lot 3730 S.E. adjoining the southwestern part of the Site (**Drawing A-1 and Plan A-2**). The pool is intended for his use for health and leisure purposes, and for the use by his relatives and nearby neighbours free of charge. He will continue to take up the responsibility for the maintenance and repair of the swimming pool.
- (b) The swimming pool was the subject of six previously approved applications and the approval conditions concerning drainage, landscape and FSIs have all been complied with. The applicant is willing to continue to maintain the completed drainage, landscape and FSIs facilities.
- (c) The swimming pool and the ancillary plant room were built in 2007 and there has been no change in the building structures since then. Therefore, there will not be any impact on the surrounding areas.

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

The applicant is the sole “current land owners” for the development. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Town Planning Board Guidelines**

Town Planning Board Guidelines for 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C)

4.1 According to TPB PG-No. 34C, the relevant assessment criteria are summarized as below:

- (a) whether there has been any material change in planning circumstance since the previous temporary approval was granted (such as a change in the planning policy/land-use zoning for the area) or a change in the land uses of the surrounding areas;
- (b) whether there are any adverse planning implications arising from the renewal of the planning approval (such as pre-emption of planned permanent development);
- (c) whether the planning conditions under previous approval have been complied with to the satisfaction of relevant Government departments within the specified time limits;
- (d) whether the approval period sought is reasonable; and
- (e) any other relevant considerations.

4.2 Under normal circumstances, the approval period for renewal should not be longer than the original validity period of the temporary approval. In general, the Board is unlikely to grant an approval period exceeding three years unless there are strong justifications and the period is allowed for under the relevant statutory plans. Depending on the circumstances of each case, the Board could determine the appropriate approval period, which may be shorter than the time under request.

Town Planning Board Guidelines for Application for Developments within Deep Bay Area under Section 16 of the Town Planning Ordinance (TPB PG-No. 12C)

4.3 According to TPB PG-No. 12C, the Site falls within the Wetland Buffer Area (WBA). The relevant assessment criteria are summarised as follows:

- (a) the intention of the WBA is to protect the ecological integrity of the fish ponds and wetland within the Wetland Conservation Area (WCA) and prevent development that would have a negative off-site disturbance impact on the ecological value of fish ponds; and
- (b) an ecological impact assessment (EcoIA) would need to be submitted for application for planning permission within the WBA. However, some local and minor uses and temporary uses are exempted from the requirement of EcoIA

5. Background

The Site is covered by a valid planning permission and not related to any planning enforcement action.

6. Previous Applications

- 6.1 The Site is related to 6 previously approved applications (No. A/YL-NSW/100, 151, 177, 206, 227 and 253), all for the same applied uses. The location of the previous applications is shown on **Plan A-1** and the details of these applications are summarized at **Appendix II**.
- 6.2 The first three applications (No. A/YL-NSW/100, 151 and 177) were approved with conditions by the Committee between 2001 and 2007 respectively, all for periods of 3 years. The main considerations were that the proposed developments would not affect other villagers as they only involved a private swimming pool and garden for the beneficial use and enjoyment of the villagers, significant adverse impacts on the surrounding areas were not expected, and there was no shortage of land in the subject “V” zone in the near future. All the approval conditions related to landscaping and drainage works had been complied with.
- 6.3 Applications No. A/YL-NSW/206, 227 and 253 (on a smaller site than the previous application sites (reduced from 335m² to 320m²) and with a plant room) were approved with conditions by the Committee between 2011 and 2017 respectively for periods of 3 years. All approval conditions had been complied with.

7. Similar Application

There is no similar application within the same “V” zone.

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

- 8.1 The Site is:
 - (a) irregular in shape;
 - (b) occupied by a swimming pool and a plant room with landscaped areas around;
 - (c) accessible via a local road leading to Castle Peak Road-Tam Mi; and
 - (d) within the WBA.
- 8.2 The surrounding areas are predominantly village areas:
 - (a) to its immediate northwest is a children playground; further north across a local track are mainly residential dwellings with a car park area and some unused/vacant land;

- (b) to its east is a petrol filling station; and
- (c) to its south and west are mainly residential dwellings.

9. **Planning Intention**

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

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):

Without recent inspection, his comments based on the applicant’s information are as follows:

- (a) The Site comprises an Old Scheduled agricultural lot held under the Block Government Lease on which no structures are allowed to be erected without prior approval of the Government.
- (b) The private land of Lot Nos. 3734 S.B ss.1 and 3734 RP in D.D. 104 are covered by Short Term Waiver (STW) No. 3399 to permit structures for the purpose of “Private Swimming Pool, Garden and Store Room (excluding storage of dangerous goods).
- (c) According to DLO/YL’s record, there is no Small House application received/under processing within the Site.
- (d) Should the application be approved, the STW holders 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. Moreover, the lot owner of the lots without STW will need to apply to his office for permitting the structures to be erected or regularize any

irregularities on Site, if any. Applications for any of the above will be considered by LandsD acting in the capacity as landlord 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 LandsD.

Traffic

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

He has no comment from traffic engineering point of view as it is considered that the traffic flow for the Site would be negligible under the application.

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

- (a) He has no comment from highways maintenance point of view.
- (b) His department is not responsible for the maintenance of any access connecting the Site and Castle Peak Road – Tam Mi.

Environment and Hygiene

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

- (a) He has no adverse comment on the renewal application.
- (b) The applicant is required to apply for a discharge licence under the Water Pollution Control Ordinance.

10.1.5 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) He has no adverse comment on the application.
- (b) The applicant should be reminded that no person shall take any part in the management of a swimming pool and the establishment or maintenance of which has not been licensed except swimming pool which serves not more than 20 residential units and to which the public has no access.

Landscaping

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

- (a) He has no objection in-principle to the application. It is noted that the proposed use does not fall within landscape sensitive zones, and significant landscape impact arising from the continuous use for temporary private swimming pool and garden is not envisaged.

- (b) The applicant is advised to maintain the landscape planting within the Site at all times. The applicant is reminded that any proposed tree treatment works shall be approved by the relevant tree authority as necessary, prior to commencement of 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 application subject to FSIs being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposed structures, 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.
- (c) The applicant should also be advised on the following:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of the proposed FSIs to be installed should be clearly marked on the layout plans.
- (d) The applicant should be reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 23), detailed fire safety 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):

He has no in-principle objection to the renewal of planning permission. The swimming pool has been approved by the Building Authority and completed with the acknowledgement letter issued to the authorised person on 4.5.2004.

Drainage

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

- (a) The applicant should maintain the same drainage facilities as those implemented under the previous application No. A/YL-NSW/253.

- (b) He has no objection in principle to the application. Should the application be approved, he suggests imposing approval conditions requiring the applicant to maintain properly all drainage facilities implemented for the development and to submit records of existing drainage facilities on Site to the satisfaction of his department or of the Board.

District Officer's Comments

10.1.10 Comments of District Officer/Yuen Long (DO/YL):

He has no comment on the application and the local comments should be submitted to TPB directly, if any.

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

- (a) Commissioner of Police (C of P);
- (b) Project Manager (New Territories North and West), Civil Engineering and Development Department (PM/NTN&W, CEDD);
- (c) Head of Geotechnical Engineering Office, CEDD (H(GEO), CEDD);
- (d) Director of Agriculture, Fisheries and Conservation (DAFC);
- (e) Director of Leisure and Cultural Services (DLCS);
- (f) Chief Engineer/Railway Development 2-2 Railway Development Office, Highways Department (CE/RD2-2,HyD); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

11. Public Comment Received During Statutory Publication Period

On 28.2.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 20.3.2020, no comment was received.

12. Planning Considerations and Assessment

12.1 The application is for renewal of a planning approval for a temporary private swimming pool and garden use. The applicant is the owner of the swimming pool and the ground and first floors of the adjoining house. The Site falls within the "V" zone which aims to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of small houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructure and services. Although the private swimming pool and garden are not in line with the planning intention of the "V" zone, according to DLO/YL, there is no committed Small House development or Small House application received at the Site. Given the temporary nature of the development, the long-term planning intention of the "V" zone would not be jeopardised.

12.2 The current renewal application to continue the existing private swimming pool and garden use for 3 more years is in line with the TPB PG-No. 34C in that there has been no change in

planning circumstances; the 3-year approval period sought is same as the previous approval; there is no adverse planning implication arising from the renewal of the planning approval; and the applicant has satisfactorily complied with all the approval conditions, including the submission/implementation of drainage and FSI works, and maintenance of landscape planting under the previous approval.

- 12.3 The swimming pool and garden are not incompatible with the surrounding environment which is predominantly occupied by village type residential development. In view of the scale of the development (the swimming pool and garden use of about 320m²), it would unlikely create any significant adverse impacts on the existing landscape, traffic and infrastructural provisions of the surrounding areas. Concerned departments including DLO/YL of LandsD, CBS/NTW of BD, DEP, DFEH, CE/MN of DSD, D of FS and CE/C of WSD have no adverse comments on the application. There is also no adverse comment from the landscape planning point of view. The technical concerns from CTP/UD&L of PlanD, CE/MN of DSD and D of FS can be addressed by imposing approval conditions recommended in paragraphs 13.2 (a) to (f) below.
- 12.4 The Site falls within the WBA under TPB PG-No. 12C and the guidelines specify that planning applications for temporary uses are exempted from the requirement of EcoIA. DAFC has no comment on the application.
- 12.5 The Site is the subject of six previously approved applications for the same applied use as detailed in paragraph 6. Approval of the current application is in line with the previous decision of the Committee.
- 12.6 There is no public comment received on the application during the statutory publication period.

13. **Planning Department's Views**

- 13.1 Based on the assessment made in paragraph 12 above, the Planning Department has no objection to the application.
- 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, and be renewed from 26.5.2020 until 26.5.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the swimming pool should not be open to members of the public;
- (b) the landscape planting within the Site should be maintained at all times during the approval period;
- (c) the drainage facilities implemented for the development on the Site should be maintained properly at all times during the planning approval period;

- (d) the submission of condition records of the existing drainage facilities on Site within **6** months from the date of commencement of the renewed planning approval to the satisfaction of Director of Drainage Services or of the Town Planning Board by 26.11.2020;
- (e) the submission of fire service installations proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 26.11.2020;
- (f) in relation to (e) above, the implementation of fire service installations proposal within **9** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services of the Town Planning Board by 26.2.2021;
- (g) if any of the above planning conditions (a), (b) or (c) 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;
- (h) if any of the above planning conditions (d), (e) or (f) 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
- (i) upon 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.

[Approval conditions (a) to (i) above are basically the same as the previously approved application No. A/YL-NSW/253.]

Advisory clauses

The recommended advisory clauses are at **Appendix III**.

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

the continuous occupation of the Site for private swimming pool and garden use is not in line with the planning intention of the "Village Type Development" zone which is designated for both existing recognised villages and areas for village expansion.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission for renewal of the planning 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 18.2.2020
Appendix Ia	FI dated 19.3.2020
Appendix II	Previous applications covering the Site
Appendix III	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with previous applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**