

RNTPC Paper No. A/YL-NTM/384
For Consideration by
the Rural and New Town
Planning Committee
on 8.3.2019

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

APPLICATION NO. A/YL-NTM/384

- Applicant** : Chow Tim Sing represented by Li Fu Chuen
- Site** : Lot 2158 RP in D.D. 104, Sheung Chuk Yuen, Ngau Tam Mei, Yuen Long
- Site Area** : About 693.1 m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Ngau Tam Mei Outline Zoning Plan (OZP) No. S/YL-NTM/12
- Zoning** : “Village Type Development” (“V”)
- Application** : Renewal of Planning Approval for Temporary Private Swimming Pool for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval to continue to use the application site (the Site) for temporary private swimming pool for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “V” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12. According to the Notes of OZP, temporary use not exceeding a period of three 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 with valid planning permission under application No. A/YL-NTM/332. The planning permission is valid until 19.3.2019.
- 1.2 The Site is the subject of 4 previously approved applications (Nos. A/YL-NTM/213, 246, 286 and 332) submitted by the same applicant for the same use. The last application No. A/YL-NTM/332 was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 4.3.2016 for a period of 3 years. All approval conditions including the submission of condition record of the existing drainage facilities, and submission and implementation of tree preservation and landscape proposal have been complied with.

- 1.3 According to the applicant, the site area is about 693.1 m². The swimming pool covering a pool area of 312.5 m² with dimension of 25m (length) x 12.5m (width) x 1.5m (depth), will be accommodated on a raised platform paved with floor tiles. Filtration plant and balance tank are at the north-western corner of the Site. The Site is accessible to San Tam Road via a local track. The layout plan is at **Drawing A-1**. The development parameters of the current application are the same as the previously approved application (No. A/YL-NTM/332).
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 16.1.2019 **(Appendix I)**
 - (b) Further Information (FI) dated 18.2.2019 providing clarification on the dimension of the swimming pool **(Appendix Ia)**

2. Justifications from the Applicant

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

- (a) The validity of the previously approved application No. A/YL-NTM/332 will expire after 19.3.2019 and all approval conditions have been complied with. As such, the applicant applied for a renewal permission for the temporary private swimming pool.
- (b) The applicant states that the swimming pool is an ancillary recreational facility for his Small House at Lot 2306 S.C in D.D. 104 (**Drawing A-1**). The private swimming pool would be open for use by his relatives and neighbours free of charge. The owner has agreed to lend the concerned piece of land to the applicant for use as swimming pool.
- (c) The swimming pool will not impose adverse traffic and environmental impacts on the surrounding areas. The applicant has provided landscape works on site and is willing to maintain the existing facilities and be responsible for future maintenance works.

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

The applicant is not a “current land owner” 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 obtaining an agreement from the current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. Town Planning Board Guidelines

The 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.34B) is relevant to this application. The relevant assessment criteria are attached as below:

- 4.1 The criteria for assessing applications for renewal of planning approval include:
- (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.

5. Background

The Site is not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site is subject of 4 previous planning applications (Nos. A/YL-NTM/213, 246, 286 and 332) submitted by the same applicant for the same use at the same site.
- 6.2 Application No. A/YL-NTM/213 was approved with conditions by the Committee on 13.7.2007 for 3 years up to 13.7.2010. While the approval conditions on the submission of landscape and drainage proposals were complied with, those on the

implementation of landscape and drainage facilities were not complied with. The application was subsequently revoked on 13.3.2010.

- 6.3 Prior to the revocation of the planning permission for No. A/YL-NTM/213, the applicant submitted a renewal application No. A/YL-NTM/246 on 20.1.2010. The applicant stated that the approval conditions on the implementation of landscape and drainage facilities were yet to be complied as construction works of the swimming pool had not yet commenced at that time. The renewal application was approved with conditions by the Committee on 19.3.2010 for 3 years up to 19.3.2013. All approval conditions were then complied with.
- 6.4 The renewal applications Nos. A/YL-NTM/286 and 332 submitted by the current applicant were approved with conditions by the Committee on 15.3.2013 and 4.3.2016 respectively for 3 years until 19.3.2016 and 19.3.2019 respectively. The approval conditions of both applications were all complied with.
- 6.5 Details of the applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1**.

7. **Similar Application**

There is no similar application within the same “V” zone on the Ngau Tam Mei OZP.

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

8.1 The Site is:

- (a) accessible via a local access leading from San Tam Road; and
- (b) currently used for the applied use with valid planning permission under approved application No. A/YL-NTM/332.

8.2 The surrounding areas have the following characteristics:

- (a) to its north are residential dwellings (some are under construction), open storage yard of vehicles and some vacant/unused land;
- (b) to its northwest is an utility installation for private project (CLP transformer room) approved under application No. A/YL-NTM/345;
- (c) to its east, south and west are mainly residential dwellings (Small Houses);
- (d) to its southwest are land for parking of vehicles, refuse collection point and unused land; and

- (e) to its further west are San Tam Road and San Tin Highway.

9. Planning Intention

The planning intention of the “V” zone is 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 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 summarised as follows:

Land Administration

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

- (a) Without recent inspection, his comments based on the applicant’s information are as follows:
- (i) the Site comprises 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;
 - (ii) the private land (PL) of Lot No. 2158 RP in D.D. 104 is covered by a Short Term Waiver (STW) No. 3432 to permit structures for the purpose of “Swimming Pool with Associated Underground Filtration Plant Room”;
 - (iii) the Site is accessible from San Tam Road through both PL and Government Land (GL). LandsD provides no maintenance work for the GL involved and does not guarantee any right-of-way; and
 - (iv) the Site does not fall within Shek Kong Airfield Height Restriction Area.

- (b) Should planning approval be given to the application, the STW holder will need to apply to LandsD for modification of the STW conditions where appropriate. 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. Application(s) for 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 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.
- (c) According to his record, there is no Small House application(s) having been approved or under processing at the Site.

Traffic

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

Noting that there is no vehicle access to the Site, he has no comment on the planning 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) HyD does not and will not maintain any access connecting the Site and San Tam Road. The applicant should be responsible for his own access arrangement.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

10.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

The Site neither falls within any administrative route protection boundary, gazetted railway scheme boundary, nor railway protection boundary of heavy rail systems. As such, he has no comment on the application from railway development viewpoint.

Environment

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

- (a) The applicant is seeking permission for renewal of planning approval for temporary private swimming pool for a period of 3 years. The Site is in an area zoned "V" on the approved Ngau Tam Mei OZP No. S/YL-NTM/12.

- (b) As there is no change in the proposed use, his previous comment remains valid, i.e. in view of its scale, he has no objection to the proposed temporary swimming pool use. The applicant is reminded to observe the requirements under the Water Pollution Control Ordinance if there is any effluent discharge from the proposed use.

Nature Conservation

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

Noting that the application is a renewal application of the previously approved use, he has no comment on the application from nature conservation point of view.

Fire Safety

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

He has no objection to the application.

Building Matters

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

- (a) He has no objection in principle under Buildings Ordinance (BO) to the renewal of planning approval for the captioned temporary private swimming pool.
- (b) Before any new building works are to be carried out on Site, prior approval and consent of BD should be obtained, otherwise they are unauthorized building works (UBW) under the BO. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.

Drainage

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

- (a) In the light that the applicant would maintain the same drainage

facilities as those implemented under previous planning application No. A/YL-NTM/246, he has no objection in principle to the proposed development.

- (b) Should the Board consider that the application is acceptable from the planning point of view, he would suggest that a condition should be stipulated in the approval letter to the applicant of the development to maintain the drainage facilities implemented under application No. A/YL-NTM/246 and to submit records of the existing drainage facilities on site to the satisfaction of his department or of the Board.

Landscaping

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

- (a) The Site, located to the south of Sheung Chuk Yuen and north of San Wai Tsuen, falls within an area zoned “V” on the approved Ngau Tam Mei OZP No. S/YL-NTM/12. The Site is involved in 4 previous planning applications, among which application No. A/YL-NTM/332 with the same development parameters for the same use submitted by the same applicant was approved by the Committee on 4.3.2016.
- (b) With reference to the aerial photo of 2018, the surrounding area of the Site comprises low density residential blocks, roads, lawn and scattered tree groups. The proposed use is considered not incompatible with the existing landscape setting in proximity.
- (c) According to his site visit conducted on 29.1.2019, the existing trees and shrub planting found along the perimeter of the swimming pool within the Site were in good condition and the landscape quality was enhanced. As such, he has no objection to the application from landscape planning perspective.
- (d) Should the application be approved by the Board, he would suggest including the following condition in planning approval:

Existing trees and shrubs planting within the Site shall be maintained in healthy condition at all times during the approval period.

Others

10.1.11 Comments of the Commissioner of Police (C of P):

There is no comment from Lok Ma Chau Division of Hong Kong Police.

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

- (a) If any Food and Environmental Hygiene Department (FEHD)'s facility is affected by the development, FEHD's prior consent must be obtained. Re provisioning of the affected facilities by the project proponent up to the satisfaction of FEHD may be required. The project proponent should provide sufficient amount of additional recurrent cost for management and maintenance of the re provisioned facilities to FEHD.
- (b) Proper license and/or permit issued by FEHD is required if there is any food business/catering service/activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and Places of Public Entertainment Ordinance (Cap. 172) and its subsidiary legislation and the operation of any business should not cause any obstruction to the public.
- (c) If the application involves any commercial/trading activities, its operation should not as to be a nuisance or injurious or dangerous to health and surrounding environment. For any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer's Comments

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

He has no comment on the application and no local comment has been received.

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

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Director of Leisure and Cultural Services (DLCS).

11. Public Comment Received During Statutory Publication Period

On 25.1.2019, the application was published for public inspection. During the first three

weeks of the statutory public inspection period which ended on 15.2.2019, one objecting public comment from a member of the public was received raising concern that the small house application of the village should be reviewed for efficient use of limited land resources (**Appendix III**).

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning approval for temporary private swimming pool within the “V” zone. The planning intention of “V” zone is 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 infrastructures and services. Given the temporary nature of the proposed development, the long-term planning intention of the “V” zone would not be jeopardized. DLO/YL has no adverse comment on the proposed renewal of the planning permission in this regard and he advises that there is no small house application approved or under processing at the Site.
- 12.2 The current application is for renewal of the permission under application No. A/YL-NTM/332 for the same use for a further period of 3 years. The application is in line with the TPB PG-No. 34B in that since the last approval, there has been no major change in planning circumstances; all approval conditions have been complied with; and the 3-year approval period sought is the same as in the previous application.
- 12.3 The proposed swimming pool is not incompatible with the surrounding land uses which are predominately occupied by village type developments (some are under construction). In view of the small scale of the open-air swimming pool (312.5 m²), it would unlikely create any significant adverse impacts on the existing landscape, traffic and infrastructural provisions on the surrounding environment. There is no adverse comment from the concerned Government departments, including C for T, CE/MN of DSD, CE/C of WSD, DEP, DFEH and CTP/UD&L on traffic, drainage, environmental and landscape aspects. The technical requirements raised by CTP/UD&L of PlanD and CE/MN of DSD regarding the maintenance of existing trees and shrubs planting and drainage facilities as well as the submission of a condition record of the existing drainage facilities could be addressed by approval condition as recommended in paragraphs 13.2 (b) to (d) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority.
- 12.4 There are 4 previously approved applications for the same use at the same site. Approval of the subject application is in line with the previous decisions of the Committee.
- 12.5 There is one objecting comment raising concern on land use efficiency in respect of small house application. The planning assessment above is of relevance.

13. Planning Department's Views

- 13.1 Based on the assessments in paragraph 12 and having taken into account the public comment mentioned in paragraph 11, the Planning Department considers that the temporary private swimming pool 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, and be renewed from 20.3.2019 until 19.3.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions:

- (a) the proposed swimming pool should not be open to members of the public;
- (b) the drainage facilities implemented on the Site should be maintained at all times during the planning approval period;
- (c) the existing trees and shrubs planting within the Site shall be maintained in healthy condition at all times during the planning approval period;
- (d) the submission of a condition record of the existing drainage facilities within **3** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.6.2019;
- (e) 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; and
- (f) if the above planning condition (d) 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.

[Approval conditions (a) and (b) above are the same as those imposed under the previously approved application No. A/YL-NTM/332 while condition (c) is newly added, conditions (d), (e) and (f) are revised and the reinstatement clause under the last approved application is deleted to accord with the latest circumstances and departmental comments.]

Advisory Clauses

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

- 13.3 Alternatively, should the Committee decide to reject the application, the

following reason for rejection is suggested for Members' reference:

The renewal of the planning permission for the private swimming pool at the Site is not in line with the planning intention of the "Village Type Development" zone which is to designate both existing recognized villages and areas of land considered suitable for village expansion. There is no strong planning justification 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 for renewal of the planning application.
- 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 received on 16.1.2019
Appendix Ia	FI dated 18.2.2019
Appendix II	Previous Applications
Appendix III	Public Comment
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and 4b	Site Photos