

RNTPC Paper No. A/YL-KTN/629  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 2.11.2018

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**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-KTN/629**

<b><u>Applicant</u></b>	: Mr. TANG Sun Kwai Shaun
<b><u>Site</u></b>	: Lot 956 RP (Part) in D.D.109 and Adjoining Government Land, Kam Tin, Yuen Long
<b><u>Site Area</u></b>	: 5,010m <sup>2</sup> (including Government Land of about 112.8m <sup>2</sup> )
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<b><u>Zoning</u></b>	: “Agriculture” (“AGR”)
<b><u>Application</u></b>	: Proposed Temporary Shop and Services (Plant Showroom) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (plant showroom) for a period of 3 years at the application site (the Site). The Site is subject to a previous Application No. A/YL-KTN/570 for temporary place of recreation, sports or culture (electric power radio control car track and ancillary facilities) which was rejected by the Rural and New Town Planning Committee (the Committee) on 20.4.2018. The Site is paved with some vacant structures.
- 1.2 According to the applicant, the proposed plant showroom involves 11 one-storey structures (2.6m to 5m) including 7 plant showrooms, 1 site office, 2 open sheds and electric meter room with a total floor area of 712.35m<sup>2</sup>. Six car parking spaces for private car or light-goods vehicles and two loading/unloading space for vehicle not exceeding 24 tonnes will be provided within the Site. The proposed development will be operated from 9:00 am to 6:00 pm daily including

public holidays. The proposed plant showroom is for wholesale purpose and will display plant samples. If any purchase is made, the plants will be delivered to the Site for pick up by the customers. Plants will also be kept at the Site for the customers if necessary. Appointment will be needed to visit the proposed plant showroom. No amplifier will be used within the Site. The Site is accessible to Kong Tai Road via a local track. The layout plan, landscape plan and vehicular access plan submitted by the applicant are at **Drawings A-1 to A-3**.

- 1.3 In support of the application, the applicant has submitted the following document:
- (a) Application Form with plans received on 5.9.2018 (**Appendix I**)
  - (b) Supplementary Information (SI) received on 12.9.2018 with updated application form (**Appendix Ia**)
  - (c) Further Information (FI) received on 5.10.2018 clarifying the traffic arrangement to the Site and operation details (**Appendix Ib**)  
*(accepted and exempted from publication and recounting requirements)*
  - (d) FI received on 25.10.2018 clarifying the traffic arrangement to the Site (**Appendix Ic**)  
*(accepted and exempted from publication and recounting requirements)*

## 2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in section 9 of the application form and FI in **Appendices I to Ic**. They can be summarized as follows:

- 2.1 The proposed development is temporary in nature with no permanent structure on site which will not jeopardize the long term planning intention of the area and the Site is easily reinstated. Several applications for plant showrooms in the vicinity of the Site have been approved by the Rural and New Town Planning Committee (the Committee).
- 2.2 The applicant will provide landscaping and drainage facilities with environmental mitigation measures to enhance the environment nearby and to minimize flooding. Adverse impact on existing road is not anticipated.

### 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 sending notification letter to current land owners by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

### 4. **Background**

The Site is subject to planning enforcement action (No. E/YL-KTN/421) against an unauthorized development (UD) involving use for model car playing ground. Enforcement Notice (EN) was issued on 23.6.2017 to the concerned parties requiring discontinuation of the UD. Since the UD has not been discontinued upon expiry of the notice, prosecution action has instigated. The defendants are pleaded guilty and will be sentencing on 7.11.2018.

### 5. **Previous Application**

The Site is the subject of a previous application No. A/YL-KTN/570 submitted by a different applicant as the current application for temporary place of recreation, sports or culture (electric power radio control car track and ancillary facilities) for a period of 3 years. The application was rejected by the Committee on 20.4.2018 on the grounds that the use was not in line with the planning intention of the “AGR” zone; adverse comments from relevant departments including the Director of Agriculture, Fisheries and Conservation (DAFC), Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) and Director of Environmental Protection (DEP); failed to demonstrate the use would not cause adverse landscape and environmental impacts on the surrounding area; and approval of the application even on temporary basis would set undesirable precedent for other similar uses to proliferate into the “AGR” zone, and the cumulative effect of approving such applications would result in a general degradation of the rural environment of the area. Details of the application and its location are shown in **Plan A-1** and **Appendix II**.

### 6. **Similar Applications**

- 6.1 There are seven similar applications (No. A/YL-KTN/413, 446, 447, 448, 540, 541 and 624) for temporary shop and services (plant showroom) within the same “AGR” zone. Six of them were approved with conditions by the Committee between 2013 and 2017 and one was rejected by the Committee in 2018. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.

- 6.2 Application Nos. A/YL-KTN/413 and 540 covering the same site for temporary shop and services (plant showroom) for a period of 3 years were approved with conditions by the Committee on 6.9.2013 and 11.11.2016 respectively mainly for the reasons that the developments were not incompatible with the surrounding land uses; temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; relevant departments including DAFC, except DEP, had no adverse comment and the concern of DEP could be addressed by approval conditions (for Application No. A/YL-KTN/413); and relevant departments had no adverse comment on the application (for Application No. A/YL-KTN/540).
- 6.3 Application Nos. A/YL-KTN/446, 447, 448 and 541 involve 4 sites for temporary shop and services (plant showroom) for a period of 3 years were approved with conditions by the Committee on 22.8.2014 (for Applications No. A/YL-KTN/446 and 447), 26.9.2014 and 12.5.2017 respectively mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the proposed developments were not incompatible with the surrounding areas; relevant departments including DAFC, except DEP, had no adverse comment and the concern of EPD could be addressed by approval conditions (for application nos. 446, 447 and 448) and relevant departments had no adverse comment on the application (for Application No. A/YL-KTN/541). Applications no. A/YL-KTN/446 and 447 were revoked on 22.11.2015 and Application No. A/YL-KTN/448 was revoked on 26.12.2015 due to non-compliance with approval conditions in respect of provision of fencing and submission/implementation of landscape, drainage and fire services installations proposals.
- 6.4 Application No. A/YL-KTN/624 for temporary shop and services (plant showroom) for a period of 3 years was rejected by the Committee on 19.10.2018 mainly on the grounds that there were adverse comments from relevant government departments including DAFC, DEP and CTP/UD&L, PlanD; and the applicant fails to demonstrate the proposed development would not generate environmental nuisance to the surrounding areas.

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

- 7.1 The Site is:
- (a) paved with some vacant structures; and
  - (b) accessible via a local track branching off Kong Tai Road.
- 7.2 The surrounding areas are predominately rural in character predominated by residential dwellings/structures, fallow/active agricultural land and unused/vacant land:

- (a) to its immediate north are residential dwellings/structures and vacant/unused land;
- (b) to its east are some residential dwellings/structures and unused/vacant land;
- (c) to its south are residential dwellings/structure, unused/vacant land and Kong Tai Road is located to the further south; and
- (d) to its immediate west are residential dwelling/structure (the nearest less than 5m) and unused/vacant land. Further northwest are some residential dwellings/structures and fallow/active agricultural land.

## **8. Planning Intention**

The planning intention of the “AGR” 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 Government Land (GL) and an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of GL (about 112.8m<sup>2</sup> subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government’s prior approval is not allowed.
- (c) The Site is accessible from Kong Tai Road via GL and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.

- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structures shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Lot No. 956 RP in D.D. 109 is currently subject to lease enforcement actions.
- (f) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities 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 portion from the Site or apply for a direct grant STT for use of the Site. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) 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**

#### 9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) He has no objection to the application from the traffic engineering point of view.
- (b) The approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department does not and will not maintain any access connecting the Site and Kong Tai 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.

**Environment**

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

- (a) There was no environmental complaint received in the past 3 years for the Site.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” (the COP), he does not support the application as there are sensitive receivers nearby, i.e. residential dwellings (the nearest at its immediate west within 5m) (**Plan A-2**) and the proposal will generate traffic of heavy vehicle within 50m from residential dwellings, environmental nuisance is expected.
- (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 the Environmental Aspects of Temporary uses and Open Storage Sites” issued by DEP.

**Landscape**

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

- (a) She has some reservations to the application from the landscape planning point of view.
- (b) The Site is the subject of a previous application No. A/YL-KTN/570 for temporary place of recreation, sports or culture (electric power radio control car track and ancillary facilities) to which she had some reservations on the application.
- (c) Compared the aerial photos of 2011 – 2015 to latest photo of

2018, it was observed that the Site was gradually hard paved over the period of time. According to the site visit in September 2018, the electric power radio control car track is in operation. It is noted that vegetation clearance has been taken place prior to obtaining planning permission. The surrounding area comprises of rural landscape farmland, temporary structures, village houses and some tree groups. The proposed use in the application is considered not incompatible with the landscape setting in proximity. Although further landscape impact arising from the temporary use under the application is not expected, the proposed development, if approved, would set an undesirable precedent for site modification prior to application. The cumulative impact of such approval would further degrade the existing landscape quality in the surrounding area.

- (d) Should the application be approved, approval condition on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board should be included in the planning permission.

### **Agriculture**

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

- (a) The Site is currently paved and partially occupied by temporary structures. The Site was well served by road access and possesses potential for agricultural uses such as plant nursery or greenhouse. As such, he does not support the application from agricultural point of view.
- (b) According to aerial photos, the Site was mostly vegetated in early 2011. Vegetation clearance on the Site may have occurred around late 2011 and the Site was found to be paved in 2012.

### **Drainage**

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

- (a) He has no in-principle objection to the proposed development from public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a



drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

### **Building Matters**

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

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (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 Site under the BO.
- (c) Before any new building works (including containers/ open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (d) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (e) 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 B(P)R at the building plan submission stage.

### **Fire Safety**

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

- (a) He has no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction.

- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **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 local's comment on the application upon close of consultation and has no comment on the application.

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

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD); and
- (d) Commissioner of Police (C of P).

## **10. Public Comments Received During Statutory Publication Period**

- 10.1 On 14.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 5.10.2018, six public comments from Tai Kong Po Tsuen Committee, World Wide Fund for Nature Hong Kong, Kadoorie Farm & Botanic Garden Corporation, The Hong Kong Bird Watching Society, Designing Hong Kong and a general public were received (**Appendices IV-1 to IV-6**).
- 10.2 All commenters object the application mainly on the grounds that the proposed development will induce heavy traffic and overload the traffic capacity of the village road; the commercial activity with no fire services installations will affect fire safety of nearby residents; generate waste without proper treatment; the Site involved illegal land filling and the applicant has not reinstated the Site; the proposed development is not in line with the planning intention of the "AGR"

zone; approval would encourage unauthorized use and/or a ‘destroy first, development later’ case and set undesirable precedent to regularize unlawful activities; and no strong planning justification has been given for a departure from the planning intention.

## **11. Planning Considerations and Assessments**

- 11.1 The Site is located in “AGR” zone which is intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed shop and services (plant showroom) is not entirely in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as the Site was well served by road access and possesses potential for agricultural uses such as plant nursery or greenhouse. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.
- 11.2 The surrounding area of the Site is predominated by residential dwellings/structures, fallow/active agricultural land and unused/vacant land. DEP does not support the application as there are sensitive receivers nearby, i.e. residential dwellings (the nearest at its immediate west within 5m) (**Plan A-2**) and the proposal will generate traffic of heavy vehicle within 50m from residential dwellings, environmental nuisance is expected. CTP/UD&L of PlanD has some reservations on the application as vegetation clearance has been taken place prior to obtaining planning permission and approval of the application would set an undesirable precedent for site modification prior to application. The cumulative impact of such approval would further degrade the existing landscape quality in the surrounding area.
- 11.3 There are seven similar applications for shop and services (plant showroom) in the same “AGR” zone. Although six of them (Applications No. A/YL-KTN/413, 446, 447, 448, 540 and 541) were approved with conditions by the Committee in 2013 to 2017 (paragraph 6 and **Plan A-1** refer), these applications are subject to different circumstances than the current application as no adverse comments were raised by DAFC and CTP/UD&L of PlanD on these similar applications. On the other hand, another similar application No. A/YL-KTN/624 was rejected by the Committee on 19.10.2018 for grounds as mentioned in paragraph 6.2 above including adverse comments by DAFC and CTP/UD&L of PlanD.
- 11.4 Six public comments were received during the statutory publication period as stated in paragraph 10 above. In this regard, the planning assessments and considerations above are relevant.

## 12. Planning Department's Views

12.1 Based on the assessments 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 proposed development is not in line with the planning intention of the "AGR" zone which 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. No strong justification has been given in the submission for a departure from the planning intention, even on temporary basis; and
- (b) the applicant fails to demonstrate that the proposed development would not generate environmental nuisance 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 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 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no heavy goods vehicles exceeding 24 tonnes, including container tractors/trailers as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the submission of landscape proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.5.2019;
- (e) in relation to (d) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 2.8.2019;
- (f) the submission of 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 2.5.2019;

- (g) in relation to (f) above, the implementation of 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 on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.5.2019;
- (j) in relation to (i) above, the provision of fire service installations within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.8.2019;
- (k) if any of the above planning conditions (a), (b), (c) or (h) 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;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) 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
- (m) 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.

#### 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 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.
- 13.3 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.

**14. Attachments**

<b>Appendix I</b>	Application Form with plans received on 5.9.2018
<b>Appendix Ia</b>	SI received on 12.9.2018
<b>Appendix Ib</b>	FI received on 5.10.2018
<b>Appendix Ic</b>	FI received on 25.10.2018
<b>Appendix II</b>	Previous s.16 applications covering the Site
<b>Appendix III</b>	Similar Applications within the same “AGR” zone on the Kam Tin North OZP
<b>Appendices IV-1 to IV-6</b>	Public comments received during statutory publication period
<b>Appendix V</b>	Advisory clauses
<b>Drawing A-1</b>	Layout Plan
<b>Drawing A-2</b>	Landscape Plan
<b>Drawing A-3</b>	Vehicular Access Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to 4b</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2018**