

RNTPC Paper No. A/YL-KTN/706  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 15.5.2020

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

**APPLICATION NO. A/YL-KTN/706**

<b><u>Applicant</u></b>	: Ko Kee Metal & Building Materials Limited represented by BMI Appraisals Limited
<b><u>Site</u></b>	: Lots 126 S.B and 126 RP in D.D. 110, Pat Heung, Yuen Long
<b><u>Site Area</u></b>	: About 2,969.7 m <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>	: Renewal of Planning Approval for Temporary Open Storage of Construction Materials with Ancillary Office and Storage 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 temporary open storage of construction materials with ancillary office and storage for a period of 3 years. The Site is zoned “AGR” on the Kam Tin North OZP and the applied use is neither Column 1 nor Column 2 use in the “AGR” zone. According to the Notes of the OZP, temporary use not exceeding a period of 3 years, notwithstanding that the use or development is not provided for in terms of the OZP, requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission (**Plans A-2 and A-4a and A-4b**).
- 1.2 The Site is involved in four previous applications submitted by the same applicant for the same applied use. The last application No. A/YL-KTN/559 was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 12.5.2017 for a period of 3 years. All approval conditions have been complied with and the planning permission is valid until 20.5.2020.

- 1.3 According to the applicant, three one-storey structures with a total floor area of about 371 m<sup>2</sup> and building height of 5m to 6m for ancillary office and storage are provided within the Site. 3 parking spaces for private car, 2 parking space for medium goods vehicle and one loading/unloading bay are provided. No vehicles exceeding 24 tonnes would be parked/stored at the Site. The operation hours are between 8:00 a.m. and 7:00 p.m. from Mondays to Saturdays and there is no operation on Sundays and statutory holidays. The Site is accessible via a local track to Kam Tai Road. The layout plan, drainage plan and fire services installation plan submitted by the applicant are shown at **Drawings A-1 to A-3**.
- 1.4 When compared with the last approved application (No. A/YL-KTN/559), the current application submitted by the same applicant is the same in terms of use, site area/boundary, layout and total floor area.
- 1.5 In support of the application, the applicant has submitted the following documents.
- (a) Application Form with planning statement and plans received on 26.3.2020 **(Appendix I)**
  - (b) Further Information on 6.5.2020 in response to departmental comments **(Appendix Ia)**  
*[exempted from publication requirement]*

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

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

- (a) The planning application is not in conflict with the planning intention. After the expiry of the permission, the “AGR” zone could still be implemented should it be desired by any interested parties. The temporary development at the Site could maximize the use of land and allow flexibility without pre-empting the long-term development potential and permanent land use of the Site.
- (b) Due to the economic restructuring and decline in agricultural activities, many farmland in Pat Heung, Shek Kong and Kam Tin have been abandoned or converted into semi-industrial and open storage uses. Building and construction materials yards and open storage of various kinds have infiltrated into the area of the Site. The development is compatible with the surrounding land uses which comprises various kinds of open storage uses.
- (c) The development is in line with the Town Planning Board Guidelines as the Site falls within Category 3 areas where favourable consideration from the Board will be given if the Site is covered by previous planning approvals. The current application is the same as the previously approved application No. A/YL-KTN/559 without any material

change and the re-granting of the planning approval will not cause land use compatibility issue.

- (d) No significant adverse drainage, traffic, landscaping and environmental impacts are anticipated. Approval of the application would not set an undesirable precedent and there are similar applications approved by the Committee in the vicinity. All approval conditions of the last application have been complied with. The applicant will continue to make efforts to comply with the approval conditions should planning permission be granted again.

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

The applicant is one of the “current land owners” and has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by notifying the other current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

### 4. Town Planning Board Guidelines

- 4.1 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. 34C) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.
- 4.2 The Town Planning Board Guidelines for ‘Application for Open Storage and Port Back-up Uses’ (TPB PG-No. 13F) promulgated by the Board on 27.3.2020 are relevant to the application. The Site falls within the Category 3 areas under TPB PG-No. 13F. The relevant extract of the Guidelines is attached at **Appendix III**.

### 5. Background

The Site is currently not subject to any active enforcement action.

### 6. Previous Applications

- 6.1 The Site was the subject of four previous applications submitted by the same applicant, and all were approved with conditions. Details of the previous applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTN/343 for proposed temporary open storage of construction materials with ancillary office for a period of 3 years covering a larger site area was approved with conditions by the Committee in 2010 on the consideration that the

original site of the development was resumed for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project and the applicant had spent efforts in identifying suitable site for continuous operation of his business for open storage and only the application site was identified; the proposed development was not incompatible with the surrounding land uses; and the concerns of the relevant government departments could be addressed by appropriate approval conditions. However, the planning permission was revoked on in 2011 due to non-compliance with approval conditions.

- 6.3 Applications No. A/YL-KTN/363, 441 and 559 covering the same area and use as the current application was approved with conditions by the Committee between 2011 and 2017 for a period of 3 years based on the similar considerations as mentioned in paragraph 6.2 above. For the last approved application (No. A/YL-KTN/559), all approval conditions had been complied with and the planning permission is valid until 20.5.2020.

## 7. Similar Applications

- 7.1 There are 19 processed similar applications for various temporary open storage uses in the vicinity of the Site within the same “AGR” zone in the Kam Tin North OZP considered by the Committee/ the Board since the promulgation of the then TPB PG-No.13E on 17.10.2008. Details of the applications are summarized in **Appendix V** and their locations are shown on **Plan A-1**.
- 7.2 14 applications (No. A/YL-KTN/338, 339, 341, 355, 364, 373, 399, 442, 452, 517, 553, 578, 648 and 654) for various temporary open storage uses were approved with conditions by the Committee between 2010 and 2019 on similar considerations that the developments were in line with TPB PG-No. 13E in that the relevant departments generally had no adverse comment and the environmental or landscape concerns could be addressed by appropriate approval conditions. However, planning permissions for five of them were revoked due to non-compliance with approval conditions.
- 7.3 Five applications (No. A/YL-KTN/375, 386, 392, 405 and 552) for various temporary open storage uses were rejected by the Committee or the Board on review between 2012 and 2017 mainly for the reasons that the developments were not in line with TPB PG No. 13E in that no previous planning approval had been granted; there was insufficient information to demonstrate the developments would not cause adverse environmental, drainage, traffic and/or landscape impacts on the surrounding areas; and the approval of the applications would set an undesirable precedent.
- 7.4 Apart from the above processed similar applications, Application No. A/YL-KTN/704 for renewal of planning approval for temporary open storage of building materials with ancillary site office and staff restroom for a period of 3 years in the same “AGR” zone will be considered at the same meeting (**Plan A-1**).

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

8.1 The Site is:

- (a) paved, fenced and used for the applied use with planning permission; and
- (b) accessible from Kam Tai Road via a local track.

8.2 The surrounding areas are rural in character and intermixed with open storage/ storage yards, vacant/unused land and scattered residential dwellings/structures. Some of the open storage yards are suspected unauthorized development subject to planning enforcement actions by the Planning Authority:

- (a) to its north are open storage/ storage yards and vacant/unused land with scattered residential structures/ dwellings;
- (b) to its immediate east are a residential structure/dwelling (about 10m) and unused land;
- (c) to its south across Kam Tin River and Kam Tai Road are open storage yard and vacant/unused land. A residential development (i.e. Seasons Villas) is located to the further southeast (**Plan A-1**); and
- (d) to its immediate west are vacant/unused land and some residential dwellings/ structures.

## **9. Planning Intention**

The planning intention of the “AGR” zone is primarily 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.

## **10. Comments from Relevant Government Departments**

10.1 The following Government departments have been consulted and their views on the application are summarized as follows:

### **Land Administration**

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

- (a) The Site comprises Old Schedule Agricultural 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 No. 126 S.B in D.D. 110 within the Site is covered by a Short Term Waiver (STW) No. 3530 to permit structures erected thereon for the purpose of “Storage of Construction Materials and Ancillary Office Use”.
- (c) Lot no. 126 RP in D.D. 110 within the Site is covered by a STW No. 3418 to permit structures erected thereon for the purpose of “Storage of Construction Materials, Ancillary Office and other directly related and ancillary uses”.
- (d) Should planning approval be given to the application, the STW holder(s) 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. Applications for any of the above will be considered by LandsD acting in the capacity as 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 approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by the LandsD.

### **Traffic**

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

- (a) He has no comment on the application from traffic engineering perspective.
- (b) Should the application be approved, 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 his 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.

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

- (a) Part of Kam Tai Road is maintained by his office.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and the part of Kam Tai Road maintained by his department.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

### **Environment**

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

- (a) There was no environmental complaint at the Site received in the past 3 years.
- (b) According to the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" (COP), he does not support the application as there are sensitive uses in the vicinity of the Site (the closest residential dwelling being about 10m to its east) (**Plan A-2**) and the development involved the use of heavy vehicle, hence 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 COP issued by DEP.

### **Agriculture and Nature Conservation**

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

- (a) Considering that the previous application for the same use was approved by the Committee, he has no strong view against the application of renewal of planning approval.
- (b) There is a drainage channel to the west of the Site. Should the application be approved, the applicant should be reminded to adopt good site practice and implement necessary measures to avoid polluting or disturbing the adjacent channel during operation.

### **Landscape**

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

- (a) She has no objection to the application from landscape planning perspective.
- (b) Based on the aerial photo taken on 12.9.2019, the Site is situated in an area of rural landscape character comprising scattered tree groups, abandoned farmlands and temporary structures. The development is considered not incompatible with surrounding environment. Comparing the aerial photos taken in 2017 and 2019, there is no significant change to the surrounding landscape setting since the application was last approved. Further significant adverse impact on landscape resources due to the development is not anticipated.
- (c) Should the application be approved, she suggests imposing approval condition requiring the maintenance of existing trees within the Site in healthy condition at all times during the planning approval period.

### **Drainage**

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

- (a) He has no objection in principle to the development. Presumably, the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-KTN/559.
- (b) Should the application be approved, approval conditions requiring (i) the maintenance of the drainage facilities implemented under Application No. A/YL-KTN/559 and (ii) the submission of clear records of the existing drainage facilities on site should be included.

### **Fire Safety**

#### 10.1.8 Comments of the Director of Fire Services (D of FS):

He has no in-principle objection to the renewal application subject to the existing FSIs implemented on the Site being maintained in efficient working order at all times.

### **Building Matters**

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

- (a) If the existing structures are erected on leased land without approval of BD (not being New Territories Exempted Houses), they are unauthorised under the Buildings Ordinance (BO) and should not be designated for any use under the application.



- (b) Before any new building works (including ancillary office and storage as temporary buildings) are to be carried out on the Site, prior approval and consent of the Building Authority (BA) should be obtained. Otherwise, they are unauthorized building works (UBW). 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 BA 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 works or UBW on the Site under 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.

#### **District Officer's Comments**

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

He has not received any comment on locals and he has no particular comment on the application.

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

- (a) Project Manager (West), Civil Engineering and Development Department;
- (b) Commissioner of Police;
- (c) Director of Electrical and Mechanical Services; and
- (d) Chief Engineer/Construction, Water Supplies Department.

#### **11. Public Comment Received During Statutory Publication Period**

On 3.4.2020, the application was published for public inspection. During the three-week statutory public inspection period, one comment from an individual was received objecting to the application mainly on the grounds that there is a need for certain amount of farmland to cope with the current health crisis, worldwide food shortages and the disruption of shipping (**Appendix VI**).

## **12. Planning Considerations and Assessments**

- 12.1 The application is for renewal of the planning permission for temporary open storage of construction materials with ancillary office and storage in “AGR” zone. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish pond for agricultural purpose, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. Although the applied use is not in line with the planning intention of the “AGR” zone, DAFC has no strong view on the application. It is considered that temporary approval of the application will not frustrate the long term planning intention of the “AGR” zone.
- 12.2 The development is considered not incompatible with the surrounding land uses, which are rural in character and intermixed with scattered residential dwellings/structures and vacant/unused land. The Site is also physically separated from the major residential development (i.e. Seasons Villas) in the vicinity by Kam Tin River and Kam Tai Road (**Plan A-1**).
- 12.3 The Site falls within Category 3 areas under the TPB PG-No. 13F. The following considerations in the Guidelines are relevant:
- Category 3 areas: Within these areas, “existing” and approved open storage and port back-up uses are to be contained and further proliferation of such uses is not acceptable. Applications within these areas would normally not be favorably considered unless the applications are on sites with previous planning approvals. Sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas. Subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions, planning permission could be granted on a temporary basis up to a maximum period of 3 years.
- 12.4 The application is in line with TPB PG-No. 34C and TPB PG-No. 13F in that previous approvals for the same applied use were granted since 2011 and all the approval conditions under the last approved Application No. A/YL-KTN/559 had been complied with. There is no adverse comment from the concerned departments except DEP. The applicant also submitted drainage and FSIs proposals in the current application. Compared with the last approved application No. A/YL-KTN/559, the current application submitted by the same applicant is the same in terms of use, site area, layout and total floor area. As there is no major change in planning circumstances since the last planning approval, sympathetic consideration could be given to the current application.

- 12.5 DEP objects to the application as there are sensitive uses in the vicinity of the Site (the closet residential dwelling being about 10m to its east) and the development involved the use of heavy vehicle, and environmental nuisance is expected. Nevertheless, there was no environmental complaint in respect of the Site received in the last three years. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and vehicle type and prohibiting workshop-related activities are recommended in paragraphs 13.2 (a) to (d) below. Besides, the applicant will be advised to follow the latest COP. The technical requirements of C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS can be addressed by approval conditions in paragraph 13.2 (e), (h) to (k) below.
- 12.6 A public comment objecting to the application was received during the statutory publication period as detailed in paragraph 11 above. In this regard, the departmental comments and planning considerations and assessments as stated above are also relevant.

### **13. Planning Department's Views**

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11 above, the Planning Department considers that the temporary open storage of construction materials with ancillary office and storage 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 21.5.2020 until 20.5.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

#### Approval Conditions

- (a) no operation between 7:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and statutory holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no heavy goods vehicles exceeding 24 tonnes, including container trailers/tractors, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;

- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the existing trees on the Site shall be maintained satisfactorily at all times during the planning approval period;
- (g) the existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (h) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the Site should be kept in a clean and tidy condition and the materials stored at the Site should be covered up at all times during the planning approval period;
- (j) the submission of a record of the existing drainage facilities on the Site 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 21.8.2020;
- (k) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g), (h), (i) or (k) 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;
- (m) if the above planning condition (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
- (n) upon the 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.

*[The above approval conditions are similar to those under the last Application No. A/YL-KTN/559, except deletion/ change of those on FSIs according to the comments of D of FS.]*

#### Advisory Clauses

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

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

the development is not in line with the planning intention of the “AGR” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given 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 approval.
- 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**

<b>Appendix I</b>	Application Form with planning statement and plans received on 26.3.2020
<b>Appendix Ia</b>	FI received on 6.5.2020
<b>Appendix II</b>	Relevant extract of TPB PG-No. 34C
<b>Appendix III</b>	Relevant extract of TPB PG- No. 13F
<b>Appendix IV</b>	Previous applications covering the Site
<b>Appendix V</b>	Similar applications within the same “AGR” zone in the vicinity of the Site on the Kam Tin North OZP
<b>Appendix VI</b>	Public comment received during the statutory publication period
<b>Appendix VII</b>	Advisory Clause
<b>Drawing A-1</b>	Site Plan
<b>Drawing A-2</b>	Drainage Plan
<b>Drawing A-3</b>	Fire Service Installations Plan

<b>Plan A-1</b>	Location Plan with Previous and Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
MAY 2020**