

RNTPC Paper No. A/YL-KTS/834
For Consideration by
the Rural and New Town
Planning Committee
on 13.12.2019

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

APPLICATION NO. A/YL-KTS/834

<u>Applicant</u>	: Mr. YIU Chung-chu represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lot 1568 (Part) in D.D. 106 and Adjoining Government Land, Yuen Kong, Pat Heung, Yuen Long, New Territories
<u>Site Area</u>	: About 330m ² (including Government land of about 16.15m ² (5%))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Shop and Services (Real Estate Agency) 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 shop and services (real estate agency) for a period of 3 years. The Site is currently used for the applied use with valid planning permission.
- 1.2 The Site is the subject of two previous applications for the same applied use, which were approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) in 2014 and 2016. All approval conditions of the last approved application have been complied with and the planning permission is valid until 23.12.2019.
- 1.3 According to the applicant, a total of 4 one to two-storey structures with a total floor area of about 255m² and building height ranging from 3m to 6.5m are erected within the Site for real estate agency and meeting room, an open shed as rain shelter, an advertisement signboard and an electricity meter room. A total of

5 parking spaces for private car are also provided underneath the rain shelter within the Site. The Site is accessible via Kam Sheung Road. The operation hours are between 9:00a.m. and 8:00p.m daily, including public holidays. The site layout plan, plan showing car parking spaces, tree preservation plan, drainage plan and fire service installations plan submitted by the applicant are at **Drawings A-1 to A-5**.

- 1.4 When compared with the last approved application (No. A/YL-KTS/724), the current application submitted by the same applicant is the same in terms of site boundary and area, number of structure, building height, total floor area and number of car parking spaces.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with supplementary information (**Appendix I**) received on 17.10.2019
 - (b) Further Information (FI) received on 2.12.2019 in (**Appendix Ia**) response to departmental comments
[exempted from publication]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the supplementary information in **Appendix I**. They can be summarised as follows:

- (a) The temporary nature of the development would not jeopardise the long term planning intention of the “AGR” zone. The Site could be easily converted to agricultural use when necessary.
- (b) The development would help meet the acute local demand on real estate agency service in the area and benefit the public.
- (c) The location is suitable for real estate agency. The development is not adjoining any agricultural activities and is compatible with the surrounding environment including village houses in the proximity. The applied use would generate neither environmental nor noise nuisance.
- (d) The traffic generated by the development is insignificant and adequate manoeuvring space for vehicle would be provided within the Site. The negligible increase in traffic would not aggravate the traffic condition of Kam Sheung Road and nearby road networks. All trees within the Site will be maintained in good condition.
- (e) Similar applications for real estate agency in “AGR” zone were approved by the Committee. The planning circumstance pertaining to the Site and its surroundings

remain unchanged since the planning permission granted to nearby similar developments in the “AGR” zone by the Board.

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

The applicant is not a “current land owner” of the private land portion 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 posting site notice and sending notice to the Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion, the “Owner’s Consent/Notification” Requirements are not applicable.

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. 34C) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. Background

The Site is currently not the subject of any outstanding enforcement case.

6. Previous Applications

- 6.1 The Site involves 2 previous applications submitted by the same applicant and for the same applied use as the current application. Details of the applications are summarized in **Appendix III** while their locations are shown on **Plan A-1**.
- 6.2 Both applications were approved with conditions by the Committee for a period of 3 years on 3.1.2014 and 23.12.2016 respectively on the considerations that the development could serve some of the needs of the neighbouring residential developments and the approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding land uses; environmental nuisance generated by the development would unlikely be significant; relevant departments had no adverse comment and their technical concerns could be addressed by imposing appropriate approval conditions. All the approval conditions of both applications related to landscaping, drainage and fire safety aspects have been complied with. The planning permission of the last approved application is valid until 23.12.2019.

7. Similar Applications

- 7.1 There are 4 similar applications for temporary shop and services (real estate agency) at one site in the same “AGR” zone on the OZP. Details of the applications are summarised in **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 All the similar applications were approved with conditions for a period of 3 years by the Committee between 2011 and 2018 mainly for the reasons that approval of the applications on a temporary basis would not jeopardise the long term planning intention; the developments were not incompatible with the surrounding land uses; in view of the small scale of the developments and the close proximity to Pat Heung Road, environmental nuisance generated by the developments to the nearby residential structures/ dwellings would unlikely be significant; relevant departments had no objection to the applications (except the Director of Agriculture, Fisheries and Conservation); and the concerns of the relevant departments could be addressed by imposing appropriate approval conditions. Nevertheless, all applications were revoked due to non-compliance with approval conditions.
- 7.3 Application No. A/YL-KTS/833 for proposed shop and services (landscaping and gardening showroom) for a period of 3 years and land filling within the same “AGR” zone will be considered at the same meeting.

8. The Site and Its Surrounding Areas (Plans A-2 to A-4)

- 8.1 The Site is:
- (a) hard-paved, fenced and used for the applied use with valid planning permission; and
 - (b) accessible via Kam Sheung Road to its north (about 20m).
- 8.2 The surrounding areas are rural in character and predominated by residential structures/dwellings mixed with parking of vehicles, open storage yards and vacant/unused land:
- (a) to its north across Kam Sheung Road are a residential cluster and car beauty services; and
 - (b) to its east, south and west are residential structures/dwellings, parking of vehicles, open storage yards and vacant/unused land.

9. 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.

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 an Old Scheduled 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) The private land portion of the Site is covered by Short Term Waiver (STW) No. 2036 for Temporary Shop and Services (Real Estate Agency) use.
- (c) For the Government Land (GL) portion included in the Site (i.e. about 16.15m² subject to verification), in view of a planning approval was given by the Board in the previous application A/YL-KTS/724, an STT was issued by his office to permit the occupation and erection of structures on the GL concerned. However, the occupier had not accepted the STT offer and appropriate land control actions had been taken against any illegal occupation of GL.
- (d) The recent site inspection to the subject location found that the structure(s) erected on the private land was projected on the GL portion included in the Site. His office would consider appropriate land control actions for the GL portion in view of the occupier had not accepted the STT offer.
- (e) The Site is accessible from Kam Sheung 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.

- (f) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (g) Should planning approval be given to the planning 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. 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. Application 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

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 TD. 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) His department is not/shall not be responsible for the maintenance of any access connecting the Site and Kam Sheung Road.

- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Environment

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

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 the DEP.

Landscape

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

- (a) He has no objection to the application from the landscape planning point of view.
- (b) With reference to the aerial photo taken in 2018, the Site is situated in an area of rural landscape character. The surrounding area of the Site is comprised of temporary structures, open storages, vacant lands, small houses and scattered tree groups. The development is considered not incompatible with existing landscape setting in the proximity.
- (c) According to the site visit conducted on 5.11.2019, four existing trees of common species were found along the northeastern and northwestern boundary of the Site. With reference to the submitted planning statement, the existing trees are proposed to be preserved. Further significant adverse landscape impact arising from the development is not anticipated.
- (d) In view that the development is unlikely to cause significant adverse landscape and visual impact, it is opined that landscape condition is not recommended, should the application be approved by the Board.

Agriculture

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

Considering that the previous application for the same use as the current application was approved, he has no strong view on the application for renewal of planning approval.

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.
- (b) Based on the submission, the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-KTS/724.
- (c) Should the application be approved, approval conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-KTS/724 and the submission of records of the existing drainage facilities on Site to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

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

He has no objection in principle to the renewal application subject to the condition that the existing fire service installations (FSIs) implemented on the Site should be 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) There is no record of approval by the Building Authority (BA) for the existing structures at the Site and BD is not in a position to offer comment on their suitability for the use related to the application.

- (b) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise, they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).
- (c) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are UBW under the BO and should not be designated for any proposed use under the application.
- (d) 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.
- (e) 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.
- (f) 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 Comment of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

He has not received any comments from locals upon close of consultation and he has no particular comments on the application.

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

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

11. Public Comment Received During Statutory Publication Period

On 25.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of the planning permission for temporary shop and services (real estate agency) at the Site zoned “AGR”. 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. The applied use is not in line with the planning intention of the “AGR” zone. Nevertheless, DAFC has no strong view on the application. Approval of the application on a temporary basis for a period of 3 years would not jeopardise the long-term planning intention of the “AGR” zone.
- 12.2 The development is considered not incompatible with the surrounding land uses which are predominated by residential structures/dwellings, open storage yards, parking of vehicles and vacant/unused land. According to the applicant, the development would meet the demand for real estate agency services in the area.
- 12.3 The application is in line with TPB PG-No. 34C in that previous approvals for the same applied use were granted since 2014 and all approval conditions of the last approved application (No. A/YL-KTS/724) have been complied with. Compared with the last approved application, the current application submitted by the same applicant is the same in terms of site area, layout, total floor area and building height. As there is no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.
- 12.4 In view of its relatively small scale with a site area of about 330m² and frontage onto Kam Sheung Road, it is unlikely that the development would generate significant environmental nuisance to the nearby residential structures/dwellings. Relevant government departments consulted including C for T, CE/MN of DSD, DEP, D of FS and CTP/UD&L of PlanD have no adverse comment on the application. To minimise the possible environmental nuisance generated by the development, approval conditions restricting the operation hours and types of vehicles are recommended in paragraph 12.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorised development on-site will be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and open Storage Sites”. The technical concerns of C for T, D of FS and CE/MN of DSD could be addressed by approval conditions in paragraph 12.2 (c) to (f) below.

- 12.5 Apart from the two previous approvals for the same use granted for the Site in 2014 and 2016, there are 4 similar applications for temporary shop and service (real estate agency) at another site within the same “AGR” zone approved with conditions by the Committee between 2011 and 2018. Approval of the application is in line with the Committee’s previous decisions.
- 12.6 No public comment was received during the statutory publication period.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department considers that the temporary shop and services (real estate agency) 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 24.12.2019 until 23.12.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 8:00p.m. and 9:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes including container tractors/trailers, 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;
- (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 existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of commencement of the renewal planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 24.3.2020;
- (g) if any of the above planning condition (a), (b), (c), (d) or (e) 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 the above planning condition (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.

[The above planning conditions are largely the same as those under the planning permission of previous Application No. A/YL-KTS/724, except change/deletion of those on FSIs and landscape aspects based on the comments of D of FS and CTP/UD&L of PlanD respectively.]

Advisory Clauses

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

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

the development is not in line with the planning intention of the "AGR" zone which is to retain and safeguard good quality agricultural land/farm/fishponds 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

Appendix I	Application form with drawings received on 17.10.2019
Appendix Ia	Further Information received on 2.12.2019
Appendix II	Relevant Extracts of Town Planning Board Guidelines No.34C on 'Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development' (TPB PG- No.34C)
Appendix III	Previous applications covering the Site
Appendix IV	Similar applications within the same "AGR" zone on the OZP
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Drawing A-2	Plan showing car parking spaces and manoeuvring space
Drawing A-3	Tree Preservation Plan
Drawing A-4	Drainage Plan
Drawing A-5	Fire Service Installations Plan
Plan A-1	Location plan with previous and similar applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2019**