

TPB Paper No. 10620
For Consideration by the
Town Planning Board
on 13.3.2020

REVIEW OF APPLICATION NO. A/YL-TT/480
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Temporary Vehicle Repair Workshop for a Period of 3 Years
in “Other Specified Uses” annotated “Rural Use” zone,
Lot 1153 RP (Part) in D.D. 119 and
Adjoining Government Land, Pak Sha Tsuen, Yuen Long, New Territories**

1. Background

- 1.1 On 5.8.2019, the applicant, Mr. SIU Cheung Tung, sought planning permission to use the application site (the Site) for temporary vehicle repair workshop for a period of 3 years under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls within an area zoned “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) on the approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16 (**Plan R-1**).
- 1.2 On 4.10.2019, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
- (a) the development is not in line with the planning intention of the “OU(RU)” zone which is primarily for the preservation of the character of the rural area. No justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis;
 - (b) the development is not in line with the Town Planning Board Guidelines for ‘Designation of “OU(RU)” Zone and Application for Development within “OU(RU)” Zone’ (TPB PG-No. 38) in that there is insufficient information in the submission to demonstrate that the development would not generate adverse landscape impact on the surrounding areas; and
 - (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “OU(RU)” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TT/480 (Annex A)
 - (b) Extract of minutes of the RNTPC meeting held on 4.10.2019 (Annex B)
 - (c) Secretary of the Board’s letter dated 18.10.2019 (Annex C)

2. Application for Review

- 2.1 On 4.11.2019, the applicant applied, under s.17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**).
- 2.2 *In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 31.1.2020 for consideration of the review application has been rescheduled, and the Board has agreed to adjourn consideration of the application. The review application is now scheduled for consideration by the Board at this meeting.*

3. Justification from the Applicant

The applicant did not provide any justifications to support the review application.

4. Background of the Site

- 4.1 The Site and the subject "OU(RU)" zone was originally zoned "Agriculture" ("AGR") on the draft Tai Tong OZP No. S/YL-TT/1. The 'Review of Rural Land Uses in Northern New Territories' completed in 2001 recommended, amongst others, the introduction of the "OU(RU)" zone. In June 2002, three pieces of "AGR" land (including the Site) in Tai Tong were rezoned as "OU(RU)" under the draft Tai Tong OZP No. S/YL-TT/9. The draft OZP incorporating the amendments was later approved and renumbered as S/YL-TT/10 in June 2003. Since then, the zoning of the Site and the subject "OU(RU)" zone has remained unchanged.
- 4.2 The Site is currently not subject to planning enforcement action.

5. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-2 to R-4b)

- 5.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC are described in paragraph 8 of **Annex A**. There has been no major change in the situation since then.
- 5.2 The Site is:
- (a) accessible from Pak Sha Shan Road to its north via a short local track;
 - (b) paved and fenced off; and
 - (c) currently occupied by the applied use without valid planning permission.
- 5.3 The surrounding areas have the following characteristics:
- (a) comprise mainly open storage/storage yards, warehouses, vehicle repair workshops and parking of vehicles, with scattered residential structures and vacant/ unused land;
 - (b) there are residential structures in the vicinity of the Site with the nearest one situated about 20m to its southwest;
 - (c) to the northwest and west of the Site and across a nullah in the "Undetermined" zone of the approved Tong Yan San Tsuen OZP No. S/YL-TYST/12 are a temporary open storage yard for recycling materials and a temporary

warehouse with ancillary workshop operating with valid planning permissions (No. A/YL-TYST/936 and 966) with validities up to 18.1.2022 and 6.9.2022 respectively; and

- (d) except for the aforementioned operations with valid planning permissions, the other operations in the vicinity of the Site are mostly suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

Planning Intention

- 5.4 There has been no change in planning intention of the concerned “OU(RU)” zone as mentioned in paragraph 9 of **Annex A**. The planning intention of the “OU(RU)” zone is for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities.

Town Planning Board Guidelines

- 5.5 TPB PG-No. 38 is relevant to the application. The relevant assessment criteria are summarised as follows and details are at Appendix II of **Annex A**:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

Previous Applications

- 5.6 The Site was the subject of two previous applications for temporary open storage of drilling machinery (small scale), private cars and vehicle parts (No. A/YL-TT/115) and temporary storage of vehicles and vehicle parts for sale and disposal (No. A/YL-TT/130) each for a period of 3 years respectively. The sites were zoned “AGR” at the time of the applications. Both applications were rejected by the RNTPC and the Board on review on 17.8.2001 and 2.8.2002 respectively mainly on considerations that the development was not in line with the planning intention of the "AGR" zone; the development was incompatible with the residential dwellings and/or rural land uses nearby; there was no information to demonstrate that the development would not generate adverse environmental and drainage impacts on the surrounding areas; and approval of the applications would set an undesirable precedent. Details of these previous applications are summarised at Appendix II of **Annex A** and their locations are shown on **Plan R-1**.

Similar Application

- 5.7 There is one similar application (No. A/YL-TT/153) for temporary vehicle repair workshop for a period of 3 years within the same “OU(RU)” zone on the OZP, which

was rejected by the RNTPC on 27.2.2004 on the considerations that the proposed use did not conform with the planning intention of the “OU(RU)” zone; the proposal was incompatible with the surrounding rural land uses; the applicant failed to demonstrate there was no adverse environmental, traffic, landscaping and drainage impacts on the surrounding areas; and approving the application would set an undesirable precedent.

6. Comments from Relevant Government Departments

- 6.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 10.1 and 10.2 of **Annex A**.
- 6.2 The following government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of the RNTPC paper in **Annex A**. The main views are recapitulated below:

Land Administration

- 6.2.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
- (a) 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.
 - (b) No permission is given for occupation of GL (about 130m² subject to verification) included in the Site. Attention should be drawn to the fact that any occupation of GL without Government’s prior approval is not allowed. With the implementation of the tightened arrangements for handling regularisation applications, her department will no longer accept application for regularisation of new or extension of unlawful occupation of GL or erection of new structures which is found commenced on or after 28.3.2017.
 - (c) The Site is accessible from Pak Sha Shan Road via GL. Her office does not provide maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
 - (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
 - (e) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularise any irregularities on Site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation 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 from the Site or apply for a formal approval prior to the actual occupation of the GL.*** Applications for any of the above will be considered by her department 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 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 her department.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Pak Sha Shan Road should be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) A proper run-in/out or road connection to Pak Sha Shan Road should be constructed to the satisfaction of the Transport Department and his department.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) His department shall not be responsible for the maintenance of any access connecting the Site and Pak Sha Shan Road.

Landscape

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

- (a) With reference to the aerial photo of 2018 (**Plan R-3**), the Site is hard paved with existing temporary structures occupying around half of the Site. No significant vegetation is found within the Site. The Site is in an area of rural landscape character predominated by open storage yards and temporary structures. The extensive hard paving and large temporary structures are incompatible with the planned landscape character of the "OU(RU)" zone which is intended primarily for the preservation of the character of the rural area to upgrade or improve the area, or provide support to the local communities.
- (b) Approval of the application would set an undesirable precedent attracting other incompatible uses to the "OU(RU)" zone. The cumulative impact would jeopardise the realisation of the intended rural landscape character.

- (c) The Site is not situated in a landscape sensitive zone and not adjoining any prominent public frontage. Should the application be approved, it is considered not necessary to impose a landscape condition.

6.3 The following government departments have no further view/comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 10.1 of **Annex A**.

- (a) Director of Environmental Protection (DEP);
- (b) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
- (c) Director of Fire Services (D of FS);
- (d) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
- (e) Director of Agriculture, Fisheries and Conservation (DAFC)
- (f) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (g) Chief Engineer/Cross-boundary Infrastructure and Development, PlanD (CE/CID, PlanD).

6.4 The following government departments maintain their previous views of having no comment on the review application:

- (a) District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (d) Commissioner of Police (C of P).

7. Public Comment Received During Statutory Publication Periods

7.1 On 22.11.2019, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 13.12.2019, one public comment was received (**Annex E**) from an individual objecting to the review application on the grounds that the development is not in line with the planning intention of the “OU(RU)” zone; the proposal lacks rural characteristics; the proposal would generate adverse noise and traffic impact on the surrounding area; the proposal would harm the surrounding environment; and approving the application would set an undesirable precedent leading to the general degradation of the surrounding area.

7.2 Four public comments, all objecting to the application, received at the s.16 application stage are set out in paragraph 11 of **Annex A**.

8. Planning Considerations and Assessments

8.1 The application is for a review of the Committee’s decision on 4.10.2019 to reject the subject application for temporary vehicle repair workshop for a period of 3 years at the Site zoned “OU(RU)” on the OZP (**Plan R-1**). The application was rejected mainly on the grounds of departure from the planning intention of the “OU(RU)” zone, incompliance with TPB PG-No. 38 and setting of undesirable precedent. The

applicant did not submit written response to substantiate the review application (**Annex D**) and there is no change in planning circumstances. The planning considerations and assessments on the review application are appended below.

- 8.2 The applied use is not in line with the planning intention of the “OU(RU)” zone which is primarily for the preservation of the character of the rural area and for uses or developments that are compatible with the rural landscape and which could upgrade or improve the area or provide support to the local communities. There is no justification given in the submission for a departure from the planning intention, even on a temporary basis.
- 8.3 Although the surrounding area comprises mainly open storage/storage yards, warehouses, vehicle repair workshops and parking of vehicles (**Plan R-2**), they are mostly suspected UD subject to enforcement action taken by the Planning Authority. The development is considered not compatible with the intended rural character of the vicinity, in particular, the village settlements and agricultural uses to its further east (**Plan R-1**).
- 8.4 The applied use is not in line with TPB PG-No. 38 in that there are adverse departmental comments on the application concerning landscape aspect. CTP/UD&L, PlanD has reservations on the proposal as the applied use would degrade the rural landscape character of the area. There is no assessment in the submission to demonstrate that the development would not generate adverse landscape impact on the surrounding areas.
- 8.5 The Site is the subject of two previous applications (No. A/YL-TT/115 and 130) for a different use (i.e. open storage/storage use) when the Site was zoned “AGR” on earlier versions of the OZP, both of which were rejected by the RNTPC or the Board on review. Moreover, there is one similar application (No. A/YL-TT/153) for temporary vehicle repair workshop use within the same “OU(RU)” zone, which was rejected by the RNTPC on the considerations that the proposed use did not conform with the planning intention of the “OU(RU)” zone; the applicant failed to demonstrate there was no adverse landscape impacts on the surrounding areas; and approving the application would set an undesirable precedent, amongst others. Such considerations are relevant to the current application. Approval of the application would set an undesirable precedent and attract similar applications within the area. The cumulative impact would result in the general degradation of the rural landscape character.
- 8.6 Regarding the public comment objecting to the application on the grounds as detailed in paragraph 7 above, the planning considerations and assessments in paragraphs 8.1 to 8.5 above are relevant.

9. Planning Department’s Views

- 9.1 Based on the assessments made in paragraph 8, having taken into account the public comment as mentioned in paragraph 7, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 4.10.2019, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
 - (a) the development is not in line with the planning intention of the “OU(RU)”

zone which is primarily for the preservation of the character of the rural area. No justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis;

- (b) the development is not in line with the Town Planning Board Guidelines for 'Designation of "OU(RU)" Zone and Application for Development within "OU(RU)" Zone' (TPB PG-No. 38) in that the applicant fails to demonstrate that the development would not generate adverse landscape impact on the surrounding areas; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "OU(RU)" zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

9.2 Alternatively, should the Board decide to approve the application on review, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 13.331.1.2023. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) only private cars and light goods vehicles not exceeding 5.5 tonnes, as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to enter/be parked on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the submission of a run in/out proposal within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 13.931.7.2020;
- (f) in relation to (e) above, the implementation of run in/out proposal within **9** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 13.1231.10.2020;
- (g) the provision of boundary fence on the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 13.931.7.2020;
- (h) the submission of a 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 13.931.7.2020;

- (i) in relation to (h) above, the implementation of the 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 13.1231.10.2020;
- (j) in relation to (i) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (k) the submission of a 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 13.931.7.2020;
- (l) in relation to (k) above, the implementation of the fire service installations proposal 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 13.1231.10.2020;
- (m) if any of the above planning conditions (a), (b), (c), (d) or (j) 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
- (n) if any of the above planning conditions (e), (f), (g), (h), (i), (k) or (l) 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.

Advisory clauses

The recommended advisory clauses are attached at **Annex F**.

10. Decision Sought

- 10.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 10.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 10.3 Alternatively, should the Board decide to approve the review 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.

11. Attachments

Plan R-1	Location Plan with Previous Applications
Plan R-2	Site Plan
Plan R-3	Aerial Photo
Plans R-4a to R-4b	Site Photos
Annex A	RNTPC Paper No. A/YL-TT/480

Annex B	Extract of minutes of the RNTPC Meeting held on 4.10.2019
Annex C	Secretary of the Board's letter dated 18.10.2019
Annex D	Letter of 4.11.2019 from the applicant applying for review
Annex E	Public comment received during statutory publication period of the review application
Annex F	Recommended Advisory Clauses

PLANNING DEPARTMENT
MARCH/JANUARY 2020