

**REVIEW OF APPLICATION NO. A/YL-TYST/914**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Eating Place and Shop and Services (Grocery Store)  
for a Period of 3 Years in “Residential (Group C)” Zone,  
Lots 1279 S.B ss.1 S.A (Part), 1279 S.B ss.1 S.B (Part) and 1281 (Part) in D.D. 119,  
Pak Sha Tsuen, Yuen Long, New Territories**

**1. Background**

- 1.1 On 23.7.2018, the applicant, Mr. Lau Yau Sum represented by Metro Planning and Development Company Limited, sought planning permission for proposed temporary eating place and shop and services (grocery store) for a period of 3 years under s.16 of the Town Planning Ordinance (the Ordinance). The application site (“the Site”) falls within an area zoned “Residential (Group C)” (“R(C)”) on the draft Tong Yan San Tsuen Outline Zoning Plan (OZP) at the time of submission of the s.16 application and the approved Tong Yan San Tsuen OZP No. S/YL-TYST/12 currently in force<sup>1</sup> (**Plan R-1a**).
- 1.2 On 21.9.2018, 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 applicant fails to demonstrate that the proposed development would not cause adverse drainage impacts on the surrounding areas; and
  - (d) previous planning permission for the same proposed use granted under application No. A/YL-TYST/738 was revoked due to non-compliance with approval conditions. Approval of the application would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.
- 1.3 For Members’ reference, the following documents are attached:
- (a) RNTPC Paper No. A/YL-TYST/914 **(Annex A)**
  - (b) Extract of minutes of the RNTPC Meeting held on 21.9.2018 **(Annex B)**
  - (c) Secretary of the Board’s letter dated 5.10.2018 **(Annex C)**
- 1.4 The Site was the subject of three previous applications (No. A/YL-TYST/524, 577 and 738). Application No. A/YL-TYST/524 for temporary warehouse was rejected on review by the Board, while Applications No. A/YL-TYST/577 and 738 for the same use as the current application were both approved by the RNTPC on a temporary basis for a period of 3 years. However, both applications were subsequently revoked due to non-compliance with approval conditions. Details of

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<sup>1</sup> There was no change in provision of the “R(C)” zone under the two OZPs.

the previous applications are at paragraph 3.6 to 3.10 below and Appendix II of **Annex A**.

**2. Application for Review**

On 9.10.2018, the applicant applied, under s.17(1) of the Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation in support of the review.

**3. The Section 16 Application**

The Site and Its Surrounding Areas

3.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by RNTPC were described in paragraphs 7.1 and 7.2 of Annex A. Except planning permission No. A/YL-TYST/773 (Plan A-2 of **Annex A**) has been lapsed, there has been no major change of the situation since then.

3.2 The Site is:

- (a) accessible via a local track leading from Kung Um Road (**Plans R-2 and R-3**);
- (b) paved and fenced off; and
- (c) currently occupied for warehouse use without valid planning permission (**Plans R-2, R-4a to R-4c**).

3.3 The surrounding areas have the following characteristics: (**Plan R-2**)

- (a) mixed with warehouses, open storage yards, scattered residential structures, fallow agricultural land and unused land;
- (b) about 180m to its further northeast within the subject "R(C)" zone is a low-density residential development known as One Hyde Park (**Plan R-1a**) ;
- (c) except the warehouses in the vicinity which are operated with valid planning permissions granted under applications No. A/YL-TYST/797, 843 and 856 respectively, the other warehouses and open storage yards in its vicinity are suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

Planning Intention

3.4 There has been no change of planning intention of the concerned "R(C)" zone as mentioned in paragraph 8 of **Annex A** which is recapitulated below.

3.5 The planning intention of the "R(C)" zone is primary for low-rise, low-density residential developments where commercial uses serving the residential neighborhood may be permitted on application to the Board.

### Previous Applications

- 3.6 The Site is subject to three previous applications (No. A/YL-TYST/524, 577 and 738). The first application was for temporary warehouse whilst the latter two applications were for the same use as the current application. Details of the applications are summarized in Appendix II of **Annex A** and the boundaries are shown on **Plan R-1b**.
- 3.7 Application No. A/YL-TYST/524 for temporary warehouse for storage of recycling materials (excluding electronic waste and not involving processing activities) submitted by the same applicant of the current application was rejected by the Board on review on 15.7.2011 on the consideration that the development was not in line with the planning intention of the “R(C)” zone; and it would generate adverse environmental impact on the residential uses located to the immediate north and in the vicinity of the site.
- 3.8 Application No. A/YL-TYST/577 for proposed temporary eating place and shop (grocery store) submitted by a different applicant was approved with conditions for a period of 3 years by RNTPC on 16.3.2012. The planning approval was subsequently revoked on 16.3.2013 due to non-compliance with approval conditions requiring provision of drainage facilities and submission and implementation of water supplies for fire-fighting and fire service installations proposals.
- 3.9 Application No. A/YL-TYST/738 for proposed temporary eating place and shop (grocery store) submitted by the same applicant of the current application was approved with conditions for a period of 3 years by RNTPC on 3.7.2015 on the consideration that the proposed development was not incompatible with the surrounding environment; approval on a temporary basis would not jeopardize the planning intention of the “R(C)” zone; government departments consulted had no adverse comments; relevant departmental concerns could be addressed through the imposition of approval conditions; and sympathetic consideration may be given to the application as the site was not occupied by the proposed use and the applicant (though different from the applicant of application No. A/YL-TYST/577) demonstrated sincerity in complying with the approval conditions by submitting relevant technical proposals. However, the application was revoked on 3.4.2016 due to non-compliance with approval conditions requiring submission and implementation of the revised drainage proposal, implementation of the landscape proposal, and submission and implementation of water supplies for fire-fighting and fire service installations proposals.
- 3.10 Compared with the last application (No. A/YL-TYST/738), the current application is submitted by the same applicant for the same use on a slightly larger site with similar development parameters and similar layout.

### Similar Applications

- 3.11 There are a total of 11 similar applications for various shop and services uses within the subject “R(C)” zone or also straddling the adjacent “U” zone. The similar applications (No. 620, 714, 737, 760, 774, 805, 821, 873 and 894) at the time of the consideration of the s.16 application are mentioned in paragraphs 6.1 and 6.2 of **Annex A**. Since then, two more similar applications under applications No. A/YL-TYST/905 and 924 for various shop and services uses were considered by RNTPC

on 2.11.2018 and 16.11.2018 respectively.

- 3.12 Application No. A/YL-TYST/905 for proposed temporary shop and wholesale of construction material was rejected by RNTPC on 2.11.2018 for the reasons that the proposed development is not in line with the planning intention of the “R(C)” zone; the applicant fails to demonstrate that the proposed development would not generate adverse environmental impact on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications.
- 3.13 Application No. A/YL-TYST/924 for temporary plant nursery and shop and services (retail shop for plants) was approved by RNTPC with conditions on temporary basis for a period of 3 years, mainly on the consideration that they were not incompatible with the surrounding environment; approvals on a temporary basis would not jeopardize the long-term planning intention of the “R(C)” zone; the departmental concerns could be addressed through imposition of approval conditions; shorter compliance are recommended in order to closely monitor the progress on compliance with associated approval conditions.
- 3.14 Updated detailed information of the similar applications are summarized in **Annex E** and the locations are shown on **Plan R-1a**.

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

- 4.1 Comments on the s.16 application made by relevant government departments are stated in paragraphs 9.1 and 9.2 of **Annex A**.
- 4.2 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 9.1 of **Annex A**.
  - (a) District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD);
  - (b) Commissioner for Transport (C for T);
  - (c) Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD);
  - (d) Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD);
  - (e) Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD);
  - (f) Director of Environmental Protection (DEP);
  - (g) Director of Food and Environmental Hygiene (DFEH);
  - (h) Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD);
  - (i) Director of Fire Services (D of FS); and
  - (j) Chief Engineer/Cross-boundary Infrastructure and Development, Planning Department (CE/CID, PlanD).
- 4.3 The following government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application as stated in paragraph 9.2 of **Annex A**.
  - (a) Director of Agriculture, Fisheries and Conservation (DAFC);

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

## 5. Public Comment on the Review Application Received During Statutory Publication Period

On 19.10.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.11.2018, 1 public comment was received (**Annex F**) from an individual raising objection to the review application mainly on the grounds of failure to demonstrate no adverse drainage impact on the surrounding areas and there was no indication that the applicant would discontinue the warehouse use on the Site.

## 6. Planning Considerations and Assessments

- 6.1 The application is for a review of RNTPC's decision on 21.9.2018 to reject the subject application. The application was rejected for the reasons of failure to demonstrate the proposed development would not cause adverse drainage impacts on the surrounding area; and approval of the application would set an undesirable precedent for similar applications within the "R(C)" zone. However, the applicant has not submitted any written representation to support the review application. There has been no material change in the planning circumstances since the consideration of the application by RNTPC on 21.9.2018.
- 6.2 The subject application is for proposed temporary eating place and shop and services (grocery store) on a site zoned "R(C)" on the OZP. The planning intention of the "R(C)" zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighborhood may be permitted on application to the Board.
- 6.3 The proposed development, which is housed within a single-storey structure, is considered not incompatible with the surrounding environment which comprises a mix of warehouses, open storage yards, scattered residential structures, fallow agricultural land and unused land (**Plan R-2**). The Site is located far apart from the major road. It is accessible via a local track of about 620 m from Kung Um Road (**Plan R-1a**).
- 6.4 The Site is the subject of two previous planning permissions for the same use on similar sites (**Plan R-1a**) granted in 2012 and 2015 (Applications No. A/YL-TYST/577 and 738 respectively). The last application (No. A/YL-TYST/738) was submitted by the same applicant whilst the earlier one was submitted by a different applicant. Both planning approvals had not been implemented and were subsequently revoked due to non-compliance with the approval conditions regarding drainage, fire service installations and/or landscape aspects. For the current application, although the applicant has submitted drainage, tree preservation and fire service installations proposals, the applicant has yet to address CE/MN, DSD's

comments on the submitted drainage proposal. As such, the applicant has failed to demonstrate that the proposed development would not cause adverse drainage impact on the surrounding area.

- 6.5 Whilst 10 similar applications for various shop and services uses including eating place and/or grocery store (No. A/YL-TYST/620, 714, 737, 760, 774, 805, 873 and 894) and plant nursery and retail shop for plants (No. A/YL-TYST/821 and 924) were approved by the Committee with conditions on temporary basis, six of them have been revoked due to non-compliance with approval conditions. The remaining three similar applications for grocery store use covered by planning permission (No. A/YL-TYST/737, 873 and 894) are of relatively small scale (about 516m<sup>2</sup> to 760m<sup>2</sup>) compared with the current application (about 1,630m<sup>2</sup>). Besides, a similar application (No. A/YL-TYST/905) for proposed temporary shop and wholesale of construction material at an adjacent site, which is currently occupied by a warehouse (**Plans R-1a and R-2**), was rejected by RNTPC on 2.11.2018 for the reasons that the proposed development is not in line with the planning intention of the “R(C)” zone; the applicant fails to demonstrate that the proposed development would not generate adverse environmental impact on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications.
- 6.6 Whilst the applicant claims that the current application is to convert the Site from warehouse use, which had been rejected by the Board on review under application No. A/YL-TYST/524 on 15.7.2011, to more prudent uses serving the need of the local residents, it should be noted that the applicant has never implemented the proposed temporary eating place and grocery store since obtaining the planning approval under application No. A/YL-TYST/738 in 2015 and none of the time-limited approval conditions has been complied with. Although the applicant had been advised in the last approval (No. A/YL-TYST/738) that the warehouse use that existed on Site was not condoned by the planning approval and shall be discontinued immediately, such warehouse use is still found on site (**Plans R-2, R-4a to R-4c**). There is no indication that the applicant would discontinue the warehouse use. Since the last approval was revoked and the applicant has not provided any justification in the submission for non-compliance with the approval conditions imposed on the previous permission, approving the current application would set an undesirable precedent for other similar planning applications for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control.
- 6.7 There are 1 public comment (**Annex E**) received during the statutory publication period raising objection to the review application on the grounds as summarised in paragraph 5 above and 1 public comment objecting to the application as stated in paragraph 10 of **Annex A**. The planning considerations and assessments in paragraphs 6.1 to 6.6 above are relevant.

## 7. Planning Department’s Views

- 7.1 Based on the assessments made in paragraph 6, having taken into account the public comment as mentioned in paragraph 5, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 21.9.2018, the Planning Department maintains its previous view of not supporting the review application for the following reasons:

- (a) the applicant fails to demonstrate that the proposed development would not cause adverse drainage impact on the surrounding area; and
- (b) previous planning permission for the same proposed use granted under Application No. A/YL-TYST/738 was revoked due to non-compliance with approval conditions. Approval of the application would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

8.2 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 28.12.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium and 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, as proposed by the applicant, 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 trees and landscape planting on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a revised drainage proposal within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 28.3.2019;
- (f) the implementation of the revised 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 28.6.2019;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the submission of a revised fire service installations proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 28.3.2019;
- (i) in relation to (h) above, the implementation of the revised 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 28.6.2019;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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

- (k) if any of the above planning conditions (e), (f), (h) or (i) 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 G**.

**9. Decision Sought**

- 9.1 The Board is invited to consider the application for a review of RNTPC's decision and decide whether to accede to the application.
- 9.2 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.
- 9.3 Alternatively, 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. Attachments**

<b>Plan R-1a</b>	Location Plan with Similar Applications
<b>Plan R-1b</b>	Previous Applications Plan
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Aerial Photo
<b>Plans R-4a to R-4c</b>	Site Photos
<b>Annex A</b>	RNTPC Paper No. A/YL-TYST/914
<b>Annex B</b>	Extract of minutes of the RNTPC Meeting held on 21.9.2018
<b>Annex C</b>	Secretary of the Board's letter dated 5.10.2018
<b>Annex D</b>	Letter of 9.10.2018 from the applicant applying for review
<b>Annex E</b>	Similar Applications covering the Application Site
<b>Annex F</b>	Public comment received during statutory publication period of the review application
<b>Annex G</b>	Recommended Advisory Clauses

**PLANNING DEPARTMENT  
DECEMBER 2018**



**TPB Paper No. 10504**

**For Consideration by  
the Town Planning Board on 28.12.2018**

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