

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

APPLICATION NO. A/YL-KTN/699

<u>Applicant</u>	: Mr. Chi Chi Hung Kenneth represented by Goldrich Planners & Surveyors Limited
<u>Site</u>	: Lots 1037A (Part), 1037B (Part) and 1037C (Part) in D.D.109 and Adjoining Government Land, Tai Kong Po, Pat Heung, Yuen Long
<u>Site Area</u>	: About 626.26 m ² (including about 6.33 m ² of Government Land (1%))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan No. S/YL-KTN/9
<u>Zoning</u>	: “Agriculture” (“AGR”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Shop and Services (Plant Showroom) 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 (plant showroom) for a period of 3 years. The Site is zoned “AGR” on the Kam Tin North OZP and the applied use is neither a 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 vacant with some vacant structures (**Plans A-2 and A-4a to 4b**).
- 1.2 The Site is subject to two previous applications (No. A/YL-KTN/531 and 541). The former for proposed temporary shop and services (pet shop with ancillary office and guard room) for a period of 3 years was rejected by the Rural and New Town Planning Committee (the Committee) in 2017. The latter for the same applied use as the current application was approved by the Committee in 2017. All the approval conditions have been complied with and the planning permission is valid until 12.5.2020.
- 1.3 According to the applicant, the development involves three single-storey temporary structures with a total floor area of about 159.75m² and building

height of 2.5m to 3.45m for greenhouse/showroom, toilet, office/customer area, storeroom, open sheds and bird cage. The bird cage at the Site will be for keeping of birds for the operator's personal interests. No animal boarding establishment will be involved. One private car parking space and one loading/unloading space for light goods vehicle will be provided at the Site and vehicles of not more than 5.5 tonnes will be used. The operation hours are from 10:00 a.m. to 5:00 p.m. on Saturdays, Sundays and public holidays, and there is no operation on weekdays. The Site is accessible to Kong Tai Road via a local track. The location plan, layout plan, tree preservation and landscaping plan, drainage plan and fire service installations (FSIs) plan submitted by the applicant are shown on **Drawings A-1** and **A-5**.

- 1.4 Compared with the last approved application No. A/YL- KTN/541, the current application is submitted by the same applicant for the same applied use, with the same site area, layout and development parameters.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with planning statement and plans (**Appendix I**) received on 12.3.2020
 - (b) Supplementary information received on 18.3.2020 (**Appendix Ia**)
 - (c) Further Information (FI) received on 3.4.2020 in response to departmental comments (**Appendix Ib**)
[exempted from publication requirement]
 - (d) FI received on 15.4.2020 in response to departmental comments (**Appendix Ic**)
[exempted from publication requirement]
 - (e) FI received on 16.4.2020 in response to departmental comments (**Appendix Id**)
[exempted from publication requirement]
 - (f) FI received on 17.4.2020 in response to departmental comments (**Appendix Ie**)
[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 and FIs in **Appendices I** to **Ie**. They can be summarized as follows:

- (a) The plant showroom can promote agricultural activities in the "AGR" zone. The operation was temporarily suspended due to poor business from middle of last year. The applied use is compatible with the surrounding environment. The Site is fenced to screen it from the surrounding environment.

- (b) The operation hours on Saturdays, Sundays and public holidays only will limit the vehicle trips generated and will not overlap with the residents' trip during peak hours. Landscaping, drainage facilities and fire service installations have been provided at the Site.

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

The applicant is the sole “current land owner” of the private land portion of the Site. 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 subject to any active enforcement action.

6. **Previous Applications**

- 6.1 The Site is subject to two previous applications. Details of the previous applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-KTN/531 for proposed temporary shop and services (pet shop with ancillary office and guard room) for a period of 3 years was rejected by the Committee on 29.7.2016 on the grounds that the development was not in line with the planning intention of the “AGR” zone; Director of Agriculture, Fisheries and Conservation (DAFC) did not support the application from the agricultural development point of view as the Site could be used as plant nursery and greenhouse; there was insufficient information to demonstrate that the pet shop would not generate vehicular trips; objection from locals on infrastructural ground; and approval of the application would set an undesirable precedent.
- 6.3 Application No. A/YL- KTN/541 submitted by the same applicant for the same applied use as the current application was approved with conditions by the Committee on 12.5.2017 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the development was not incompatible with the surrounding land uses; and relevant departments including DAFC had no adverse comment on the application. All the approval conditions have been complied with and the planning permission is valid until 12.5.2020.

7. **Similar Applications**

7.1 There are nine similar applications for temporary shop and services use within the same “AGR” zone. Seven of them were approved with conditions by the Committee between 2013 and 2019 and two were rejected by the Committee or the Board on review between 2018 and 2019. Details of the applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1**.

Approved applications (7)

7.2 Five applications (No. A/YL-KTN/413, 446, 447, 448 and 540) for temporary shop and services (plant showroom) for a period of 3 years were approved with conditions by the Committee between 2013 and 2016 mainly for the reasons that the developments were not incompatible with the surrounding land uses; temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; relevant departments including the DAFC had no adverse comment; and or the concern of the Director of Environmental Protection (DEP) could be addressed by approval conditions. Three planning permissions were revoked in 2015 and 2016 due to non-compliance with approval conditions.

7.3 Two applications (No. A/YL-KTN/637 and 656) for proposed temporary shop and services (retail of tail lift) for a period of 3 years located to the further west of the Site were approved with conditions by the Committee in 2019 mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; the sites were located at the fringe of the “AGR” zone and adjoining the “Industrial (Group D)” zone; relevant departments except DAFC and/or Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) had no adverse comment; and departmental concerns could be addressed by approval conditions.

Rejected applications (2)

7.4 Applications No. A/YL-KTN/624 and 629 for temporary shop and services (plant showroom) for a period of 3 years were rejected by the Board on review and the Committee in 2019 and 2018 respectively on the grounds that the proposed development was not in line with the planning intention of the “AGR” zone; DAFC did not support the application; and the applicant failed to demonstrate that the proposed development would not generate environmental nuisance to the surrounding areas.

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

8.1 The Site is:

- (a) fenced, vacant with some vacant structures; and
- (b) accessible from Kong Tai Road via a local track.

8.2 The surrounding areas are mainly rural in character predominated by cultivated/fallow agricultural land, residential structures/dwellings, parking of vehicles, open storages, a temple and vacant/unused land. The parking of vehicles and open storages are suspected unauthorized development subject to enforcement action by the Planning Authority (**Plans A-1 and A-2**) :

- (a) to its east are residential structures/dwellings;
- (b) to the south is a piece of land used for parking of vehicles and open storage yards. Further south are cultivated / fallow agricultural land, vacant / unused land, residential dwellings/structures and the Kam Tin River, as well as the Tai Kong Po Site of Archaeological Interest;
- (c) to the west of the Site is a storage shed and unused land; and
- (d) to the immediate north are a temple and residential dwelling/structure. Further north is the foothill of a vegetated knoll mainly under “Green Belt” zone.

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 Government land (GL) and 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) A small part of the Site falls within Tai Kong Po Site of Archaeological Interest.
- (c) No permission is given for occupation of GL (about 6.33m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government’s prior approval is not allowed.

- (d) The applicant has applied to his office for a Short Term Tenancy and Short Term Waiver(s) to effect the previous planning approved scheme (No. A/YL-KTN/541) and the applications are under processing.
- (e) Should planning approval be given to the application, the lots owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site. Furthermore, the applicant has to either exclude the GL from the Site or obtain a formal approval prior to the actual occupation of the GL. 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) Kong Tai Road is not maintained by his department.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Chi Ho Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Agriculture

10.1.4 Comments of the DAFC:

Considering that the previous application for the same use as the current application was approved by the Board, he has no strong view against the renewal application.

Environment

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

No environmental complaint at the Site was received in the past three years. 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

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

- (a) She has no objection to the application from the landscape planning point of view.
- (b) The Site is subject to two previous applications. The last application for the same use was approved by the Committee in 2017, which she had no objection from landscape planning perspective.
- (c) Based on the aerial photo taken on 3.1.2018, the Site is situated in an area of rural landscape character comprising scattered tree groups, temporary structures and abandoned farmlands. The applied use is considered not incompatible with the surrounding environment. The Site is largely paved without significant vegetation. Comparing the aerial photos taken in 2016 and 2018, 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.
- (d) The applicant is advised to properly maintain the existing landscape planting at all times during the 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 approved application No. A/YL-KTN/541.

- (b) Should the application be approved, approval conditions requiring (i) the maintenance of the drainage facilities implemented under Application No. A/YL-KTN/541 and (ii) the submission of records of the existing drainage facilities on the Site to the satisfaction of his department or of the Board are recommended.

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) Before any new buildings works (including containers/ open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of BD 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 Buildings Ordinance (BO).
- (b) If the existing structures are erected on leased land without approval of BD (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any approved use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by 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.
- (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 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.

Food and Environmental Hygiene

10.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):

For any waste generated from such activities or operations, the applicant should arrange disposal properly at her own expenses. Such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.

Others

10.1.11 Comments of the AMO:

- (a) In view of the location and scope of the temporary shop and services (plant showroom), he has no objection to the application from the cultural heritage viewpoint.
- (b) Nevertheless, the applicant is required to inform AMO immediately if antiquities or supposed antiquities are discovered within the Site.

District Officer's Comments

10.1.12 Comments 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 comments on the application.

10.2 The following Government departments have no comment on or no objection to 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 20.3.2020, 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 planning approval for temporary shop and services (plant showroom) for a period of 3 years at a site in the "AGR" zone. The planning intention of the "AGR" zone is to retain and safeguard good

quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow land with good potential for rehabilitation for cultivation and other agricultural purposes. Although the temporary plant showroom is not in line with the planning intention of “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 areas which are predominated by cultivated/ fallow agricultural land, residential structures/dwellings, a temple and vacant/unused land.
- 12.3 The application is in line with TPB PG-No. 34C in that previous approval (Application No. A/YL-KTN/541) for the same applied use was granted on 12.5.2017 and all the approval conditions have been complied with. Compared with the last approved application, the current application is the same in terms of use, site area, layout and development parameters. As there has been no major change in planning circumstances since the last approval, sympathetic consideration could be given to the current application.
- 12.4 Relevant departments consulted have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and vehicle type are recommended in paragraphs 13.2 (a) to (d) below. The applicant will be advised to adopt the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses”. Other technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 13.2 (e) to (h).
- 12.5 There are nine similar applications for temporary shop and services (plant showroom) and (retail of tail lift) within the same “AGR” zone. Seven of them were approved with conditions by the Committee between 2013 and 2019 (paragraph 7 and **Plan A-1** refer). The two similar applications rejected by the Committee between 2018 and 2019 were subject to different circumstances including adverse comments from DAFC and CTP/UD&L of PlanD.
- 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 (plant showroom) 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 13.5.2020 to 12.5.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 5:00p.m. and 10:00a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Mondays to Fridays (except public holidays), as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) 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;
- (d) the boundary fencing on the Site shall be maintained at all times 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 drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) the submission of the 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 Board by 13.8.2020;
- (h) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (i) if any of the above planning condition (a), (b), (c), (d), (e), (f) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (j) if the above planning condition (g) 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
- (k) 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/541, except deletion / change of those on landscape, drainage and FSIs based on the comments of CTP/UD&L of PlanD, CE/MN of DSD and D of FS.]

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/fish ponds for agricultural purposes. This zone is also intended 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 planning statement and plans received on 12.3.2020
Appendix Ia	Supplementary information received on 18.3.2020
Appendix Ib	FI received on 3.4.2020
Appendix Ic	FI received on 15.4.2020
Appendix Id	FI received on 16.4.2020
Appendix Ie	FI received on 17.4.2020
Appendix II	Relevant extract of Town Planning Board Guidelines No. 34C on "Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use of Development" (TPB PG-No. 34C)
Appendix III	Previous applications covering the Site

Appendix IV	Similar applications within the same “AGR” zone on the Kam Tin North OZP
Appendix V	Advisory Clauses
Drawing A-1	Location Plan
Drawing A-2	Layout Plan
Drawing A-3	Tree Preservation and Landscape 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
Plan A-4a to A-b	Site Photos

**PLANNING DEPARTMENT
APRIL 2020**