

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/845

- Applicant** : Creative Pro Advertising Produce Limited represented by Mr. HUI Kwan-ye
- Site** : Lot 1638 RP (Part) in D.D. 106 and Adjoining Government Land, Yuen Kong, Kam Tin, Yuen Long
- Site Area** : About 642.21 m² (including Government land of about 172.8 m² (about 27%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
- Zoning** : “Agriculture” (“AGR”) (80%)
“Residential (Group C)1” (“R(C)1”) (20%)
[maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]
- Application** : Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks 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 zoned “AGR” and “R(C)1” on the approved Kam Tin South OZP. The applied use is neither a Column 1 nor Column 2 use in the “AGR” zone but is a Column 2 use in the “R(C)1” zone. According to the Notes of the OZP, temporary use not exceeding a period of three years, notwithstanding that the use or development is not provided for in terms of the OZP, requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use (**Plan A-4**).

- 1.2 The Site is involved in six previous applications submitted by the same applicant (**Plan A-1b**). The last application No. A/YL-KTS/729 for the same applied use was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) on 17.2.2017. All the approval conditions were complied with, and the planning permission lapsed on 18.2.2020.
- 1.3 According to the applicant, the development involves 10 single-storey structures with height not exceeding 2.44m and a total floor area of 249.71 m² for office, toilet, pantry, store room, electricity meter room and shelter uses. Two parking spaces for private cars are provided within the Site. The operation hours are between 10:00 a.m. and 8:00 p.m. daily, including public holidays. The Site is accessible from Kam Sheung Road. The site layout plan submitted by the applicant is shown in **Drawings A-1 and A-2**.
- 1.4 When compared with the last approved application (No. A/YL-KTS/729), the current application is the same in the applied use, site area/boundary, development parameters and layout.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 12.3.2020 and (**Appendix I**) supplementary information (SI) received on 18.3.2020
 - (b) Further Information (FI) received on 14.4.2020 in (**Appendix Ia**) response to departmental comments
[exempted from publication requirement]
 - (c) FI received on 16.4.2020 in response to departmental (**Appendix Ib**) comments
[exempted from publication requirement]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 7 of the Application Form in **Appendix I**. They can be summarized as follows:

- (a) The last application for real estate agency was approved by the Committee in 2017. This application is the same as the last approved application.
- (b) The temporary real estate agency will continue to provide service to the villagers and residents in Kam Tin area.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

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

5. **Previous Applications**

- 5.1 The Site is involved in six previous applications submitted by the same applicant. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.

5 Approved Applications

- 5.2 Applications No. A/YL-KTS/497, 608, 649, 704 and 729 for the same applied use as the current application were approved with conditions for 3 years by the Committee between 2010 and 2017 for similar reasons that the development was not incompatible with the surrounding land uses; there was no adverse departmental comment; and departmental concerns could be addressed by appropriate approval conditions. The planning permissions of applications No. A/YL-KTS/608, 649 and 704 were revoked due to non-compliance with approval conditions. For the last application No. A/YL-KTS/729 submitted by the current applicant, all approval conditions related to drainage, landscape and fire safety aspects were complied with. The planning permission lapsed on 18.2.2020.

Rejected Application

- 5.3 Application No. A/YL-KTS/604 covering the southern portion of the Site for proposed temporary private garden ancillary to temporary real estate agency for a period of 3 years was rejected by the Committee on 19.7.2013 on the considerations that the development was not in line with the planning intentions of “AGR” and “R(C)1” zones; the applicant failed to demonstrate the need of the proposed development for the operation of the adjoining real estate agency office; and approval of the application would set an undesirable precedent for similar application.

6. **Similar Applications**

- 6.1 There is no application for similar temporary shop and services (real estate agency) use within the same “R(C)1” zone on the Kam Tin South OZP. There are five similar applications within the same “AGR” zone. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1a**.

5 Approved Applications

- 6.2 Applications No. A/YL-KTS/495 and 809 on two sites northeast of the Site and No. A/YL-KTS/513, 619 and 742 on a site west of the Site straddling the “AGR” zone and the adjoining “Village Type Development” (“V”) zone for temporary shop and services (real estate agency) for 3 years were approved with conditions by the Committee between 2010 to 2019 mainly for the reasons that the developments were not incompatible with the surrounding land uses; relevant departments had no adverse comment; and technical requirements of relevant departments could be addressed by appropriate approval conditions. However, application No. A/YL-KTS/495 was revoked due to non-compliance with approval conditions.

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

7.1 The Site is:

- (a) paved, fenced and currently used for the applied use; and
- (b) accessible via Kam Sheung Road.

7.2 The surrounding areas are predominantly occupied by residential structures/development, parking of vehicles, fallow agricultural land, a plant nursery, a restaurant, orchard and vacant/unused land. Some of them are suspected unauthorized development subject to enforcement action by the Planning Authority:

- (a) to its north and northeast are residential dwellings/structures, fallow agricultural land and an orchard. A residential development, namely Seasons Palace, within “R(C)1” zone is located to its further northeast;
- (b) to its west are residential dwellings/structures, a car service workshop and parking of vehicles; and
- (c) to its south across Kam Sheung Road are residential dwellings/structures, a plant nursery, a restaurant and vacant/unused land.

8. Planning Intentions

- 8.1 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.

- 8.2 The planning intention of the “R(C)1” zone is for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

9. **Comments from Relevant Government Departments**

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

Land Administration

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

- (a) The Site comprises Government Land (GL) and 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) Lot 1638 RP in D.D. 106 and the concerned Government Land (GL) in the Site are covered by Short Term Waiver (STW) No. 3681 and Short Term Tenancy (STT) No. 2796 respectively for the purpose of “Temporary Shop and Services (Real Estate Agency)”.
- (c) Should planning approval be given to the application, the STW/STT holder(s) will need to apply to his office for modification of the STW/STT conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by the LandsD.

Traffic

- 9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) He has no comment on the application from traffic engineering point of view.

- (b) Should the application be approved, the approval condition of no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period is recommended.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport 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.

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

- (a) HyD is not and 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 the nearby public roads or exclusive road drains.

Environment

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

The applicant is advised to adopt 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 his department to minimise any potential environmental nuisances.

Landscape

9.1.5 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) The Site is the subject of six previous planning applications. The last application submitted by the same applicant for the same use was approved by the Committee on 17.2.2017, to which he had no objection from the landscape planning perspective.

- (c) Based on the aerial photos taken on 12.9.2019, the Site is situated in an area of rural landscape character comprising of scattered tree groups, low-rise residential houses, village clusters and fallow fields. Given the nature of the application, the development is considered not incompatible with the surrounding environment. Comparing the aerial photos taken in 2017 and 2019, there is no significant change to the surrounding landscape setting since the application was last approved. Further significant adverse impact on landscape resources due to the development is not anticipated.
- (d) In view that tree buffer is found to the south of the Site along the public frontage for screening purpose and significant adverse landscape and visual impact due to the development is not anticipated, landscape condition is not recommended should the Board approve the application.
- (e) The applicant is advised that the landscape plantings within the Site should be properly maintained at all times.

Drainage

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

- (a) He has no in-principle objection to the development.
- (b) Based on the information submitted by the applicant, apparently the applicant would maintain the same drainage facilities as those implemented under the previous application No. A/YL-KTS/729.
- (c) Should the application be approved, the conditions requiring the maintenance of the drainage facilities implemented under Application No. A/YL-KTS/729 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 in the planning approval.

Agriculture and Nature Conservation

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

- (a) The Site is currently occupied by a real estate agency. Agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water

source are also available. The Site can be used for agricultural activities such as greenhouses, plant nurseries, etc. As the Site possesses potential for agricultural rehabilitation, the application is not supported from agricultural point of view.

- (b) Noting that the Site is primarily disturbed in nature, he has no adverse comments on the application from nature conservation perspective

Fire Safety

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

- (a) He has no objection in-principle to the proposal subject to fire service installations being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) There is no record of approval granted by the Building Authority (BA) for the existing structures at the Site. He is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.

- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the prevailing 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) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise, they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with 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) The Site does not abut on a specified street of not less than 4.5 m 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

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

He has not received any local's comment on the application upon close of consultation and has no particular comment on the application and

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

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

10. 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, one public comment from a

Yuen Long District Council member was received (**Appendix IV**) objecting to the application mainly on the grounds that the applied use will generate adverse traffic and environmental impacts to the surrounding areas; “AGR” zone is planned for agricultural use and would be difficult for polluted agricultural land to be reinstated; and the cumulative effect of approving such applications would result in hoarding of brownfields, discourage agricultural development in Hong Kong, piecemeal land use pattern, pollution and adverse impacts on the nearby residents.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (real estate agency) for a period of 3 years at the Site which largely falls within the “AGR” zone (80%) with a portion falling within “R(C)1” zone (20%). 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 arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The planning intention of the “R(C)1” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The applied use is not entirely in line with the planning intentions of the “AGR” and “R(C)1” zones and DAFC does not support the application as the Site possesses potential for agricultural rehabilitation. Nevertheless, the applied use provides real estate agency services to the residents in Kam Tin area according to the applicant, and there is no known programme for long-term development at the Site. It is considered that approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “AGR” and “R(C)1” zones.
- 11.2 The real estate agency use is considered not incompatible with the surrounding land uses which are predominated by residential structures/development, orchard, plant nursery, fallow agricultural and vacant/unused land (**Plan A-2**).
- 11.3 In view of its scale (about 642 m² in area and a total gross floor area of 249.71m²) and location which is abutting Kam Sheung Road, it is unlikely that the temporary shop and services would generate significant adverse traffic, drainage and landscape impacts and environmental nuisance to the nearby residential structures/dwellings. Relevant departments consulted including C for T, CE/MN of DSD, CTP/UD&L of PlanD and D of FS (except DAFC) have no adverse comment on the application. To minimize the possible environmental nuisance generated by the applied use, approval condition restricting the operation hours is recommended in paragraph 12.2 (a) below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. The applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage

Sites”. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (b) to (f).

- 11.4 Five previous applications at the Site submitted by the same applicant for the same applied use were approved with conditions by the Committee between 2010 and 2017. The current application is same as the last approved application in terms of site area/boundary, development parameters and site layout. For the last approved application (No. A/YL-KTS/729), all the approval conditions have been complied with and the planning permission lapsed on 18.2.2020. There has been no major change in planning circumstances and approval of the application is in line with the Committee’s previous decision. There are also 5 similar applications for temporary real estate agency within the same “AGR” zone approved by the Committee between 2010 and 2019.
- 11.5 One public comment was received during the statutory publication period objecting to the application as stated in paragraph 10 above. In this regard, the departmental comments and the planning considerations and assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10 above, the Planning Department considers that the temporary shop and services (real estate agency) could be tolerated for a period of 3 years.
- 12.2 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 until 24.4.2023. 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 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of a record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of Director of Drainage Services or of the Town Planning Board by 24.7.2020;

- (e) the submission of 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 24.10.2020;
- (f) in relation to (e) above, the implementation of 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 24.1.2021;
- (g) if any of the above planning conditions (a), (b) or (c) 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 any of the above planning conditions (d), (e) or (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 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.

Advisory Clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Member's 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 and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. It is also not in line with the planning intention of the "R(C)1" zone which is for low-rise, low-density residential developments. No strong planning justification has been given in the submission for a departure from the planning intentions, even on a temporary basis.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 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.

- 13.3 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.

14. Attachments

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| Appendix I | Application Form received on 12.3.2020 and SI received on 18.3.2020 |
| Appendix Ia | FI received on 14.4.2020 |
| Appendix Ib | FI received on 16.4.2020 |
| Appendix II | Previous applications covering the Site |
| Appendix III | Similar applications within the same “AGR” zone on the Kam Tin South OZP |
| Appendix IV | Public comment received during the statutory inspection period |
| Appendix V | Advisory Clauses |
| Drawings A-1 to A-2 | Site Layout Plan |
| Plan A-1a | Location Plan |
| Plan A-1b | Previous Applications Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

**PLANNING DEPARTMENT
APRIL 2020**