

RNTPC Paper No. A/YL-KTN/709
For Consideration by
the Rural and New Town
on 12.6.2020

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

APPLICATION NO. A/YL-KTN/709

<u>Applicant</u>	: Mr. LEE Tsun, Frankie
<u>Site</u>	: Lots 812 S.A (Part) and 813 S.A (Part) in D.D.107, Kam Tin, Yuen Long
<u>Site Area</u>	: 37.1 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
<u>Zoning</u>	: “Agriculture” (“AGR”) ¹
<u>Application</u>	: Renewal of Planning Approval for Temporary Warehouse for Musical Instruments, Posters, Documents and Ancillary Caretaker's Office 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 warehouse for musical instruments, posters, documents and ancillary caretaker's office 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 requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. The Site is used for the applied use with valid planning permission (**Plans A-2 and A-4a to 4b**).

¹ About 0.5% (1.9 m²) of the Site falls within the “Industrial (Group D)” (“I(D)”) zone, which can be considered as minor boundary adjustment as permitted under the covering Notes of the OZP.

- 1.2 The Site is subject to five previous applications for similar/ same temporary warehouse use, which were all approved by the Rural and New Town Planning Committee (the Committee) between 2009 and 2017. Approval conditions of the last approved application No. A/YL-KTN/565 have been complied with and the planning permission is valid until 14.7.2020.
- 1.3 The development involves a two-storey building with a total floor area of 74.2 m² and a building height of 5.18 m for warehouse and ancillary caretaker's office. The operation hours are from 10am to 6pm from Mondays to Fridays. There is no operation on Saturdays, Sundays and public holidays. The development is accessible via a local track branching off Fung Kat Heung Road and San Tam Road. The floor plan with fire service installations (FSIs) as submitted by the applicant is at **Drawing A-1**.
- 1.4 The current applicant is one of the applicants of the last approved application No. A/YL-KTN/565. The current application is the same as the last application in terms of applied use, site area, layout and development parameters.
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application Form with plans received on 17.4.2020 (Appendix I)
 - (b) Supplementary information received on 22.4.2020 (Appendix Ia)
 - (c) Further Information (FI) received on 1.6.2020 in response to departmental comments (Appendix Ib)
[exempted from publication requirement]
 - (d) FI received on 8.6.2020 in response to departmental comments (Appendix Ic)
[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 application form and FI in **Appendices I to Ic**. They can be summarized as follows:

The application is entirely the same as the last approval. There is no change to the existing development and use. All the approval conditions of the last approved application have been complied with. The existing warehouse is covered by Short Term Waivers since 2011. There is no significant change in surrounding environment. No complaint has been received since operation.

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. **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**

The Site is subject to five previous applications, all for similar use (i.e. temporary warehouse for musical instruments and posters for a period of 3 years). Applications No. A/YL-KTN/320, 379, 398, 509 and 565 (the last one with ancillary caretaker’s office) were all approved with conditions between 2009 and 2017 on similar considerations that the development was not incompatible with the surrounding areas; the development would not have significant impact on the rural character of the area given the small scale and temporary nature of the development with entirely enclosed structure; and relevant departments had no adverse comment on the application. The approval of applications No. A/YL-KTN/379 and 509 were revoked in 2012 and 2016 respectively due to non-compliance with approval condition related to FSIs proposal. For the last approved application (No. A/YL-KTN/565), all approval conditions have been complied with and the planning permission is valid until 14.7.2020. Details of the previous applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.

7. **Similar Applications**

- 7.1 There are two similar applications within the same “AGR” zone on the OZP in the vicinity of the Site for various storage or warehouse uses. One application was approved with conditions by the Committee in 1995 and one was rejected by the Committee in 2013. Details of these applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 Application No. A/YL-KTN/10 for erection of a steel-frame open-side structure for storage of wooden board was approved with conditions by the Committee in

1995 on the considerations that the use at the application site was an “existing use” and the proposed steel-frame was considered as in-situ improvement works to the “existing use”; the proposed development was not close to any sensitive uses and would not generate adverse impact on the surrounding areas; there was no adverse comment from the relevant departments; and appropriate conditions would be imposed to minimize the potential impact of the proposed development.

- 7.3 Application No. A/YL-KTN/397 for proposed temporary back-up warehouses (storage of new electrical components and garments in packed boxes) for a period of 3 years covering a large site area of 11,237m² and straddling the same “AGR” and adjoining “I(D)” and “Village Type Development” (“V”) zones was rejected by the Committee in 2013 on the grounds that the proposed development was not in line with the planning intentions of the “AGR” zone and the “V” zone; the proposed development would pose adverse environmental impact on the nearby residential uses and would generate adverse landscape and drainage impacts on the surrounding areas; and approval of the application would set an undesirable precedent.

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

8.1 The Site is:

- (a) used for the applied use with valid planning permission; and
- (b) accessible via a local track branching off Fung Kat Heung Road and San Tam Road.

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

- (a) to its northwest, north and northeast are open storage/ storage yards, parking of vehicles, warehouses and a kennel;
- (b) to its east are residential dwellings/structures and parking of vehicles; and
- (c) to its south and west are cultivated/ fallow agricultural land and vacant/unused land.

9. **Planning Intention**

The planning intention of the “AGR” zone is primarily 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 Old Scheduled 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) Lot Nos. 812 S.A and 813 S.A in D.D. 107 are covered by Short Term Waiver (STW) No. 3411 and STW No. 3412 respectively to permit structures erected thereon for the purpose of “Temporary Warehouse for Musical Instruments and Posters of Concert”.
- (c) The ancillary caretaker’s office of the proposal, in any event, shall not be used for domestic/residential purposes.
- (d) Should planning approval be given to the planning application, the STW holders will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of 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 point of view, noting that the loading/unloading for the development is beside the Site within the applicant's premises with a frequency of twice a month.
- (b) 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, Highway Department (CE/NTW, HyD):

- (a) Fung Kat Heung Road is not maintained by his department.
- (b) His department is not/ shall not be responsible for the maintenance of any access connecting the Site and San Tam Road;
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads or exclusive road drains.

Environment

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

No environmental complaint concerning 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

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

- (a) She has no objection to the application from the landscape planning point of view.

- (b) 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. Considering the nature and scale of the application, the applied use is considered not entirely incompatible with the surrounding environment. Comparing the aerial photos taken in 2017 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.

Agriculture

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

He has no strong view against the application considering that the previous application for the same use as the current application was approved by the Committee.

Drainage

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

- (a) He has no in-principle objection to the development from the public drainage point of view given the development only occupies site area of 37.1m².
- (b) The applicant should be advised that the development would neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

Building Matters

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

- (a) There is no record of approval by the Building Authority for the structures existing at the Site, he is not in a position to offer comments on their suitability for the use related to the application.
- (b) Before any new buildings works (including containers/ open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of the BD should be obtained,

otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO).

- (c) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are UBW under the BO and should not be designated for any proposed use under the application.
- (d) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) The Site does not abut on any specified street, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Fire Safety

10.1.9 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.

District Officer's Comments

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

He has not received any locals' comment on the application and has no comment from departmental point of view.

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

- (a) Director of Electrical and Mechanical Services;

- (b) Chief Engineer/Construction, Water Supplies Department;
- (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 three-week statutory publication period, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of planning approval for temporary warehouse for musical instruments, posters, documents and ancillary caretaker's office for a period of 3 years in the "AGR" zone. The planning intention of the "AGR" zone is primarily 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. Although the applied use is not in line with the planning intention of "AGR" zone, it is of a small scale with site area of about 37.1m² and DAFC has no strong view against the development. It is considered that temporary approval of the application would not frustrate the long-term planning intention of the "AGR" zone.
- 12.2 The applied use is considered not incompatible with the surrounding areas which are predominated by cultivated/ fallow agricultural land, scattered residential dwellings/structures, open storages/ storage yards, parking of vehicles and vacant/unused land.
- 12.3 The application is in line with TPB PG-No. 34C in that the last previous approval for the same applied use was granted in 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. Besides, there has been no major change in planning circumstances since the last approval.
- 12.4 Relevant departments including C for T, D of FS, CTP/UD&L of PlanD and CE/MN of DSD have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours are recommended in paragraph 13.2 (a) to (b). 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". Technical requirement of D of FS could be addressed by approval condition in paragraph 13.2 (c).

- 12.5 The Site was subject to five previous planning applications for similar temporary warehouse use which were all approved with conditions by the Committee between 2009 and 2017. Also, one similar application for storage use within the same “AGR” zone was approved with conditions by the Committee in 1995. The one rejected application in the same “AGR” zone is subject to different circumstances including that it involved a much larger site straddling the adjoining “V” zone.
- 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 warehouse for musical instruments, posters, documents and ancillary caretaker’s office 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 15.7.2020 to 14.7.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays, Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) the existing fire service installations implemented on the Site shall be maintained in efficient working order at all times during the planning approval period;
- (d) 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; and
- (e) 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 planning conditions are largely the same as those under planning permission of previous Application No. A/YL-KTN/565, while those on FSIs is revised based on the comments of 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 primarily 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

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|--------------------|---------------------------------------------------|
| Appendix I | Application form with plans received on 17.4.2020 |
| Appendix Ia | Supplementary information received on 22.4.2020 |
| Appendix Ib | FI received on 1.6.2020 |
| Appendix Ic | FI received on 8.6.2020 |
| Appendix II | Relevant extract of TPB PG-No. 34C |

Appendix III	Previous applications covering the Site
Appendix IV	Similar applications within the same “AGR” zone in the vicinity of the Site on the Kam Tin North Outline Zoning Plan
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan with Fire Service Installations Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2020**