

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

APPLICATION NO. A/YL-SK/253

<u>Applicant</u>	: Pinnacle Property Limited represented by Goldrich Planners & Surveyors Ltd.
<u>Site</u>	: Lot 225 S.D (Part) in D.D. 112, Kam Sheung Road, Yuen Long
<u>Site Area</u>	: About 225 m ²
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<u>Zoning</u>	: “Village Type Development” (“V”)
<u>Application</u>	: Renewal of Planning Approval for Temporary Shop and Services (Real Estate Agency) 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 (real estate agency) for a period of 3 years. According to the Notes of the OZP, real estate agency as a ‘Shop and Services’ use is a Column 2 use within the “V” zone and requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use with valid planning permission under application No. A/YL-SK/214 until 3.5.2019.
- 1.2 The Site is the subject of 5 previous applications (No. A/YL-SK/152, 160, 167, 185 and 214) for the same applied use, which were all approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2009 and 2016. The last application No. A/YL-SK/214 for renewal of a previous planning approval submitted by the same applicant of the current application was approved with conditions by the Committee on 22.4.2016 for a period of 3 years. All approval conditions of the application have been complied with. The validity of the planning permission is until 3.5.2019.

- 1.3 According to the information provided by the applicant, the development parameters of the current application are the same as those of the last application No. A/YL-SK/214 in terms of site area, layout and number and size of structures. The Site is currently occupied by 2 single-storey converted container structures (with a building height of about 2.8 m to 3.8 m and a total floor area of about 97 m²) for office and store room uses. The operation hours of the shop are from 9:00 a.m. to 6:00 p.m daily. The Site is directly accessible from Kam Sheung Road to its immediate north. No car parking space is provided on site. The staff and customers access the Site by public transport. The layout plan, landscape and tree preservation plan, drainage implementation plan and fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application form with attachments received on 7.3.2019 **(Appendix I)**
 - (b) Further Information (FI) dated 29.3.2019 **(Appendix Ia)**
 - (c) FI dated 25.4.2019 **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in **Appendix I**. They are summarized as follows:

- (a) The development parameters are the same as those of the previously approved application No. A/YL-SK/214 and the approval conditions in relation to the maintenance of existing drainage facilities, the submission and implementation of tree preservation proposal and the implementation of FSIs proposal have been complied with.
- (b) No adverse impact on the environment is expected. The existing trees, drainage facilities and FSIs at the Site will be maintained throughout the planning approval period.

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

The applicant is not the current land owner but has complied with the requirements as set out in the Town Planning Board (TPB) Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No.31A) by posting site notice at the Site and sending notice to Pat Heung Rural Committee by local registered post. 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. 34B) are relevant to this application. The relevant assessment criteria are attached at **Appendix II**.

5. Background

The Site is not the subject of any active enforcement case.

6. Previous Applications

- 6.1 The Site is involved in 5 previous applications (No. A/YL-SK/152, 160, 167, 185 and 214) for the same applied use, which were all approved with conditions by the Committee between 2009 and 2016. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Applications No. A/YL-SK/152 and 160 for temporary shop and services (real estate agency) for a period of 3 years at the same site submitted by a different applicant were approved with conditions by the Committee on 8.5.2009 and 28.1.2011 both for a period of 1 year on the consideration that the development was of a relatively small scale and was located by the side of a major road; it was not incompatible with the surrounding environment; there was no application for Small House development on the site; most Government departments consulted had no adverse comment on the application; and the technical requirements of the department could be addressed by the approval conditions. To respond to the public concerns on the possible impacts of the development and to monitor the situation on the site, a shorter approval period of 1 year was allowed. However, the planning approval for application No. A/YL-SK/152 was revoked on 8.3.2010.
- 6.3 Application No. A/YL-SK/167 for the renewal of planning approval under Application No. A/YL-SK/160 was submitted by the same applicant of the current application. The application was approved with conditions by the Committee on 20.1.2012 for a period of 3 years on the consideration that the application was generally in line with the Town Planning Board Guidelines No. 34B in that there had been no material change in planning circumstances since the granting of the previous temporary approval and the conditions of the previous approval had been complied with; the development was considered not incompatible with the surrounding environment; Government departments consulted generally had no adverse comment on the application; and public concerns on the possible impacts of the development could be addressed by imposition of approval conditions and there was no record of the occurrence of the problems raised by the commenters. However, the planning approval was subsequently revoked on 28.1.2013 due to non-compliance with the condition requiring submission of a record of the existing drainage facilities on site.
- 6.4 Application No. A/YL-SK/185 for the same use as the applied use was approved by the Committee on 3.5.2013 for a period of 3 years on the considerations that the development was not incompatible with the surrounding environment; Government departments consulted had no objection to or adverse comment on the application; significant adverse impacts on the surrounding area were not envisaged; technical concerns of Government departments could be addressed by

imposition of approval conditions and the applicant has demonstrated efforts to comply with the approval condition in the previous application No. A/YL-SK/167.

- 6.5 The last application No. A/YL-SK/214 for the renewal of planning approval under Application No. A/YL-SK/185 was submitted by the same applicant of the current application. The application was approved with conditions by the Committee on 22.4.2016 for a period of 3 years on the similar considerations as mentioned in paragraph 6.4 above and that there had been no major change in planning circumstances since the granting of last planning approval in 2013; and all the approval conditions under application No. A/YL-SK/185 were complied with. All the approval conditions of the last application No. A/YL-SK/214 have been complied with and the approval will lapse on 4.5.2019. Compared with the last approved application No. A/YL-SK/214, the current application is submitted by the same applicant for the same use with the same layout and development parameters.

7. Similar Applications

- 7.1 There are 2 similar applications (No. A/YL-SK/164 and 205) for temporary shop and services (real estate agency) uses within the same and adjoining “V” zones on the OZP, with some encroachment on the adjoining “Agriculture” (“AGR”) zone for application No. A/YL-SK/164. Details of the applications are summarized at **Appendix IV** and their locations are shown in **Plan A-1**.
- 7.2 Applications No. A/YL-SK/164 and 205 for temporary real estate agency uses (the latter application also involves retail shop for furniture and pet accessory) were approved by the Committee for a period of 3 years on 18.11.2011 and 27.2.2015 respectively. The considerations for approval were that the developments were of a relatively small scale and were not incompatible with the surrounding environment; there was no Small House application at the application site; the approval of the developments on a temporary basis would not frustrate the long-term planning intentions of “V” and “AGR” zones; and Government departments consulted generally had no adverse comment on the applications.

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

- 8.1 The Site is:
- (a) paved and fenced off;
 - (b) currently occupied for the applied use with valid planning permission under application No. A/YL-SK/214 until 3.5.2019; and
 - (c) directly accessible from Kam Sheung Road to its immediate north.
- 8.2 The surrounding areas are predominantly rural in character and have the following characteristics:
- (a) to its immediate west and east are areas used for parking of vehicles. To its east is a local track which leads to the village cluster and farmland of Lai

Uk Tsuen to the south and residential dwellings, including a residential development known as Jazz Garden (Phase I);

- (b) to its immediate south are fallow farmland and an area used for parking of vehicles. Further south and southwest are residential dwellings/structures, fallow farmland and unused land; and
- (c) to its northwest across Kam Sheung Road is a temporary shop and services (real estate agency and retail shop for furniture and pet accessory) with ancillary office operated previously under a planning permission under application No. A/YL-SK/205 until 27.2.2018. Further north is an area of active/fallow farmland with some scattered residential structures.

9. Planning Intention

The planning intention of the “V” zone is to reflect recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House (NTEH). Other commercial, community and recreational uses may be permitted on application to the Board.

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 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) Within the Site, Lot No. 225 S.D in D.D.112 is currently covered by Short Term Waiver (STW) No. 3916 for the permitted use of “Temporary Shop and Services (Real Estate Agency)”.
- (c) The Site is accessible from Kam Sheung Road via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.

- (d) The Site falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the applied structures shall not exceed relevant airfield height limit within the SKAHRA.
- (e) According to his records, there is no Small House application received/under processing within the Site.
- (f) Should planning approval be given to the planning application, the STW holder(s) will need to apply to his office to modification of the STW conditions where appropriate. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of NTEH(s) will be considered or allowed. 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(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 premium or fee, as may be imposed by LandsD.

Traffic

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

He has no comment on the application considering there is no parking provision and vehicular access to the Site and the induced traffic is minimal.

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

- (a) His department does not and will not maintain the access connecting the Site and Kam Sheung Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Landscape

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

- (a) He has no comments on the application from landscape planning point of view.
- (b) Should the application be approved, approval condition on maintenance of all existing trees within the Site satisfactorily at all times during the planning approval period should be included in the planning approval.

Environment

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

- (a) He has no comment on the application.
- (b) Should the application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites'.

Drainage

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

- (a) He has no in-principle objection to the applied development, having regard to the applicant's submission that the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-SK/214.
- (b) Should the application be approved, approval conditions requiring the maintenance of the existing drainage facilities implemented under application No. A/YL-SK/214 and the submission of a record 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.

Building Matters

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

- (a) He has no in-principle objection to the applied use at the Site.
- (b) As there is no record of approval by the Building Authority for the existing structures at the Site, he is not in a position to offer comments on their suitability for the applied use in the application.
- (c) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on site, 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).
- (d) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of BD, they

are UBW under the BO and should not be designated for use under the application.

- (e) 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.
- (f) 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.
- (g) If the Site does not abut on a specified street of not 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.

Fire Safety

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

- (a) He has no objection in-principle to the application, having regard to the applicant's submission that there is no change to the layout/proposed uses comparing to the previous application No. A/YL-SK/214, and the applicant has submitted the latest approved FSIs proposals and the relevant certificate of FSIs (i.e. FS-251).
- (b) Should the application be approved, condition requiring the maintenance of the existing FSIs implemented on the Site in efficient working order at all times during the planning approval period should be included in the planning approval.

District Officer's Comments

10.1.9 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 particular comments on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC);

- (d) Commissioner of Police (C of P); and
- (e) Director of Electrical and Mechanical Service (DEMS).

11. Public Comments Received During the Statutory Publication Period

On 15.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.4.2019, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The application is for renewal of the planning permission for temporary shop and services (real estate agency) for a period of 3 years within the “V” zone on the approved Shek Kong OZP No. S/YL-SK/9. The planning intention of the “V” zone is to reflect recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Although the applied development is not in line with the planning intention of the “V” zone, similar ‘Shop and Services’ use on the ground floor of a NTEH is always permitted within the “V” zone, and other commercial uses may be permitted upon application to the Board. The applied development could provide real estate agency service to serve the needs of the local villagers and neighboring residential developments. DLO/YL, LandsD advised that there is no Small House application approved or under processing at the Site. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long term planning intention of the “V” zone.
- 12.2 The applied development is considered not incompatible with the surrounding land uses which are rural in character predominated by areas for parking of vehicles, residential dwellings/structures, active/fallow farmland and vacant land. In view of its small scale and its location abutting Kam Sheung Road, the environmental nuisance generated by the development is unlikely to be significant.
- 12.3 The application is in line with TPB PG-No.34B in that there is generally no adverse comment from the concerned Government departments and no local objection received, and there has been no major change in planning circumstances since the last planning approval under application No. A/YL-SK/214 in 2016. Besides, all the approval conditions under the last application have been complied with.
- 12.4 Relevant Government departments consulted, including C for T, DEP, CE/MN, DSD, D of FS and CTP/UD&L, PlanD have no objection to or adverse comment on the application. Considering there is no parking provision and vehicular access to the Site and the induced traffic is minimal, C for T has no comment on the application from traffic engineering perspective. Besides, DEP and CE/MN, DSD have no objection to or no adverse comment on the application from

environmental and drainage aspects respectively. To mitigate potential environmental impacts on the surrounding areas, approval condition restricting the operation hours is recommended in paragraph 13.2 (a) below. Any non-compliance with the approval condition will result in revocation of the planning permission. Besides, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP. The technical requirements of CTP/UD&L, PlanD, D of FS and CE/MN of DSD could be addressed by approval conditions in paragraph 13.2 (b) to (e) below.

- 12.5 No public comment was received on the application during the statutory publication period.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12, the Planning Department has no objection to the temporary shop and services (real estate agency) 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 4.5.2019 until 3.5.2022. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (c) the existing fire service installations implemented on the Site should be maintained in efficient working order at all times during the planning approval period;
- (d) the existing drainage facilities implemented on the Site should be maintained at all times during the planning approval period;
- (e) the submission of a 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 Town Planning Board by 4.8.2019;
- (f) if any of the above planning conditions (a) to (d) 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
- (g) if the above planning condition (e) 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.

[The above approval conditions are the similar as those under the last approved application No. A/YL-SK/214, except for the replacement of the conditions requiring submission and implementation of tree preservation proposal by approval condition (b).]

Advisory clauses

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

- 13.3 Should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the applied development is not in line with the planning intention of the "V" zone which is to reflect recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission to justify 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 permission.
- 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 Attachments received on 7.3.2019
Appendix Ia	Further Information (FI) dated 29.3.2019
Appendix Ib	FI dated 25.4.2019
Appendix II	Relevant Extracts of Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34B)
Appendix III	Previous Applications
Appendix IV	Similar Applications
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan

Drawing A-2	Landscape and Tree Preservation Plan
Drawing A-3	Drainage Implementation Plan
Drawing A-4	Fire Services Installations Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MAY 2019**