

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

APPLICATION NO. A/YL-TT/472

<u>Applicant</u>	:	Mr. KWAN Hoi Ngai represented by Goldrich Planners and Surveyors Limited
<u>Site</u>	:	Lots 266 RP (Part) and 268 (Part) in D.D. 117 and Adjoining Government Land (GL), Tai Tong, Yuen Long, New Territories
<u>Site Area</u>	:	249 m ² (about) (including about 18.5 m ² of GL)
<u>Lease</u>	:	Block Government Lease (demised for agricultural use)
<u>Plan</u>	:	Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	:	“Village Type Development” (“V”) [Restricted to a maximum building height of 3 storeys (8.23m)]
<u>Application</u>	:	Renewal of Planning Approval for Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning approval for temporary shop and services (local provision store with ancillary storage area and real estate agency) at the application site (the Site) for a further period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by the applied use and covered by a valid planning permission No. A/YL-TT/384 with validity up to 29.7.2019 (**Plans A-2, A-4a to A-4c**).
- 1.2 The Site was the subject of two previous applications (No. A/YL-TT/384 and 429). Application No. A/YL-TT/384, which is the basis of this renewal application, for the same use as the current application was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 29.7.2016. All the time-limited approval

conditions of the planning permission had been complied with and the validity of which is up to 29.7.2019. Details of the previous applications are at paragraph 6 below and **Appendix III**. Compared with the previous relevant application (No. A/YL-TT/384), the current application is submitted by a different applicant for the same use on a slightly larger site with slightly different development parameters and site layout.

- 1.3 According to the applicant, drinks and snacks would be sold at the local provision store while real estate services would be provided by the real estate agency. Both uses are intended to serve the local residents. A total of five staff would be working at the Site, who will access the Site mainly by public transport. No parking spaces, loading/unloading (L/UL) area and vehicular access are proposed at the Site. L/UL activities for the local provision store will take place at the L/UL bay to the east of the Site at Tai Tong Road (**Drawing A-1**). Plans showing the proposed off-site L/UL location, site layout, tree preservation proposal, drainage proposal and fire services installation (FSI) proposal submitted by the applicant are at **Drawings A-1 to A-5** respectively.
- 1.4 The major development parameters of the previous relevant application (No. A/YL-TT/384) and the current application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TT/384 (a)	Current Application No. A/YL-TT/472 (b)	Difference (b) – (a)
Applied Use	Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency) for a Period of 3 Years		---
Site Area	About 228.6 m ² (including about 16.2 m ² of GL)	About 249 m ² (including about 18.5 m ² of GL)	+20.4 m ² (+8.9%)
Total Floor Area (Non-domestic)	About 216.3 m ²	About 206 m ²	-10.3 m ² (-4.7%)
No. of Structures	5 (for real estate agency, local provision stores, toilets and ancillary storage area uses)		---
Height of Structures	5.4 to 6.5m (1 to 2 storeys)		---
Operation Hours	8:00 a.m. to 10:00 p.m. daily		---

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with appendix and plans received on 31.5.2019 (**Appendix I**)
 - (b) Further Information received on 10.7.2019 clarifying that no vehicular access is proposed (**Appendix Ia**)
[accepted and exempted from publication and recounting requirements]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the appendix to the Application Form at **Appendix I**. They can be summarised as follows:

- (a) All the approval conditions for planning permission No. A/YL-TT/384 have been complied with, including landscaping, drainage and FSI aspects. The existing trees and drainage facilities within the Site will be properly maintained by the applicant.
- (b) There are few local provision stores and real estate agencies in the area. The proposed development could serve the locals living and visiting the vicinity.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board 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 a notice of the application outside the Site and sending the notice to the Shap Pat Heung Rural Committee by 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. 34C) are relevant to this application. The relevant assessment criteria of the Guidelines are attached at **Appendix II**.

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site is the subject of two previous applications (No. A/YL-TT/384 and 429) for temporary shop and services with or without eating place uses. Details of the applications are summarised in **Appendix III** and the boundaries of the sites are shown on **Plan A-1**.
- 6.2 Application No. A/YL-TT/384 for temporary shop and services (local provision store with ancillary storage area and real estate agency) covering a slightly smaller site was approved with conditions by the Committee on 29.7.2016 for a period of 3 years on the considerations that the proposal would not jeopardise the long-term planning intention of the “V” zone; the proposal was not incompatible with surrounding land uses; and no adverse comments from relevant government departments were received. All the time-limited approval conditions of the

planning permission had been complied with and the validity of which is up to 29.7.2019.

- 6.3 Application No. A/YL-TT/429 for temporary shop and services (real estate agency) and eating place covering a slightly larger site area was approved with conditions for a period of 3 years by the Committee on 1.6.2018 mainly on similar considerations as the former application. All the time-limited approval conditions have been complied with except for the implementation of FSIs proposal. The validity of the permission is up to 1.9.2021.
- 6.4 Compared with the previous application No. A/YL-TT/384, which is the subject of this renewal application, the current proposal is submitted by a different applicant for the same applied use on a slightly larger site with slightly different development parameters and site layout.

7. Similar Applications

- 7.1 There are a total of 11 similar applications (No. A/YL-TT/289, 301, 302, 327, 343, 344, 357, 418, 421, 445 and 462) covering three sites for various shop and services uses within the same “V” zone. Detailed information of the applications is at **Appendix IV** and their locations are shown on **Plan A-1**.
- 7.2 Applications No. A/YL-TT/301, 343 and 418 for temporary shop and services (real estate agency) in relation to one site were approved with conditions by the Committee each for a period of three years on 20.4.2012, 16.1.2015 and 12.1.2018 respectively, on the considerations that the development was not incompatible with the surrounding land uses; it could serve any such demand in the area; and the proposed development would unlikely cause significant adverse environmental, traffic and drainage impacts to the surrounding areas. While the former planning approval was subsequently revoked on 20.7.2014 due to non-compliance with approval conditions on parking arrangement, run in/run-out and landscaping aspects, all the approval conditions were complied with under subsequent permission No. A/YL-TT/343. Renewal of this permission was later granted under application No. A/YL-TT/418 for a further period of three years up to 16.1.2021.
- 7.3 Applications No. A/YL-TT/289, 302, 327, 344, 357, 421 and 445 were related to another site for temporary shop and services for real estate agency (for the former four applications), environmental consultancy and landscaping services (for No. A/YL-TT/357), building surveying consultancy (for No. A/YL-TT/421) and interior design and decoration engineering company uses (for No. A/YL-TT/445) respectively. The former three applications were approved with conditions by the Committee on 19.8.2011 and 20.4.2012 and by the Board on review on 22.12.2015 respectively for periods ranging from one to three years. All three approvals were subsequently revoked due to non-compliance with approval conditions. The three subsequent applications (No. A/YL-TT/344, 357 and 421) were either rejected by the Board on review on 15.5.2015 (No. A/YL-TT/344) and 10.8.2018 (No. A/YL-TT/421) or dismissed by the Town Planning Appeal Board (TPAB) on appeal on 25.8.2017 (No. A/YL-TT/357), mainly on the grounds, amongst others, that approval of the application with repeated non-compliances

would set an undesirable precedent for other similar planning permissions for temporary uses, thus nullifying the statutory planning control system. The last application (No. A/YL-TT/445) was submitted by a different applicant, which was approved with conditions by the Committee for a period of three years on 8.3.2019 on similar considerations as mentioned in paragraph 7.2 above.

7.4 Application No. A/YL-TT/462 for temporary shop and services (retail of construction materials) concerning another site was approved with conditions by the Committee on 3.5.2019 for a period of three years also on similar considerations as mentioned in paragraph 7.2 above.

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

8.1 The Site is:

- (a) abutting Tai Tong Road to its north and a local track to its east (**Plan A-2**);
- (b) hard-paved and fenced off; and
- (c) currently occupied by the applied use with valid planning permission (No. A/YL-TT/384).

8.2 The surrounding areas have the following characteristics:

- (a) predominantly rural residential in nature intermixed with scattered car parks, vehicle repair workshops, storages, works sites, an elderly home, store, temple, latrine, electrical transformer, a tyre company, a retail shop for vehicle parts, some vacant land and agricultural land;
- (b) there are various residential structures in the vicinity with the nearest one situated about 5m to the west of the Site (**Plan A-2**); and
- (c) except for the aforementioned electrical transformer, the remaining car parks, vehicle repair workshops, storages, tyre company, retail shop for vehicle parts, store and elderly home are mostly suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the 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 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 summarised 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 Schedule Agricultural Lots held under Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Lots No. 266 RP and 268 in D.D. 117 are covered by Short Term Waivers (STW) No. 4679 and 4680 respectively to permit structures erected thereon for the purpose of “Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency)”.
- (c) The GL within the Site is covered by Short Term Tenancy (STT) No. 3069 for the purpose of “Temporary Shop and Services (Local Provision Store with Ancillary Storage Area and Real Estate Agency)”.
- (d) The Site is accessible to Tai Tong Road via GL. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way to the Site.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) No Small House applications have been received or under processing within the Site.
- (g) Should planning approval be given to the subject planning application, the STW/STT holder(s) will need to apply to her office for modification of the STW/STT conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by her department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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 her

department.

Traffic

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

From the information provided in the subject application, no vehicular access to the Site and no parking/L/UL space will be allowed. He also notes the arrangement of the L/UL activities using the nearby existing layby at Tai Tong Road. As such, he has no comment on the subject application from traffic engineering viewpoint.

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

Should the application be approved, the applicant should note that the approval is based on the understanding that there is and will be no vehicular access to/from the Site.

Environment

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

Should the application be approved, the applicant should 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” (Code of Practice) issued by the Environmental Protection Department to minimise any potential environmental impact.

Drainage

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

- (a) Based on the submitted drainage proposal (**Drawing A-4**), apparently the applicant would maintain the same drainage facilities as those implemented under previous planning application No. A/YL-TT/384.
- (b) In view of the above, he has no objection in principle to the proposed development. Should the Board consider the application acceptable from the planning point of view, approval conditions requiring the maintenance of the existing drainage facilities and submission of a record of the existing drainage facilities on the Site to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Landscape

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

- (a) With reference to the aerial photo of 2018, the Site is located in an area of village landscape character. Significant change to the landscape character arising from the continued use of the applied use is not envisaged.
- (b) Should the application be approved, the applicant is advised that approval of the section 16 application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority/ government department(s) direct to obtain the necessary approval on tree works.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to FSI being provided to his satisfaction.
- (b) Furthermore, the attached FSI (**Drawing A-5**) is considered acceptable by his department. Please be advised that the installation/maintenance/modification/repair work of FSI shall be undertaken by an Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/maintenance/modification/repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to him.
- (c) In addition, 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

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

- (a) 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 use proposed in the application.
- (b) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a NTEH) are erected on leased land without the approval of BD, they are unauthorised building works (UBW) under the BO and should not be designated for any proposed use under the

application.

- (ii) 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.
- (iii) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on the Site, prior approval and consent of BD should be obtained, otherwise they are UBW. An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (iv) 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.
- (v) 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 B(P)R at the building plan submission stage.

District Officer's Comments

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

Her office has not received any locals' comment on the subject application and she has no comment from departmental point of view.

10.2 The following government departments have no comments on the application:

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police (C of P).

11. Public Comment Received During the Statutory Publication Period

On 11.6.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 2.7.2019, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The subject application is for renewal of planning permission under previous application No. A/YL-TT/384 for temporary shop and services (local provision store with ancillary storage area and real estate agency) for a period of 3 years at a site zoned “V” on the OZP. Although the applied use is not entirely in line with the planning intention of the “V” zone, which is primarily intended for development of Small Houses by indigenous villagers, nevertheless, the proposed use is intended to serve the local residents and could meet any such demand in the area. As advised by DLO/YL, LandsD, no Small House applications have been received/under processing within the Site. As such, approval of the application on a temporary basis for a further period of 3 years would not frustrate the long-term planning intention of the area.
- 12.2 The Site abuts the major public road of Tai Tong Road and is generally not incompatible with the surrounding uses which are predominantly rural residential intermixed with scattered storages, car parks, vehicle repair workshops and various standalone uses. Although there are various residential structures in the vicinity (with the nearest one situated about 5m to the west of the Site), significant environmental nuisance is not envisaged.
- 12.3 The application is generally in line with TPB PG-No. 34C in that there has been no material change in planning circumstances since the granting of the previous approval under application No. A/YL-TT/384; the approval conditions have been complied with; and the 3-year approval period sought is reasonable and of the same timeframe as the previous approval.
- 12.4 There is no adverse comment on the application from concerned government departments and significant adverse traffic, environmental, drainage and fire safety impacts on the surrounding area are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 13.2 to address the technical requirements of the concerned departments and to minimise any possible environmental concerns arising from the proposal. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the Code of Practice in order to minimise any potential environmental impact.
- 12.5 Given that 2 previous applications and 8 similar applications for various shop and services uses have been approved within the same “V” zone, approval of the subject application is considered in line with the Committee’s previous decisions. Three similar applications for various shop and services uses (for real estate agency, environmental consultancy and landscaping services, and building surveying consultancy) were either rejected by the Board on review or dismissed by the TPAB on appeal mainly on the grounds, amongst others, that approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning permissions for temporary uses, thus nullifying the statutory planning control system. However, such considerations are not applicable to the current application.

- 12.6 There is no public comment received on the application during the statutory publication period.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12 above, the Planning Department has no objection to the application.
- 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 further period of 3 years from 30.7.2019 to 29.7.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) the existing trees and landscape planting on the Site shall be maintained at all times during the approval period;
- (d) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the implementation of the accepted fire service installations proposal within **6** months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 30.1.2020;
- (f) the submission of a condition 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 30.10.2019;
- (g) if any of the above planning conditions (a), (b), (c) or (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
- (h) if any of the above planning conditions (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.

[Approval conditions (a), (b) and (d) are the same as those under the permission for application No. A/YL-TT/384, while conditions (c), (e) and (f) are updated and

the reinstatement clause is deleted to accord with relevant departments' latest requirements.]

Advisory clauses

The recommended advisory clauses are 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 proposed development is not in line with the planning intention of the "V" zone which is primarily 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.
- 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 appendix and plans received on 31.5.2019
Appendix Ia	Further Information received on 10.7.2019 clarifying that no vehicular access is proposed
Appendix II	Relevant extract of 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)
Appendix III	Previous Applications covering the Site
Appendix IV	Similar Applications within the Same "V" Zone on the OZP
Appendix V	Recommended Advisory Clauses
Drawing A-1	Plan showing the off-site L/UL location
Drawing A-2	Proposed Site Layout
Drawing A-3	Tree Preservation Proposal

Drawing A-4	Drainage Proposal
Drawing A-5	FSI Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
JULY 2019**