

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

APPLICATION NO. A/YL-TT/494

<u>Applicant</u>	:	Mr. KWOK Wai Shing represented by Metro Planning and Development Company Limited
<u>Site</u>	:	Lots 3586 S.B RP (Part), 3587 (Part) and 3588 (Part) in D.D.116 and Adjoining Government Land (GL), Yuen Long, New Territories
<u>Site Area</u>	:	1,048m ² (about) (including GL of about 4m ²)
<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>	:	“Other Specified Uses” annotated “Rural Use” (“OU(RU)”) <i>[restricted to maximum plot ratio (PR) of 0.4 and maximum building height of 3 storeys (9m)]</i>
<u>Application</u>	:	Renewal of Planning Approval for Temporary Shop and Services 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 (retail shop for pet food) for a further period of 3 years (**Plans A-1a**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use for the “OU(RU)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently partly vacant and partly used for storage use without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site was involved in 4 previous applications (No. A/YL-TT/73, 365, 387 and 400). Applications No. A/YL-TT/73, 365 and 387 for temporary open storage or warehouse uses were rejected either by the Rural and New Town Planning Committee (the Committee) or by the Board on review between 2000 and 2016 (**Plan A-1b**). The last application (No. A/YL-TT/400) for the same use as the current application was approved with conditions for a period of 3 years by the Committee on 28.4.2017 with validity up to 28.4.2020. All the approval conditions have been complied with. Compared with the last application, the current

application is submitted by the same applicant for the same use on the same site, and the development parameters and site layout remain unchanged.

- 1.3 According to the applicant, the Site is intended for a retail shop for pet food. The applicant will offer delivery services, thus large volume of visiting customers are not expected. Furthermore, no medium or heavy goods vehicles will be allowed to be parked or enter the Site. Plans showing the vehicular access leading to the Site, site layout, tree preservation proposal, as-built drainage facilities and fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-5**.
- 1.4 The major development parameters of the previously approved application and the current application are the same and summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TT/400	Current Application No. A/YL-TT/494
Applied Use	Temporary Shop and Services for a Period of 3 Years	
Site Area	1,048 m ² (about) (including Government land of about 4m ²)	
Total Floor Area (Non-domestic)	About 546 m ²	
No. and Height of Structures	3 <ul style="list-style-type: none"> • 2 for retail shops for pet food (Not exceeding 4m, 1 storey) • 1 for site office (Not exceeding 8m, 2 storey) 	
Parking Space	1 (for private car)	
Loading/Unloading Space	1 (for light goods vehicle)	
Operation Hours	9:00 a.m. to 9:00 p.m. daily	

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 5.3.2020 **(Appendix I)**
 - (b) Supplementary Information received on 6.3.2020 clarifying that the layout of the current application is the same as that of the last application and providing a FSIs plan and a Certificate of Fire Service Installation and Equipment (FS 251) **(Appendix Ia)**
 - (c) Further Information (FI) received on 19.3.2020 providing photos of the existing trees at the Site **(Appendix Ib)**
 - (d) FI received on 27.3.2020 providing the estimated traffic generation and attraction arising from the proposal **(Appendix Ic)**
 - (e) FI received on 14.4.2020 clarifying the proposed use in the estimated traffic generation **(Appendix Id)**

- (f) FI received on 2.6.2020 confirming the proposed use and layout are same as the previous planning permission **(Appendix Ie)**
[(c) to (f) accepted and exempted from publication and recounting requirements]

1.6 In view of the situation of COVID-19 and the special work arrangement for government departments announced by the Government, the Planning Department (PlanD) only provided essential and limited public services and the District Planning Offices of PlanD suspended all fieldwork, including visit to the Site for gathering of background information, during the interim. In view of the above, the Board on 24.4.2020 agreed to defer consideration of this application (the previous planning permission was valid up to 28.4.2020). All fieldwork has since been resumed and the application is now scheduled for consideration by the Committee at this meeting.

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 (**Appendix I**) and the FI received on 27.3.2020 (**Appendix Ic**). They can be summarised as follows:

- (a) The proposal is temporary in nature and would not jeopardise the long term planning intention of the “OU(RU)” zone. Similar planning applications for temporary shop and services have been approved by the Committee in the vicinity.
- (b) The nature and form of the proposal is compatible with the surrounding environment. No adverse impact would be generated. The proposed development would not generate significant amount of traffic and would not affect the traffic condition of the adjacent area.
- (c) A number of open storage yards and warehouses are found within the same “OU(RU)” zone. Approval of the current application would curb the situation.
- (d) All the approval conditions of the previous planning application (No. A/YL-TT/400) have been complied with. The applicant has planted trees and provided surface U-channel.

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. For the GL portion, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines for ‘Designation of “OU(RU)” Zone and Application for Development within “OU(RU)” Zone’ (TPB PG-No. 38) are relevant to the application. The relevant assessment criteria are attached at **Appendix II** and summarised as follows:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

- 4.2 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 also relevant to this application. The relevant assessment criteria are attached at **Appendix III**.

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Applications

- 6.1 The Site was involved in four previous applications (No. A/YL-TT/73, 365, 387 and 400) for temporary open storage/warehouse or shop and services uses covering different extent of the Site. Details of the applications are summarised in **Appendix IV** and the boundaries of the sites are shown on **Plan A-1b**.
- 6.2 The western fringe of the Site was involved in a previous application (No. A/YL-TT/73) for proposed temporary open storage of construction materials which was rejected by the Board on review on 15.9.2000. The site was zoned “Agriculture” (“AGR”) on the then approved Tai Tong OZP No. S/YL-TT/6 at the time of consideration. The application was rejected mainly for not being in line with the planning intention of the “AGR” zone; incompatibility with the surrounding uses; failure to demonstrate no adverse drainage impact; insufficient information to demonstrate lack of suitable sites within the “Open Storage” (“OS”) zone for the proposed development; and setting of undesirable precedent.
- 6.3 Applications No. A/YL-TT/365 and 387 for temporary warehouse for storage of vehicle parts were rejected by the Committee on 4.12.2015 and 30.9.2016 respectively on the grounds of not in line with the planning intention of the “OU(RU)” zone; not in line with TPB PG-No. 38 in that the applicant failed to demonstrate no adverse environmental and landscape impacts on the surrounding areas; and setting of undesirable precedent.
- 6.4 The last application (No. A/YL-TT/400) for proposed temporary shop and services

(retail shop for pet food) for a period of 3 years was approved by the Committee on 28.4.2017 on the consideration that the proposal could serve any such needs in the area; approval of the application on a temporary basis would not jeopardise the long-term planning intention; the proposed development was not incompatible with the surrounding area; and the application was generally in line with TPB PG-No. 38. All the time-limited conditions have been complied with and the permission lapsed on 29.4.2020.

- 6.5 Compared with the last application, the current application is submitted by the same applicant for the same use on the same site, and the development parameters and site layout remain unchanged.

7. **Similar Applications**

There are six similar applications (No. A/YL-TT/362, 408, 414, 466, 470 and 495) for various temporary shop and services uses (No. A/YL-TT/362, 414 and 470 for grocery store, No. A/YL-TT/408 and 495 for retail shop for pet food and No. A/YL-TT/466 for motor-vehicle showroom) within or straddling the same “OU(RU)” zone, which were all approved with conditions by the Committee between 2015 and 2020 for a period of 3 years each mainly on similar considerations that the proposed developments were not incompatible with the surrounding area; the proposed uses could serve the demand in the area; approval of the applications on a temporary basis would not jeopardise the long-term planning intention of “OU(RU)” zone; the applications were generally in line with TPB PG-No. 38; and the concerns of the relevant departments could be addressed by imposing approval conditions. However, three of these approved applications (No. A/YL-TT/362, 408 and 414) were revoked due to non-compliance with approval conditions. Details of the applications are summarised in **Appendix V** and the locations of the sites are shown on **Plan A-1a**.

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

8.1 The Site is:

- (a) accessible via a local track connecting to an unnamed road to its north (**Plan A-3**);
- (b) paved and fenced off; and
- (c) currently partly vacant and partly used for storage use without valid planning permission.

8.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) mixed in character with predominately residential structures intermixed with warehouses, open storage/storage yards, workshops, parking of vehicles and vacant/unused land, as well as an office, orchard, eating place and real estate agency;
- (b) there are residential structures in the vicinity of the Site with the nearest one located 30m to its west; and

- (c) except for the real estate agency to the further northeast, three warehouses to its further east and southeast and a vehicle park and eating place operating with valid planning permissions, the other warehouses, open storage/storage yards, workshops and office in the vicinity of the Site are mostly suspected unauthorised development (UD) subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of “OU(RU)” zone is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities.

10. Comments from Relevant Government Departments

- 10.1 The following government departments have been consulted and their views 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 GL and Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of GL (about 4m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) Within the Site, Lots 3586 S.B RP and 3587 in D.D. 116 are currently covered by Short Term Waiver (STW) No. 4983 to permit structures erected thereon for the purpose of ‘Temporary Shop and Services (Retail Shop for Pet Food)’.
- (d) Should planning approval be given to the application, the STW holder(s) will need to apply to her office for modification of the STW conditions where appropriate. The owner(s) of the lot(s) without STW will need to apply to her office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a direct grant Short Term

Tenancy for use of the Site. 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(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 her department.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Tai Shu Ha Road East and Tai Shu Ha Road West shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Tai Shu Ha Road East.

Environment

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

Should the planning application be approved, the applicant should be 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" (Code of Practice) issued by the Environmental Protection Department to minimise any potential environmental nuisances on the surrounding area.

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 landscape planning

perspective.

- (b) According to the aerial photo of 2019 (**Plan A-3**) and the site inspection photos by her office taken on 20.3.2020, there is no significant change to the surrounding landscape setting since the application was last approved. Although rectifications are required on implemented trees from previous application, further adverse impact due to the renewal of the proposal is not expected.
- (c) The applicant is reminded of the importance of undertaking proper tree care for existing trees within the Site. Useful information published by the Greening, Landscape & Tree Management Section, Development Bureau on general tree maintenance and tree risk management should be referenced to.
- (d) The applicant should take note that approval of the s.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.

Drainage

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

- (a) He has no objection in principle to the proposed development.
- (b) Based on the planning statement enclosed in the application (**Appendix I**), apparently the applicant would maintain the same drainage facilities as those implemented under previous planning application No. A/YL-TT/400.
- (c) Should the Board consider the application is acceptable from the planning point of view, approval conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-TT/400 and the submission of condition record of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Fire Safety

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

He has no objection in principle to the renewal application subject to the existing FSIs implemented on the Site being maintained in efficient working order at all times.

Building Matters

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

- (a) As 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) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BA, they are unauthorised building works (UBW) under the Building Ordinance (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 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.
 - (iii) 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 BA 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) The Site does not abut on a specified street of not less than 4.5m wide and 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

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

His office has not received any comment from the village representatives in the vicinity.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (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 13.3.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, no public comment was received.

12. Planning Considerations and Assessments

- 12.1 The subject application is for renewal of the planning permission under previous application No. A/YL-TT/400 for temporary shop and services (retail shop for pet food) for a period of 3 years at a site zoned “OU(RU)” on the OZP. The planning intention of the “OU(RU)” zone is primarily for preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. In this regard, while the proposed development is not entirely in line with the planning intention of the “OU(RU)” zone, the proposed temporary retail shop for pet food could serve any such demand in the area. There is no known programme for the long-term development of the Site. As such, approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.
- 12.2 The applied use is not incompatible with the surrounding uses which are mixed in nature with predominately residential structures intermixed with warehouses and storage yards (**Plan A-2**).
- 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/400; the approval conditions have been complied with; and the 3-year approval period sought is of the same timeframe as the previous approval.
- 12.4 There is no adverse comment on the application from concerned government departments, including DEP, C for T, CE/MN, DSD, CTP/UD&L, PlanD and D of FS. The application is generally in line with TPB PG-No.38 in that the proposal would not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings, nor would it overstrain the capacity of existing and planned infrastructure. Furthermore, relevant approval conditions are recommended in paragraph 13.2 below to address the technical requirements of the concerned government departments. 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 planning application

be approved, the applicant will also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding area.

- 12.5 Given that a previous approval for the same applied use has been granted to the Site and six similar applications have been approved within the subject “OU(RU)” zone, approval of the current application is generally in line with the Committee’s previous decisions. While there were 3 previous applications (No. A/YL-TT/73, 365 and 387) rejected by the Committee or the Board on review, they were for various temporary open storage or warehouse uses, which were considered incompatible with the planning intention of the “OU(RU)” and “AGR” zones (for the former application only). Adverse impacts on the surrounding area were also envisaged. The current application is for temporary shop and services use and no adverse impacts on the surrounding area are anticipated.
- 12.6 There is no public comment received on the application during 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 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 period of 3 years, and be renewed from 12.6.2020 to 12.6.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 9:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance, as proposed by the applicant, is allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (e) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (f) all existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 12.9.2020;

- (h) the existing fire service installations implemented on the Site should be maintained in efficient working order at all times during the planning approval period;
- (i) if any of the above planning conditions (a), (b), (c), (d), (e), (f) or (h) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (j) if the above planning condition (g) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

[Approval conditions (a) to (c) are the same as those under the permission for application No. A/YL-TT/400, while conditions (d) to (h) are updated and the reinstatement clause is delete to accord with the department's latest requirements.]

Advisory clauses

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

- 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 "OU(RU)" zone which is primarily intended for the preservation of the character of the rural area. 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.
- 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 received on 5.3.2020

Appendix Ia	Supplementary Information received on 6.3.2020
Appendix Ib	FI received on 19.3.2020
Appendix Ic	FI received on 27.3.2020
Appendix Id	FI received on 14.4.2020
Appendix Ie	FI received on 2.6.2020
Appendix II	Relevant extract of TPB PG-No. 38
Appendix III	Relevant extract of TPB PG-No. 34C
Appendix IV	Previous Applications covering the Site
Appendix V	Similar Applications within the same “OU(RU)” zone on the OZP
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Plan showing the Vehicular Access leading to the Site
Drawing A-2	Site Layout Plan
Drawing A-3	Tree Preservation Proposal
Drawing A-4	As-Built Drainage Plan
Drawing A-5	FSIs Proposal
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JUNE 2020**