

RNTPC Paper No. A/YL-TYST/924  
For Consideration by  
the Rural and New Town  
Planning Committee  
on 16.11.2018

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**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-TYST/924**

- Applicant** : Cosmos Gem Limited represented by Metro Planning and Development Company Limited
- Site** : Lots 1319, 1320 S.A, 1320 RP, 1321 S.A, 1321 S.B, 1322 (Part) and 1323 (Part) in D.D. 119, Tong Yan San Tsuen, Yuen Long, New Territories
- Site Area** : 5,640 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
- Zonings** : “Residential (Group C)” (“R(C)”) (about 98%)  
[restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m)]  
  
“Undetermined” (“U”) (about 2%)
- Application** : Proposed Temporary Plant Nursery and Shop and Services (Retail Shop for Plants) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary plant nursery and shop and services (retail shop for plants) for a period of 3 years (**Plan A-1**). The majority of the Site (about 98%) falls within an area zoned “R(C)” on the OZP with a minor portion (about 2%) (about 112m<sup>2</sup>) straddling the adjacent “U” zone. According to the Notes of the OZP for “R(C)” and “U” zones, ‘Shop and Services’ use is a Column 2 use in the “R(C)” zone and all uses or development except those specified in the Notes that requires permission from the Board. The Site is currently vacant and overgrown with weed and vegetation (**Plans A-2 and A-4a to A-4b**).
- 1.2 The Site was involved in 3 previous applications (No. A/YL-TYST/28, 736 and 821) for temporary open storage use (No. A/YL-TYST/28), for temporary hydroponics farm (No. A/YL-TYST/736) and for the same applied use (No. A/YL-TYST/821) (**Plan A-1**). The last application (No. A/YL-TYST/821) for the same applied use was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for 3 years on 13.1.2017 but

was subsequently revoked on 26.6.2017 due to non-compliance with approval condition regarding no site formation and construction works being allowed on the Site at any time within the breeding season of ardeids (i.e. from March to August inclusive) in order to protect the egretty nearby. Details of the previous applications are at paragraph 5 and **Appendix II**. Compared with the last application, the current application is submitted by the same applicant for the same applied use on a smaller site with different development parameters and site layout.

- 1.3 The Site is accessible from Kung Um Road via a local track which traverses the adjoining open storage site to its immediate north (i.e. Application No. A/YL-TYST/827) (**Drawing A-1** and **Plans A-2** and **A-3**). According to the applicant, majority of the Site will be unpaved for the proposed plant nursery and only part of the Site which will be occupied by four proposed structures will be hard paved (**Drawing A-2**). The applicant proposes additional ameliorative measures in accordance with the 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites', including the access area at the Site frontage and 5m strip of the area beyond the access gate will be hard paved; no medium and heavy goods vehicle and container trailer/tractor are permitted to enter the Site; no workshop use will be attached to the proposed development; and the operation time is restricted to the period from 9:00 a.m. to 5:00 p.m. 2.5m-high hoarding will be provided along the periphery of the Site. All existing trees will be preserved, and trees are proposed to be planted along the site periphery to enhance the visual quality of the proposed development. All the proposed drainage facilities will be provided and maintained at the applicant's own expense.
- 1.4 According to the applicant, in order to minimize disturbance to an existing egretty (breeding ground of ardeids) located at the southwestern corner of the Site covered by some bamboos and trees (**Plan A-2**), these existing bamboo clumps will be preserved and the proposed trees near the bamboo clumps will be set back. The applicant undertakes to schedule all the site formation and construction works (including fencing/hoarding, filling/excavation of land, installation of drainage facilities and erection of structures within the Site as well as planting of new trees along the site periphery) outside the breeding season of ardeids (i.e. from March to August inclusive). The applicant also acknowledges that all wild bird, including their eggs and nests, are protected under the Wild Animals Protection Ordinance (Cap 170). Plans showing the vehicular access leading to the Site, site layout, landscape and tree preservation proposal, drainage proposal, fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-5**.

1.5 The major development parameters of the previously approved application and the current application are compared as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/821 (a)	Current Application No. A/YL-TYST/924 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Plant Nursery and Shop and Services (Retail Shop for Plants) for a Period of 3 Years		-
Site Area	About 13,415 m <sup>2</sup>	About 5,640 m <sup>2</sup>	-7775 m <sup>2</sup> (-137.9%)
Total Floor Area (Non-domestic)	619 m <sup>2</sup>	485 m <sup>2</sup>	-134 m <sup>2</sup> (-27.6%)
No. and Height of Structures	3 <ul style="list-style-type: none"> <li>• for a greenhouse (5.5m, 1 storey)</li> <li>• for a site office (3m, 1 storey)</li> <li>• for a toilet (3m, 1 storey)</li> </ul>	4 <ul style="list-style-type: none"> <li>• for storage of farm tools (7m, 1 storey)</li> <li>• for storage of seeds and fertilizer (7m, 1 storey)</li> <li>• for a toilet (3m, 1 storey)</li> <li>• for a retail shop for plants (3.5m, 1 storey)</li> </ul>	+1
Loading/Unloading Spaces	1 (for light goods vehicle)		-
Operation Hours	7:00 a.m. to 7:00 p.m. daily	9:00 a.m. to 5:00 p.m. daily	Shorter operation hours

1.6 In support of the application, the applicant has submitted the following documents:

- (a) Application Form received on 28.9.2018 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Supplementary information received on 28.9.2018 clarifying the plan number of the Tong Yan San Tsuen OZP and providing the updated Executive Summary **(Appendix Ib)**
- (d) Further information received on 8.10.2018 providing a new fire service installations (FSIs) proposal **(Appendix Ic)**  
*[accepted and exempted from publication and recounting requirements]*
- (e) Further information received on 6.11.2018 providing responses to the Transport Department with shorter operation hours **(Appendix Id)**  
*[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

Section 3 of the Supplementary Planning Statement at **Appendix Ia** and further information at **Appendix Ic**. They can be summarized as follows:

- (a) The proposed development is in line with the planning intention of the “R(C)” zone which is intended primarily for low-rise, low density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.
- (b) The proposed development is a temporary development for a period of 3 years which would be an ideal use to utilize the vacant land and co-exist with the egretry in the close proximity. It would not jeopardize the long term planning intention of the “R(C)” zone.
- (c) The Site is subject to previous planning permissions No. A/YL-TYST/736 for hydroponics farm for a period of 3 year and No. A/YL-TYST/821 for temporary plant nursery and shop and services (retail shop for plants) for a period of 3 years. The proposed development is exactly the same to the previous planning permissions except smaller in size. As such, the approval of the previous planning applications shows that the actual impact of the proposed development would be minimal to the surrounding environment. In addition, similar ‘shop and services’ uses have been approved in the “U” and “R(C)” zones.
- (d) The proposed development is considered compatible with the surrounding environments which are mainly open storage yards, warehouses, vacant land and informal housing.
- (e) The approval of the proposed development would provide convenience to the villagers and nearby residents as there is no similar shop in the vicinity.
- (f) Insignificant traffic, environmental, noise and drainage impact would be generated from the proposed development. The existing bamboo clumps to the southwest of the Site will be preserved and the proposed trees near the bamboo clumps will be set back. The applicant undertakes to schedule all the site formation and construction works (including fencing/hoarding, filling/excavation of land, installation of drainage facilities and erection of structures within the Site as well as planting of new trees along the site periphery) outside the breeding season of ardeids. The applicant also acknowledges that all wild bird, including their eggs and nests, are protected under the Wild Animals Protection Ordinance (Cap 170). All the proposed drainage facilities will be proposed and maintained by the applicant’s own expense. Also, surface U-channel will be cleaned at regular interval to ensure unhindered flow of surface runoff along the 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 the notice of application on the Site and sending the notice to the Shap Pat Heung Rural Committee and the Ping Shan Rural Committee by registered post. Detailed information would be deposited at the meeting

for Members' inspection.

#### **4. Background**

The Site is not subject to planning enforcement action.

#### **5. Previous Applications**

- 5.1 The Site was involved in 3 previous applications (No. A/YL-TYST/28, 736 and 821), of which a previous application for open storage use (No. A/YL-TYST/28) covering part of the Site and the other 2 applications (No. A/YL-TYST/736 and 821) for proposed temporary hydroponics farm and the applied use respectively covering a larger site. Details of the applications are summarized at **Appendix II** and the boundaries of the sites are shown on **Plan A-1**.
- 5.2 Application No. A/YL-TYST/28 for proposed temporary open storage of construction materials for a period of 12 months covering a small southern portion of the Site zoned "R(C)" was rejected by the Board on review on 24.7.1998 on the grounds that the proposed development was incompatible with the surrounding areas; the proposed development would encircle a number of existing domestic structures which would be adversely affected by the noise generated by the proposed development and access to these structures would also be denied by the development; no information to demonstrate that the vehicular access arrangement is satisfactory; insufficient information to demonstrate that the development would not generate adverse environmental/drainage impacts; and approval of the application would set an undesirable precedent for other similar applications.
- 5.3 Application No. A/YL-TYST/736 for proposed temporary hydroponics farm for a period of 3 years submitted by the same applicant was approved with conditions by the Committee on 7.8.2015 on consideration that the proposed development was not in conflict with the planning intention of "R(C)" and "U" zones; it was not incompatible with the surrounding areas; and relevant government departments have no adverse comment on the application. However, the planning approval was later revoked on 7.5.2016 due to non-compliance with the approval conditions on the submission and implementation of drainage, tree preservation and landscape proposals, as well as implementation of fire service installations proposals.
- 5.4 The last application (No. A/YL-TYST/821) for the same applied use for a period of 3 years submitted by the same applicant was approved with conditions by the Committee on 13.1.2017 on similar considerations as those for application No. A/YL-TYST/736, as well as sympathetic consideration on the application as the Site was largely vacant before the application is made though the previous planning approval was revoked due to non-compliance with approval conditions. However, the planning permission was subsequently revoked on 26.6.2017 due to non-compliance with approval condition regarding no site formation and construction works being allowed on the Site at any time within the breeding season of ardeids.
- 5.5 Compared with the last application (No. A/YL-TYST/821), the current application

is submitted by the same applicant for the same applied use on a smaller site with different development parameters and site layout.

## 6. Similar Applications

There are 11 similar applications (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 873, 894 and 914) in the same “R(C)” zone for various shop and services use (eating place, grocery store or real estate agency), of which 10 applications (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 873 and 894) were approved with conditions on a temporary basis by the Committee from 2012 to 2018. The remaining application (No. A/YL-TYST/914) was rejected by the Committee on 21.9.2018 on the grounds that the applicant fails to demonstrate that the proposed development would not cause adverse drainage impacts on the surrounding areas; and approval of application with repeated non-compliances would set an undesirable precedent. Details of the applications are summarized at **Appendix III** and the locations of the sites are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) accessible via a local track leading from Kung Um Road (**Plan A-2**); and
- (b) currently vacant and overgrown with weed and vegetation (**Plans A-2, A-4a and A-4b**).

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural in nature mixed with open storage/storage yards, scattered residential structures, fallow agricultural land and some unused/vacant land;
- (b) according to information provided by DAFC, an active egretty (i.e. breeding ground of ardeids) is located to the immediate southwest of the Site (**Plan A-2**);
- (c) there are scattered residential structures in the vicinity of the Site in the subject “R(C)” and “U” zones (with the nearest one to its immediate south);
- (d) to its immediate west in the “U” zone is a knoll with a number of graves;
- (e) to its immediate south is vacant land; and
- (f) except for the 2 open storage yards to its north and northwest in the “U” zone which are operated with planning permission under Applications No. A/YL-TYST/827 and 896, the other open storage/ storage yards, are suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

## 8. **Planning Intention**

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

## 9. **Comments from Relevant Government Departments**

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

### **Land Administration**

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

- (a) The Site consists of Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without prior approval of the Government.
- (b) Lot 1323 in D.D 119 is covered by Short Term Waiver (STW) No. 4196 to permit structures erected thereon for the purpose of “Temporary Open Storage of Construction Machinery and Materials Recycling Materials and Used Electrical Appliances with Ancillary Workshop Activities”.
- (c) The Site is accessible from Kung Um Road via government land (GL), private land and STT 2863 immediately adjoining Lot 1323 in D.D. 119. Her office does not provide maintenance work for GL/STT involved and does not guarantee any right-of-way over the GL/STT to the Site.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should planning application be given to the application, the STW holder(s) will need to apply to her office for modification of the STW conditions where appropriate and the lot owner(s) of the lot(s) without STW will need to apply to her office to permit the structures to be erected or regularize any irregularities on site. Besides, given the proposed use is temporary in nature, only application for regularization 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(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 her department.

## **Traffic**

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

- (a) He has no comment on the further information received on 6.11.2018 (**Appendix Id**).
- (b) The working hours should be restricted to the period from 9:00 a.m. to 5:00 p.m. daily.
- (c) No medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (d) The land status of the access road/path/track leading to the Site at Kung Um Road shall be checked with the lands authority.
- (e) The management and maintenance responsibilities of the access road/path/track shall be clarified with the relevant management and maintenance authorities accordingly.
- (f) 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.

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

- (a) The access arrangement should be commented by the Transport Department.
- (b) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) His Department shall not be responsible for the maintenance of any access connecting the Site and Kung Um Road.

## **Nature Conservation and Agriculture**

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

- (a) It is noted that the Site is immediately adjacent to an active egretty (i.e. breeding ground of ardeids). According to the Supplementary Planning Statement (**Appendix Ia**) section 2.1.7, “the applicant is willing to preserve the existing bamboo clumps near the Site at the southwest (**Plan A-2**). The proposed tree near the bamboo clumps will be set back so as not to generate direct conflict with the preserved bamboos. The applicant is also willing to schedule all site formation and construction works



(including fencing/hoarding, filling/excavation of land, installation of drainage facilities and erection of structures within the Site as well as planting of new trees along the site periphery) outside the breeding season of ardeids (i.e. from March to August inclusive)".

- (b) Provided that the applicant would follow his commitments as mentioned in the Supplementary Planning Statement (**Appendix Ia**), he has no adverse comments on the application from nature conservation point of view.
- (c) Nonetheless, should the application be approved, approval condition regarding preservation of existing bamboos and no site formation and construction works during breeding season of ardeids, which are same as the conditions in planning application No. A/YL-TYST/821, are recommended. The applicant is reminded that all wild birds, including their nests and eggs, are protected under the Wild Animals Protection Ordinance (Cap. 170). Furthermore, the applicant should be reminded to minimize any artificial lighting at the Site during night time and do not direct any lighting at the bamboo clumps of the egret especially the breeding season of the ardeids.
- (d) As the Site falls within "R(C)" and "U", he has no comments on the application from agricultural point of view.

### **Environment**

#### 9.1.5 Comment of the Director of Environmental Protection (DEP):

The latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by the Environmental Protection Department should be observed by the applicant.

### **Landscape**

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

- (a) The Site, located on the west of Pak Sha Tsuen and south of Shan Ha Tsuen, falls within an area zoned "R(C)" and "U" on the approved Tong Yan San Tsuen OZP No. A/YL-TYST/12. The Site was the subject of two previous applications (No. A/YL-TYST/736 and 821) for the similar uses on which she had no objection from the landscape planning perspective, while the applications were revoked subsequently due to non-compliance with approval conditions.
- (b) With reference to the information submitted, the Site is surrounded by open storage sites, warehouses and temporary structures. Some existing trees identified within the Site are proposed to be preserved, and significant adverse landscape impact is not anticipated. Therefore, she has no objection to the application

from the landscape planning perspective.

- (c) Since there is no major public frontage along the boundary, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent. Should the Board approve the application, the applicant should be advised to maintain all the existing trees within the Site at all times during the planning approval.
- (d) The applicant is reminded to approach relevant authority/government department(s) direct to obtain the necessary approval on tree works such as felling, transplanting or pruning under lease.
- (e) The applicant is reminded of the importance of undertaking proper tree care for the existing trees. Useful information published by the Greening, Landscape & Tree Management Section, Development Bureau on general tree maintenance and tree risk management is available for reference in the following links:
  - 護養樹木的簡易圖解:  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/Pictorial\\_Guide\\_for\\_Tree\\_Maintenance.pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf)
  - 樹木管理手冊:  
[https://www.greening.gov.hk/tc/tree\\_care/Handbook\\_on\\_Tree\\_Management.html](https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html)
  - 樹木風險評估及管理安排:  
[https://www.greening.gov.hk/tc/tree\\_care/tra\\_arrangements.html](https://www.greening.gov.hk/tc/tree_care/tra_arrangements.html)
  - 護養樹木 保障安全:  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/Chinese\\_Leaflet\\_Big\\_font\\_size\\_v1\\_2012\\_03\\_29.pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Chinese_Leaflet_Big_font_size_v1_2012_03_29.pdf)
  - 減低樹木風險的樹木護養簡易圖解 :  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk\(eng\).pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk(eng).pdf)

### **Drainage**

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) His detailed comments on the submitted drainage proposal (**Drawing A-4**) are in **Appendix IV**.

- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission and implementation of the revised drainage proposal and the maintenance of the implemented drainage facilities to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

### **Fire Safety**

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the structures, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the revised FSIs to his department for approval. In addition, the applicant should also be advised on the followings points:
  - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
  - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) He has the following comments on the submitted FSIs proposal (**Drawing A-5**):
  - (i) FSIs shall be provided in accordance with paragraph 4.14 (Commercial buildings - low rise) of the current Code of Practice for Minimum Fire Service Installations and Equipment.
  - (ii) FSIs provisions should be provided in the form of FS notes and clearly indicated on the layout plans.
- (d) However, the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

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

- (a) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with

BO.

- (b) 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 BO.
- (c) 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.
- (d) 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.

### **Others**

9.1.10 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. The parties concerned should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the "Code of Practice on Working near Electricity Supply Lines" established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

### **District Officer's Comments**

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

The local consultation was completed and his office has not received any comment from the village representatives in the vicinity regarding the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);  
and
- (b) Commissioner of Police (C of P).

## **10. Public Comments Received During Statutory Publication Period**

On 5.10.2018, the application was published for public inspection. During the three weeks of the statutory public inspection period, which ended on 26.10.2018, 2 public comments were received from an land owner of a surrounding lot (**Appendix V-1**) and a general public (**Appendix V-2**). The land owner of a surrounding lot objects to the application on the grounds that there will be no right of way to his land. The general public raised concern over the history of non-compliance with approval conditions. She also queried not zoning the breeding ground as “Conservation Area”.

## **11. Planning Considerations and Assessments**

11.1 The subject application is for proposed temporary plant nursery and shop and services for a period of 3 years. The majority of the Site (about 98%) falls within an area zoned “R(C)” on the OZP with a minor portion (about 2%) straddling the adjacent “U” zone. Although the proposed temporary plant nursery and shop and services (retail shop for plants) is not in line with the planning intention of the “R(C)” zone, which is primarily for low-rise, low-density residential developments, approval of the application for a period of 3 years would not frustrate the long-term planning intention of the “R(C)” zone.

11.2 The surrounding areas of the Site are rural in nature intermixed with open storage/storage yards, scattered residential structures, fallow agricultural land and some unused/vacant land. The applied use is not incompatible with the surrounding land uses. Although an active egret is located immediately adjacent to the Site, the applicant has proposed measures, including restricting the operation hours, types of vehicles allowed to be used for site operation, preserving the existing bamboo clumps, setting back of the proposed trees near the bamboo clumps and scheduling the site formation and construction works outside the breeding season of ardeids. DAFC has no adverse comment on the application and the aforementioned measures.

11.3 Relevant government departments consulted, including DEP, C for T, CTP/UD&L and CE/MN, DSD, have no objection to or adverse comment on the application. Significant adverse environmental, traffic, landscape and drainage impacts on the surrounding area are not envisaged. Relevant approval conditions are also recommended in paragraph 12.2 below to minimize any potential nuisance on the surrounding areas or to address the technical requirements of the concerned departments. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on-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 latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact.

11.4 The Committee had approved two previous applications (No. A/YL-TYST/736

and 821) for proposed temporary hydroponics farm and the same applied use at the Site in 2015 and 2017 respectively. Also, 10 similar applications (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 873 and 894) in the same “R(C)” zone for various shop and services use were approved by the Committee from 2012 to 2018 (**Plan A-1**). Approval of the subject application is in line with the Committee’s previous decision.

- 11.5 However, the 2 previous approvals No. A/YL-TYST/736 and 821 submitted by the same applicant were revoked due to non-compliance with approval condition(s) in May 2016 and June 2017 respectively. It is noted that the applicant has not pursued the planning approval No. A/YL-TYST/736 and the Site is currently vacant. For the current application, the applicant has submitted landscape and tree preservation proposal, drainage proposal and FSIs proposal (**Drawings A-3 to A-5**). In view of the above, sympathetic consideration may be given to this application. Nevertheless, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. The applicant will be advised that should he fail to comply with any of the approval conditions resulting in revocation of the planning permission, sympathetic consideration would not be given to any further application.
- 11.6 There are two public comments (**Appendices V-1 and V-2**) received on the application during the statutory publication period as summarized in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10, the Planning Department considered that the proposed temporary plant nursery and shop and services (retail shop for plants) could be tolerated for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 16.11.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no operation between 5:00 p.m. to 9:00 a.m., as proposed by the applicant, is allowed on the Site during the approval period;
- (b) no medium and heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are 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) no workshop activities, as proposed by the applicant, shall be carried out on the Site at any time during the planning approval period;
- (d) the existing bamboos clumps at the southwestern corner of the Site shall be

preserved at all times during the planning approval period to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board;

- (e) no site formation and construction works (including fencing/hoarding, filling/excavation of land, installation of drainage facilities and erection of structures within the Site as well as planting of new trees along the site periphery), are allowed on the Site at any time within the breeding season of ardeids from March to August inclusive in order to protect the egret nearby to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board;
- (f) no vehicle is allowed to queue back to or reverse onto/from the public road at any time during the planning approval period;
- (g) the provision of boundary fence on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 16.2.2019;
- (h) the submission of a revised drainage proposal within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.2.2019;
- (i) in relation to (h) above, the implementation of the revised drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.5.2019;
- (j) in relation to (i) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (k) the existing trees and landscape planting on the Site shall be maintained at all times during the planning approval period;
- (l) the submission of a revised fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.2.2019;
- (m) in relation to (l) above, the implementation of fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 16.5.2019;
- (n) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (j) or (k) 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;
- (o) if any of the above planning conditions (g), (h), (i), (l) or (m) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and

### Advisory Clauses

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

12.3 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 "R(C)" zone which is primarily for low-rise, low-density residential developments. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis.

### **13. Decision Sought**

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

13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

### **14. Attachments**

<b>Appendix I</b>	Application Form received on 28.9.2018
<b>Appendix Ia</b>	Supplementary Planning Statement
<b>Appendix Ib</b>	Supplementary information received on 28.9.2018 clarifying the plan number of the Tong Yan San Tsuen OZP and providing the updated Executive Summary
<b>Appendix Ic</b>	Further information received on 8.10.2018 providing a new FSIs proposal
<b>Appendix Id</b>	Further information received on 6.11.2018 providing responses to the Transport Department with shorter operation hours
<b>Appendix II</b>	Previous applications covering the application site
<b>Appendix III</b>	Similar applications within the subject "R(C)" and/or "U" zone on the OZP
<b>Appendix IV</b>	Detailed Comments of CE/MN, DSD
<b>Appendices V-1 to V-2</b>	Public comments received during the statutory publication period



<b>Appendix VI</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Plan showing the vehicular access leading to the Site
<b>Drawing A-2</b>	Site Layout Plan
<b>Drawing A-3</b>	Proposed Landscape and Tree Preservation Plan
<b>Drawing A-4</b>	Proposed Drainage Plan
<b>Drawing A-5</b>	Proposed FSIs Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2018**