

**REVIEW OF APPLICATION NO. A/YL-KTN/624**  
**UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE**

**Proposed Temporary Shop and Services (Plant Showroom)**  
**for a Period of 3 Years in “Agriculture” Zone,**  
**Lots 1204 and 1208 in D.D. 107, Kam Tin, Yuen Long**

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**1. Background**

- 1.1 On 20.8.2018, the applicant, Mr. TANG Wai-IP, sought planning permission to use the application site (the Site) for proposed temporary shop and services (plant showroom) for a period of 3 years. The Site is zoned “Agriculture” (“AGR”) on the approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9 (**Plan R-1**). The Site is currently vacant and covered by sands and grass (**Plans R-2, R-4a and 4b**).
- 1.2 On 19.10.2018, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reasons were:
  - (a) the proposed development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from the planning intention, even on temporary basis; and
  - (b) the applicant fails to demonstrate that the proposed development will not generate environmental nuisance on the surrounding areas.
- 1.3 For Members’ reference, the following documents are attached:
  - (a) RNTPC Paper No. A/YL-KTN/624 (**Annex A**)
  - (b) Extract of minutes of the RNTPC meeting held on 19.10.2018 (**Annex B**)
  - (c) Secretary of the Board’s letter dated 2.11.2018 (**Annex C**)
- 1.4 The Site is subject to on-going planning enforcement action (No. E/YL-KTN/467) against unauthorized development (UD) involving filling of land. Reinstatement Notice was issued on 31.12.2018 requiring reinstatement of the concerned land. If the notice is not complied with, prosecution action may be taken.

## 2. **Application for Review**

On 21.11.2018, the applicant applied, under section 17(1) of the Town Planning Ordinance, for a review of the RNTPC's decision to reject the application (**Annex D**). The applicant has not submitted any written representation or technical document in support of the review.

## 3. **The Section 16 Application**

*The Site and its Surrounding Areas* (**Plan R-2**, aerial photo on **Plan R-3** and site photos on **Plans R-4a and 4b**)

3.1 The situations of the Site and its surrounding areas at the time of the consideration of the s.16 application by the RNTPC were described in paragraphs 7.1 and 7.2 of **Annex A**. There has been no material change of the situations since then (**Plans R-2, R-4a and 4b**).

3.2 The Site is:

- (a) vacant and covered by sands and grass; and
- (b) accessible from Castle Peak Road – Tam Mi via a local track.

3.3 The surrounding areas are predominately rural in character predominated by residential dwellings/structures, open storage/ storage yards and vacant/unused land:

- (a) to its immediate north is a piece of unused land. Further north are some residential dwellings/structures, open storage yard and unused land within the “Industrial (Group D)” zone;
- (b) to its east and southeast are residential dwellings/structures, open storage/storage yards and unused land; and
- (c) to its south and west are residential dwellings/structures (the nearest about 5m), fallow agricultural land and vacant/unused land. To the further south are some active agricultural uses (**Plan R-3**).

### **Planning Intention**

3.4 There has been no change of planning intention of the “AGR” zone, which is mentioned in paragraph 8 of **Annex A**.

3.5 The planning intention of the “AGR” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

### Previous Application

- 3.6 There was no previous application at the Site at the time of consideration of the s.16 application as mentioned in paragraph 5 of **Annex A**. The position remains unchanged.

### Similar Applications

- 3.7 There were 6 similar applications (No. A/YL-KTN/413, 446, 447, 448, 540 and 541) for temporary shop and services (plant showroom) for a period of 3 years within the same “AGR” zone at the time of the consideration of the s.16 application as mentioned in paragraph 6 at **Annex A**. Detailed of the applications are summarized at Appendix II of **Annex A** and their locations are shown on **Plan R-1**.
- 3.8 Application Nos. A/YL-KTN/413 and 540 covering the same site were approved with conditions by the RNTPC on 6.9.2013 and 11.11.2016 respectively mainly for the reasons that the developments were not incompatible with the surrounding land uses; temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; relevant departments including Director of Agriculture, Fisheries and Conservation (DAFC), except Director of Environmental Protection (DEP), had no adverse comment and the concern of DEP could be addressed by approval conditions (for Application No. A/YL-KTN/413); and relevant departments had no adverse comment on the application (for Application No. A/YL-KTN/540).
- 3.9 Application Nos. A/YL-KTN/446, 447, 448 and 541 involve 4 different sites were approved with conditions by the RNTPC on 22.8.2014 (for Applications No. A/YL-KTN/446 and 447), 26.9.2014 and 12.5.2017 respectively mainly for the reasons that temporary approval would not jeopardize the long-term planning intention of the “AGR” zone; the proposed developments were not incompatible with the surrounding areas; relevant departments including DAFC, except DEP, had no adverse comment and the concern of EPD could be addressed by approval conditions (for Application Nos. 446, 447 and 448) and relevant departments had no adverse comment on the application (for Application No. A/YL-KTN/541). Planning permission for Applications No. A/YL-KTN/446 and 447 were revoked on 22.11.2015 and that for Application No. A/YL-KTN/448 was revoked on 26.12.2015 due to non-compliance with approval conditions in respect of provision of fencing and submission/implementation of landscape, drainage and fire services installations proposals.
- 3.10 Since the consideration of the application by the RNTPC on 19.10.2018, an application (No. A/YL-KTN/629) for proposed temporary shop and services (plant showroom) within the same “AGR” zone (**Plan R-1**) was rejected by the RNTPC on 2.11.2018 on the grounds that the proposed development was no in line with the planning intention of the “AGR” zone; there were adverse departmental comments from DAFC, DEP and CTP/UD&L, PlanD; and the applicant failed to demonstrate that the proposed development would not generate environmental nuisance on the surrounding area.

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

- 4.1 Comments on the s.16 application made by relevant Government departments are stated in paragraphs 9.1 and 9.2 of **Annex A**.
- 4.2 For the review application, the relevant Government departments have been further consulted and the comments are summarized as follows:

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

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

He has not received any comment from the locals upon close of consultation and he has no particular comment on the review application.

- 4.3 The following Government departments have no further comment on the review application and maintain their previous views on the s.16 application as below:

##### **Land Administration**

- 4.3.1 The District Lands Officer, Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises 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) The Site is accessible from Castle Peak Road – Tam Mi via Government Land (GL) and private land. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (d) Should the application be approved, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. 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 LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

## **Traffic**

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

- (a) He has no comment on the application from traffic engineering point of view.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department. The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

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

## **Environment**

### 4.3.4 Comments of the Director of Environmental Protection (DEP) :

- (a) Two substantiated environmental complaints on waste aspect in 2017 and 2018 were received.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” (the COP), he does not support the application as there are sensitive receivers nearby, i.e. residential dwellings (the nearest at its immediate south within 5m) (**Plan R-2**) and the proposal will generate traffic of heavy vehicles within 50m from residential dwellings, environmental nuisance is expected.
- (c) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest “COP” issued by DEP.

### **Landscape**

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

- (a) She has some reservations to the application from the landscape planning point of view.
- (b) The surrounding area is rural fringe in landscape character occupied with some temporary structures and scattered tree groups. The proposed use is not entirely incompatible with the landscape setting in proximity.
- (c) According to the site visit in September 2018, there is no significant vegetation observed within the site boundary. It is anticipated that landscape impact from the proposed development would be insubstantial. Although no information on the ground surface treatment within the Site is shown, it is anticipated that soil compaction would be incurred as large portion of the Site would be occupied by the proposed “plant showroom”, “parking area” and “drop-off area”. Compacted soil would inhibit vegetation establishment in future, and the proposed use deviate from the planning intention for "AGR" zone to retain and safeguard good quality agricultural land / farm/ fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purpose.
- (d) Should the application be approved, approval conditions on submission and implementation of landscape proposal to the satisfaction of the Director of Planning or of the Board are recommended.

### **Agriculture and Nature Conservation**

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

- (a) The application lots were involved in a case of suspected unauthorised land filling. A mixture of sand, rocks, rubbish and construction wastes were found on the Site. However, the agricultural activities in the vicinity are active and agricultural infrastructures such as footpath and water source are available. As the Site possesses a potential for agricultural rehabilitation, he does not support the application from agricultural point of view.
- (b) A watercourse is found nearby the proposed access of the Site (**Plan R-2**). While it may have been affected by land filling/alterations previously, further culverting, filling, alterations and pollution to abutting watercourses should be avoided as far as possible. In such connection, the proposed vehicular access to the east of the Site crossing over the abutting

watercourse (which culverting/ alterations of the watercourses may be necessary) is not favored from nature conservation point of view.

### **Drainage**

#### 4.3.7 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 public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.
- (c) Detailed comments on the drainage proposal are at Appendix III of **Annex A**.

### **Building Matters**

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

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (b) 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.
- (c) 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 the 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 the BO.
- (d) 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.

- (e) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

### **Fire Safety**

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

- (a) He has no in-principle objection to the application subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSI to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Electricity**

#### 4.3.10 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) 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. They 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.

- 4.4 The following Government departments have no further comment on the review application and maintain their previous views of having no comment on the s.16 application below:



- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department; and
- (c) Commissioner of Police.

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

- 5.1 On 7.12.2018, the review application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 28.12.2018, three comments from World Wide Fund for Nature Hong Kong, The Hong Kong Bird Watching Society and an individual objecting to the application were received (**Annexes E-1 to E-3**). They object to the application mainly on the grounds that the proposed use is not in line with the planning intention of the “AGR” zone; the Site involved an enforcement case of unauthorized development; approval of the application will set an undesirable precedent for similar applications; two substantiated complaints on waste were received; and there are adverse comments from government departments.
- 5.2 During the s.16 application stage, five public comments from The Hong Kong Bird Watching Society, World Wide Fund for Nature Hong Kong, Kadoorie Farm & Botanic Garden Corporation, Designing Hong Kong and an individual were received (Appendices IV-1 to IV-5 of **Annex A**), objecting the application on similar grounds as stated in paragraph 5.1 above.

## **6. Planning Considerations and Assessments**

- 6.1 The application is for a review of RNTPC’s decision on 19.10.2018 to reject the application for proposed temporary shop and services (plant showroom) for a period of three years. The rejection reasons were that the proposed development is not in line with the planning intention of the “AGR” zone and no strong justification in the submission for a departure from the planning intention, even on temporary basis; and the applicant fails to demonstrate that the proposed development would not generate environmental nuisance on the surrounding areas. The applicant has not submitted any written representation to support the review application. As there has been no material change in the planning circumstances of the case since the consideration of the application by RNTPC on 19.10.2018, the planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid, and are recapitulated and slightly updated in the following paragraphs.
- 6.2 The Site is located in “AGR” zone which is intended to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed shop and services (plant showroom) is not entirely in line with the planning intention of the “AGR” zone. DAFC does not support the application from agricultural point of view as agricultural activities in the vicinity are active, agricultural infrastructures are available and the Site possess potential for agricultural rehabilitation. CTP/UD&L of PlanD also has some reservation on the application as the proposed structure, parking and loading/unloading areas will occupy large portion of the Site and soil compaction is anticipated, which would inhibit vegetation establishment in

future, and deviate from the planning intention for “AGR” zone. No strong planning justification has been given in the submission to justify for a departure from the planning intention, even on a temporary basis.

- 6.3 The surrounding area of the Site is predominated by residential dwellings/structures, fallow/active agriculture land with scatted open storage/storage yards and vacant/unused land. DEP does not support the application as there are sensitive receivers nearby, i.e. residential dwellings (the nearest at its immediate south within 5m) (**Plan R-2**) and the proposal will generate traffic of heavy vehicle within 50m from residential dwellings, hence environmental nuisance is expected. In addition, DAFC advised that the proposed vehicular access to the east of the Site crossing over the abutting watercourse (**Plan R-2**) is not favored from nature conservation point of view.
- 6.4 Although there are six similar applications (No. A/YL-KTN/413, 446, 447, 448, 540 and 541) for the same use approved with conditions by the Committee from 2013 to 2017 (paragraphs 3.7 to 3.9 above and **Plan R-1** refer), these applications are subject to different circumstances than the current application as no adverse comments were raised by DAFC and CTP/UD&L of PlanD on these similar applications, and DAFC advised that the concerned sites were generally located in areas with low potential for agricultural rehabilitation. On the other hand, after RNTPC’s rejection of this application, an additional similar application (No. A/YL-KTN/629) was rejected by the RNTPC on 2.11.2018 for reasons stated in paragraph 3.10 above, including adverse comments from DAFC and CTP/UD&L, PlanD.
- 6.5 Three public comments objecting to the application were received during the statutory publication period at the s.17 review stage of the application as stated in paragraph 5.1 above. In this regard, the planning assessments and considerations above are relevant.

## 7. **Planning Department’s Views**

- 7.1 Based on the assessments made in paragraph 6, and having taken into account the public comments mentioned in paragraph 5, and given that there is no major change in the planning circumstances since the consideration of the subject application by the RNTPC on 19.10.2018, the Planning Department maintains its previous view of not supporting the review application for the following reasons:
  - (a) the proposed development is not in line with the planning intention of the “AGR” zone which is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong justification in the submission for a departure from the planning intention, even on a temporary basis; and
  - (b) the applicant fails to demonstrate that the proposed development will not generate environmental nuisance on the surrounding areas.

- 7.2 Alternatively, should the Committee decide to approve the application, the permission shall be valid on a temporary basis for a period of 3 years until 15.2.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no heavy goods vehicles exceeding 24 tonnes, including container tractors/trailers as defined in the Road Traffic Ordinance, as proposed by the applicant, are 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 submission of landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 15.8.2019;
- (e) in relation to (d) above, the implementation of landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 15.11.2019;
- (f) the submission of 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 15.8.2019;
- (g) in relation to (f) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.11.2019;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission 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 15.8.2019;
- (j) in relation to (i) above, the provision of fire service installations within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.11.2019;
- (k) if any of the above planning conditions (a), (b), (c) 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;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) 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; and

- (m) upon expiry of the planning permission, the reinstatement of the Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

#### Advisory Clauses

The recommended advisory clauses are attached at **Annex F**.

### **8. Decision Sought**

- 8.1 The Board is invited to consider the application for review of the RNTPC's decision and decide whether to accede to the application.
- 8.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 8.3 Alternatively, should the Board decide to approve the review 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.

### **9. Attachments**

<b>Annex A</b>	RNTPC Paper No. A/YL-KTN/624
<b>Annex B</b>	Extract of minutes of the RNTPC meeting held on 19.10.2018
<b>Annex C</b>	Secretary of the Board's letter dated 2.11.2018
<b>Annex D</b>	Letter dated 21.11.2018 from the applicant applying for review of the application
<b>Annexes E-1 to E-3</b>	Public comments on the review application
<b>Annex F</b>	Advisory Clauses
<b>Plan R-1</b>	Location Plan with Similar Applications
<b>Plan R-2</b>	Site Plan
<b>Plan R-3</b>	Aerial Photo
<b>Plans R-4a and R4-b</b>	Site Photos

**PLANNING DEPARTMENT  
FEBRUARY 2019**