

RNTPC Paper No. A/YL-KTN/760
For Consideration by
the Rural and New Town
Planning Committee
on 14.5.2021

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/760

- Applicant** : Wing Ho Yuen Landscaping Company Limited represented by R-riches Property Consultants Limited
- Site** : Lots 84 (Part), 85 S.A RP (Part), 85 S.C (Part), 86 RP (Part) and 113 (Part) in D.D. 110, Kam Tin, Yuen Long, N.T.
- Site Area** : About 3,565m²
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Office for Permitted Agricultural Use for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary office (about 197m² / 5.5% of the Site) for permitted agricultural use for a period of 3 years and filling of land (about 851m² / 24% of the Site). The Site is zoned “AGR” on the Kam Tin North OZP and ‘Office’ use is neither a Column 1 nor Column 2 use in the “AGR” zone. According to the covering Notes of the OZP, temporary use not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board), notwithstanding that the use or development is not provided for in terms of the OZP. Filling of land in “AGR” zone also requires planning permission from the Board. The Site is currently used as a plant nursery with an office (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is the subject of a previous application No. A/YL-KTN/552 submitted by a different applicant for temporary open storage of waste metals, construction materials and vehicle maintenance workshop which was rejected by the Rural and New Town Planning Committee (the Committee) in 2017.

1.3 According to the applicant, the applied use involves 6 one-storey structures:

Structure	Use	Floor Area (m ²)	Height (m) (all 1-storey)
B1	Site office, meeting room and covered car parking spaces	197	4.5
B2	Portable toilet	9	3
B3	Greenhouse	54	3
B4	Greenhouse	54	3
B5	Storage of fertilizer and farm tools	15	2.8
B6	Guardroom	3	2.8
Total:		332	N/A

About 2,714m² (76%) of the Site will be soil ground used for farmland, plant nursery (pot plants/trees), greenhouses, etc. About 851m² (about 24% of the Site) is filled by concrete by a maximum of 0.2m (from about 7.1mPD to 7.3mPD). 4 private car parking spaces and a loading/unloading space for light goods vehicle are provided at the Site. The operation hours are 9:00a.m. to 6:00p.m. daily including public holidays. The Site is accessible from Kong Tai Road via a local access. The site layout plan and land filling ratio plan submitted by the applicant are at **Drawings A-1 to A-2**.

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

- (a) Application form received on 15.3.2021 **(Appendix I)**
- (b) Further Information (FI) received on 7.5.2021 and 10.5.2021 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the planning statement in **Appendix I and Ia**. They can be summarized as follows:

- (a) The applicant is a local landscaping company providing landscaping, horticultural and arboricultural services. The Site is currently used as a plant nursery. The applicant would like to use portion of the Site as back office to support the daily operation of the development, while the remaining area is for agricultural use, i.e. plant nursery, greenhouses, etc. Major part of the Site is reserved for agricultural use and the hard-paved area is for site formation to support the structure, parking/loading/unloading spaces and circulation spaces (**Drawing A-1**). Concrete site formation is required to provide stronger ground reinforcement to stabilise the existing soil ground and prevent erosion from

surface runoff. Considering the Site's operation, the paved/filled area and number of structures have been kept to a minimum. The applicant will preserve all existing trees within the Site as far as possible and reinstate the Site for agricultural purpose after the planning approval period.

- (b) No vehicle exceeding 5.5 tonnes will be allowed to enter/exit the Site. The applicant will strictly follow the 'Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites' to minimize all possible environmental impacts on the nearby sensitive receivers. No storage of dangerous goods will be carried out at the Site. The applicant will submit and implement proposal for diversion of water mains and bear the cost of the diversion works. Structure will not be erected over the waterworks reserve and such area will not be used for storage purposes. The development will not create significant adverse traffic, environmental, landscape and drainage impacts to the surrounding areas.

3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not the "current land owner" of the Site but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting notice at the Site and sending notification letter to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection.

4. Background

The Site is currently subject to an on-going planning enforcement action (No. E/YL-KTN/546) (**Plan A-2**) against an unauthorised development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued on 16.9.2020 requiring discontinuation of the UD. Compliance Notice was issued on 11.3.2021.

5. Previous Application

The Site is subject to a previous application No. A/YL-KTN/552 for temporary open storage of waste metals, construction materials and vehicle maintenance workshop for a period of 3 years, which was rejected by the Committee on 7.4.2017 on the grounds that the development was not in line with the planning intention of the "AGR" zone; the development did not comply with the Town Planning Board Guidelines for "Application for Open Storage and Port Back-up Uses" in that there was no previous approval granted at the site and there were adverse departmental comments and local objections; the applicant failed to demonstrate that the proposed development would not cause adverse environmental, landscape and drainage impacts on the surrounding areas; and approval of the application would set an undesirable precedent for similar applications. Details of

the previous application are summarized in **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Applications

- 6.1 There is no similar application for office within the same “AGR” zone on the OZP.
- 6.2 There are eight applications involving filling of land within the same “AGR” zone. Four are for temporary hobby farm and/ or caravan holiday camp (Applications No. A/YL-KTN/691, 693, 726 and 745), which involved filling of 10% to 29.8% of the site area and with a depth of 0.2 to 0.5m. The remaining four are for temporary animal boarding establishment (Applications No. A/YL-KTN/723, 716, 752 and 756), which involved filling of the entire site (526.1m² to 734.7m²) by about 0.5m or about 38% of the Site by 0.2m. These applications were approved with conditions by the Committee between 2020 and April 2021 mainly for the reasons that temporary approval would not frustrate the long-term planning intention of the “AGR” zone; the developments were not incompatible with the surrounding land uses; and/ or the relevant government departments generally had no adverse comments on the developments.

7. The Sites and Their Surrounding Areas (Plans A-1 to A-4b)

- 7.1 The Site is:
 - (a) currently used as a plant nursery with an office;
 - (b) fenced and partly hard-paved; and
 - (c) accessible to Kong Tai Road via a local track.
- 7.2 The surrounding area is rural in character and intermixed with open storage/storage yards, residential structures/dwellings and vacant/unused land:
 - (a) to the immediate west are open storage/storage yards and a local track. Further west across a nullah are residential structures/dwellings and vacant/unused land;
 - (b) to the south are parking of vehicles and a nullah; and
 - (c) to the east and north are open storage yards, residential structures/dwellings and unused land.

8. Planning Intention

- 8.1 The planning intention of the “AGR” zone is primarily 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.
- 8.2 According to the Explanatory Statement of the OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities.

9. Comments from Relevant Government Departments

- 9.1 The following Government departments have been consulted and their views on the applications 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 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) Should the application be approved, the lots owner(s) will need to apply to his office to permit the structure(s) 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. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.

Traffic

- 9.1.2 Comments of Commissioner for Transport (C for T):
- (a) He has no comment on the application from traffic engineering perspective.
 - (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 (TD). 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.

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

- (a) Part of Kong Po Road is maintained by his office.
- (b) HyD is not/shall not be responsible for the maintenance of any access connecting the Site and part of Kong Po Road.
- (c) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past three years.
- (b) He has no objection to the application.
- (c) The applicant is advised to (i) follow the relevant mitigation measures and requirements in the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental nuisance; (ii) to minimise any noise from the applied use, the use of public announcement systems, audio amplifier and loudspeakers shall be prohibited; and (iii) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

Landscape

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

- (a) He has no objection to the application from the landscape planning perspective.

- (b) Based on the aerial photo taken in 2020, the Site is situated in an area of rural inland plain landscape character comprising of farmlands, temporary structures, open storages, vacant land and scattered tree groups. The development is considered not entirely incompatible with the surrounding landscape setting. According to the site photos taken in March 2021, the Site is fenced off, mainly bare soil with car parking and some existing temporary structures. Active farming activity is noted within part of the Site at northeast. Approximately 4 nos. of existing trees of common species and a few trees claimed to be stocked trees for nursery trees are found within the Site. As the proposed temporary office is for permitted agricultural use and the proposed filling of land is about 1/4 of the site area, significant adverse impact to the existing landscape resources arising from the applied use within the Site is not anticipated.
- (c) The applicant is advised that approval of the planning application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. Applicant is reminded to approach relevant authority / government department(s) direct to obtain the necessary approval on tree works.

Agriculture and Nature Conservation

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

- (a) The Site falls within “AGR” zone and is currently a plant nursery. Agricultural use is always permitted in the “AGR” zone. He will not support any non-agricultural development or related proposal in the Site, which has potential for agricultural rehabilitation. The applicant should justify the need for temporary office for agricultural use and filling of land for the Board’s consideration.
- (b) He has no comment on the application from the nature conservation perspective.

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 development from the public drainage point of view.

- (b) Should the application be approved, approval conditions requiring the submission of a drainage proposal including how the raised land as a result of the land filling will not adversely affect the overland flow across the Site, and implementation and maintenance of drainage proposal for the development should be included in the planning permission.

Fire Safety

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

- (a) He has no objection in principle 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 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 of 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) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be carried out on Site, prior approval and consent of the BA should be obtained, otherwise they are unauthorized building works (UBW). An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (c) His detailed comments on UBW, provision of access, temporary or licensed structures are at **Appendix V**.

- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Water Supply

9.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing water mains will be affected (**Plan A-2**). The developer shall bear the cost of any necessary diversion works affected by the development.
- (c) In case it is not feasible to divert the affected water mains, a waterworks reserve within 1.5 metres from the centreline of the water main shall be provided to WSD. No structure shall be erected over this waterworks reserve and such area shall not be used for storage purposes.
- (d) The Water Authority and his officers and contractors, his or their workmen shall have free access at all times to the said area with necessary plant and vehicles for the purpose of laying, repairing and maintenance of water mains and all other services across, through or under it which the Water Authority may require or authorize.
- (e) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

District Officer's Comments

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

He has not received any locals' comment on the application and has no comment on the application.

9.2 The following Government departments have no objection to/ no comment on the applications:

- (a) Project Manager (West), Civil Engineering and Development Department;
- (b) Director of Electrical and Mechanical Services; and
- (c) Commissioner of Police.

10. Public Comments Received During Statutory Publication Period

On 23.3.2021, the application was published for public inspection. During the three-week statutory publication period, three public comments from the World Wide Fund for Nature Hong Kong, Kadoorie Farm and Botanic Garden Corporation and an individual were received (**Appendices IV-1 to IV-3**). They raise concerns on the application mainly on the grounds that the Site is subject to enforcement case and may involve in “destroy first, build later” practice which should not be encouraged; and much of the Site is paved.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary office for permitted agricultural use for a period of 3 years at “AGR” zone and filling of land at part of the Site (24%) by a maximum of 0.2m for foundation of the office and vehicular access. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish pond for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC advised that he does not support non-agricultural development at the Site. Nevertheless, it is noted that about 76% of the Site is soil ground for farmland, plant nursery, greenhouses, etc. The back office (about 197m² / 5.5% of the Site) is to support the daily operation of the development. The applied use is not in conflict with the planning intention. It is considered that temporary approval of the application will not frustrate the long-term planning intention of the “AGR” zone.
- 11.2 The applied use is considered not incompatible with the surrounding area which is rural in character intermixed with residential structures/dwellings and vacant/unused land. According to the applicant, the filling of land is for site formation of structure, parking/loading/unloading spaces and circulation spaces, which is required to provide stronger ground reinforcement to stabilise the existing soil ground and prevent erosion from surface runoff. The land filling area is minimized for operation need. DEP and CE/MN of DSD have no adverse comment on the proposal.
- 11.3 Relevant departments including C for T, CE/MN of DSD, D of FS and DEP have no adverse comment on the application. To minimize the possible environmental nuisance, approval conditions restricting the operation hours and vehicle types are proposed in paragraph 12.2 (a) to (c). The applicant will also be advised to adopt the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Site”. Other technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions (c) to (h) in paragraph 12.2 below.
- 11.4 The Site is subject to a previous application for temporary open storage use, which was rejected by the Committee in 2017 as detailed in paragraph 5 above. The current application is submitted by a different applicant and for a different

use. There is no similar application for office use within the same “AGR” zone. There are 8 similar applications involving filling of land within the same “AGR” zone approved with conditions by the Committee between 2020 and 2021 as stated in paragraph 6 above.

- 11.5 Three public comments were received during the statutory publication period raising concerns on the application as state in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as state above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary office for permitted agriculture use and filling of land 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 14.5.2024. 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 medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, as defined in the Road Traffic Ordinance 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 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 14.11.2021;
- (e) in relation to (d) 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 14.2.2022;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (g) 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 14.11.2021;
- (h) in relation to (g) above, the implementation of fire service installations proposal 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 14.2.2022;
- (i) if any of the above planning conditions (a), (b), (c) or (f) 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;
- (j) if any of the above planning conditions (d), (e), (g) or (h) 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
- (k) 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 **Appendix V**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the development is not in line with the planning intention of the "AGR" zone which is primarily to retain and safeguard good quality agricultural land/ farm/ fish ponds for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission for 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 reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 15.3.2021
Appendix Ia	FI received on 7.5.2021 and 10.5.2021
Appendix II	Previous application covering the Site
Appendix III	Similar applications for filling of land within the same “AGR” zone on the Kam Tin North OZP
Appendices IV-1 and IV-3	Public comments received during the statutory publication period
Appendix V	Advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Land Filling Ratio Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2021**