RNTPC Paper No. A/YL-KTS/896 For Consideration by the Rural and New Town Planning Committee on 27.8.2021

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

APPLICATION NO. A/YL-KTS/896

Applicant : High Way Development and Trading Limited

Site : Lots 617 RP and 618 RP in D.D. 103, Ko Po San Tsuen, Kam

Tin, Yuen Long

Site Area : About 1,530m²

<u>Lease</u> : Block Government Lease (demised for agricultural use)

Plan : Approved Kam Tin South Outline Zoning Plan (OZP) No.

S/YL-KTS/15

Zoning : "Agriculture" ("AGR")

Application : Renewal of Planning Approval for Temporary Open Storage of

Vehicles and Container Trailers/ Tractors Park for a Period of 3

Years

1. The Proposal

- 1.1 The applicant seeks renewal of planning permission to use the application site (the Site) for temporary open storage of vehicles and container trailers/ tractors park for a period of 3 years. The Site falls within an area zoned "AGR" on the approved Kam Tin South OZP (Plan A-1) and the applied 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. The Site is currently used for the applied use under planning application No. A/YL-KTS/793 (Plans A-2 and A-4).
- 1.2 The Site is the subject of nine previous applications for various temporary open storage uses. All applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) from 2000 to 2018. The last application No. A/YL-KTS/793 for the same applied use and submitted by the same applicant as the current application was approved with

- conditions by the Committee on 17.8.2018 for a period of 3 years. All approval conditions of the last application have been complied with.
- 1.3 According to the applicant, there are two structures with a total floor area of about 89m² and building height of not higher than 5.6m (1-2 storeys) provided on-site for storage and office uses. 15 container trailer parking spaces, 6 container tractor parking spaces and 3 private car parking spaces are provided within the Site. The operation hours are between 8:00 a.m. and 7:00 p.m. daily. The Site is accessible via a local track from Kam Tin Road. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 Compared with the last approved application (No. A/YL-KTS/793), the proposal and major development parameters of the current application are mainly the same, in terms of the applied use, site area, site layout, and number of container tractor / trailer parking spaces except for a minor increase of floor area from 78m² to 89m² (+ 12.8%).
- 1.5 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with supplementary (Appendix I) information received on 7.7.2021
 - (b) Further Information (FI) received on 12.8.2021 in response to departmental comments (accepted and exempted from publication and recounting requirements)

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI in **Appendices I to Ia**. They can be summarized as follows:

- (a) The applicant is engaged in business related to container transportation between Hong Kong and Mainland and planning permissions have been granted for the applied use at the Site for a long time. All the planning conditions stipulated by the Board in the temporary planning approval have been complied with.
- (b) To address the concern of the Transport Department (TD), self-monitoring measures will be adopted regarding vehicular access arrangements and road safety aspects of the development. Only the applicant's vehicles will be allowed to use the Site and each vehicle would only make 2 to 3 trips per day on average. The width of the access road leading to the Site is wide enough and hence the pedestrian walkway nearby would not be affected. Besides, there is adequate vehicular manoeuvring space within the Site.
- (c) Care would be taken by the container vehicle drivers in order not to cause danger to the pedestrians nearby and affect other road users of the local road

network. Besides, there has been neither traffic accident nor complaint since the operation of the development.

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

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. 31) by posting notice near entrance of the Site and sending notice to Pat Heung Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guideline for "Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development" (TPB PG-No. 34C) is relevant to this application. The relevant assessment criteria are attached at **Appendix II**.
- 4.2 The Site falls within Category 2 area under the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses (TPB PG-No.13F) promulgated by the Board on 27.3.2020. The relevant extract of the Guidelines is attached at **Appendix III**.

5. Background

The Site is currently covered by a valid planning permission (No. A/YL-KTS/793) for the same applied use with validity up to 5.10.2021. Should the application for renewal of the planning approval is not granted, and the current open storage use on site continues after the expiry of the current planning approval (i.e. the use continues but without a valid planning permission), such use will be considered as an unauthorized development under the Town Planning Ordinance and enforcement action would be taken against it.

6. Previous Applications

- 6.1 The Site is the subject of nine previous planning applications (No. A/YL-KTS/191, 214, 300, 318, 400, 460, 580, 675 and 793) submitted by the same applicant for temporary open storage of vehicles and/or container trailers/tractors park. Details of the applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1**.
- 6.2 All the applications were approved with conditions by the Committee between 2000 and 2018 on similar considerations that the developments were not incompatible with the surrounding areas; the applications were generally in line with the then Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses; previous approvals were granted; and there was no adverse departmental comments or the departmental concerns could be

addressed by approval conditions. However, the planning permissions for applications No. A/YL-KTS/191, 300 and 400 were revoked in 2000, 2004 and 2008 due to non-compliance with the approval conditions on the provision of landscape and drainage facilities (for Application No. A/YL-KTS/191), and submission of landscape improvement scheme and provision of fire extinguisher(s) (for Applications No. A/YL-KTS/300 and 400). For the remaining 6 applications, all approval conditions have been complied with.

6.3 Compared with the last Application No. A/YL-KTS/793, the current application is the same in terms of applicant, use, site layout, and major development parameters. All approval conditions of this application have been complied with, and its planning permission is valid until 5.10.2021.

7. Similar Applications

- 7.1 There are 17 similar applications for various temporary open storage/storage uses within the same "AGR" zone in the vicinity of the Site on the Kam Tin South OZP. Details of the applications are summarized in **Appendix V** and their locations are shown on **Plan A-1**.
- 7.2 14 applications (No. A/YL-KTS/409, 457, 458, 483, 488, 511, 515, 600, 614, 628, 687, 699, 717 and 821) were approved with conditions by the Committee from 2007 to 2019 mainly on the reasons that previous approvals were granted for the sites; the proposed uses were not incompatible with the surrounding land uses or would not frustrate the planning intention; relevant approval conditions could be imposed to minimize the environmental impact; and there were no adverse comments from relevant departments or the departmental or public concerns could be addressed by appropriate approval conditions. However, applications No. A/YL-KTS/457, 458, 600, 628 and 699 were revoked due to non-compliance with approval conditions.
- 7.3 Applications No. A/YL-KTS/624, 667 and 685 were rejected by the Committee in June 2014 to January 2016 mainly on the grounds that the developments were not in line with the planning intention of the "AGR" zone; the applications did not comply with the then TPB-PG No. 13E in that the developments were not compatible with the surrounding land uses and there were adverse comments from the relevant government department and local objections; and the applicants failed to demonstrate that the developments would not generate adverse environmental and drainage impacts on the surrounding areas.

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

- 8.1 The Site is:
 - (a) currently used for the applied use with a valid planning permission under A/YL-KTS/793; and
 - (b) accessible from Kam Tin Road via a local track.

- 8.2 The surrounding areas are rural in character, mixed with open storages yards, warehouse, parking of container vehicles, residential structures/dwellings, unused/vacant land and Au Tau Water Treatment Works (ATWTW):
 - (a) to its immediate north is a storage of vehicles with a valid planning permission (Application No. A/YL-KTS/819), and to its further north are a few residential structures/dwellings, a warehouse, open storage/storage yards and unused land;
 - (b) to its northeast across the local track are some vacant/unused land (a piece of land with planning permission under Application No. A/YL-KTS/791 for temporary animal boarding establishment);
 - (c) to its immediate west are an storage yard and a residential structure/dwelling (about 15m away) and to its further west and southwest are two vehicle parking sites; and
 - (d) to its immediate south is a site with works in progress (with planning permission under Application No. A/YL-KTS/790 for temporary animal boarding establishment) and to its further south is Au Tau Treatment Water Works.

9. Planning Intention

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.

10. Comments from Relevant Government Departments

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

Land Administration

- 10.1.1 Comments of the District Lands Officer/Yuen Long. Lands Department (DLO/YL, LandsD):
 - (a) The Site comprises Old Scheduled 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) Lot 617 RP in D.D. 103 within the Site is covered by a Short Term Waiver (STW) No. 2567 to permit structures erected thereon for the purpose of "office and watchman shed ancillary to open storage of vehicles for sale/disposal and container trailer/ tractor park".

(c) Should planning approval be given to the planning application, the STW holder(s) will need to apply to his office for modification of the STW conditions if there is any irregularities on site. The owner(s) of the lot without STW will need to apply to his 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 Applications for any of the above will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by LandsD.

Traffic

- 10.1.2 Comments of the Commissioner for Transport (C for T):
 - (a) He has no comment on the application from traffic engineering perspective.
 - (b) Should the application be approved, the 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 Lands Department. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- 10.1.3 Comments of the Chief Engineer, New Territories West, Highways Department (CHE/NTW, HyD):
 - (a) HyD shall not be responsible for the maintenance of any access connecting the Site and Kam Tin Road.
 - (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Agriculture

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

(a) He has no comment on the application noting that the previous applications for the same use as the current application were approved by the Board.

Environment

- 10.1.5 Comments of the Director of Environmental Protection (DEP):
 - (a) There was no environmental complaint received in the past three years. However, in accordance with the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" ("COP"), he does not support the application as there are sensitive receivers, i.e. residential dwellings, located in the vicinity (the nearest one is about 15m away to its west) (Plan A-2), and environmental nuisance is expected.
 - (b) The Site falls within the Consultation Zone of ATWTW, which is a Potentially Hazardous Installation. Based on the information submitted by the applicant, he has no objection from chlorine risk perspective.
 - (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

- 10.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):
 - (a) She has no objection to the application from the landscape planning point of view
 - (b) The Site is involved in 9 previous planning applications to which she has no objection to the last application (No. A/YL-KTS/793) for the same use from landscape planning perspective.
 - (c) Compared the aerial photos taken in 2018 and 2020, there are no significant changes to the surrounding landscape setting since the last application was approved. According to the site inspection taken on 22.7.2021, existing tress in good condition are found within the Site. Further significant adverse impact arising from the continued use is not anticipated.
 - (d) With reference to the site inspection taken on 22.07.2021, three trees at southern boundary and southeastern corner of the site are found withered and the existing *Ficus microcarpa* (細葉榕) and *Ficus benjamina* (垂葉榕) within the site are infested with sparse foliage. The Applicant should carry out appropriate remedial actions, such as tree replacement and pest control in a

timely manner. Irrigation should be carried out in regular basis for healthy growth of trees. The Applicant is reminded of the importance of undertaking proper tree care for existing trees within the site with reference to information published by the GLTM Section, DEVB on general tree maintenance and tree risk management.

(e) The applicant is reminded that approval of the application under Town Planning Ordinance does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant should seek comments and approval from the relevant authority /government department(s) direct to obtain approval on tree works.

Drainage

- 10.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):
 - (a) He has no objection in principle to the development.
 - (b) Based on the application, the applicant would maintain the existing drainage facilities.
 - (c) Should the application be approved, approval conditions on the maintenance of the existing drainage facilities and submission of a record of the existing drainage facilities on site to his satisfaction should be included in the planning approval.

Fire Safety

- 10.1.8 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. The applicant should adhere to the "Good Practice Guidelines for Open Storage Sites" in **Appendix VII.**
 - (c) Having considered the nature of the open storage, the approval condition on "the provision of fire extinguisher(s) within 6 weeks from the date of planning approval" should be included in the planning permission. To address this approval

- condition, the applicant should submit a valid fire certificate (FS 251) to his department for approval.
- (d) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

- 10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
 - (a) If the existing structures are erected on leased land without approval of the BD (not being a New Territories Exempted House), they are Unauthorized Building Works (UBW) under the BO and should not be designated for any use under 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 (AP) 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 respectively.
 - (e) If the Site does not abut a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

District Officer's Comments

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

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

- 10.2 The following Government departments have no comment on the application:
 - (a) Project Manager (West), Civil Engineering and Development Department;
 - (b) Director of Electrical and Mechanical Services (DEMS);
 - (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
 - (d) Commissioner of Police (C of P).

11. Public Comment Received During Statutory Publication Period

On 16.7.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 6.8.2021, one public comment was received from an individual (**Appendix VI**). The commenter objects to the application mainly on the grounds that the application would cause traffic congestion, environment pollution and fire risk, thus affecting the safety and quality of life of the villagers nearby.

12. Planning Considerations and Assessments

12.1 The Site falls within Category 2 areas under the TPB PG-No. 13F. The following considerations in the Guidelines are relevant.

Category 2 areas: planning permission could be granted on a temporary basis up to a maximum period of 3 years, subject to no adverse departmental comments and local objections, or the concerns of the departments and local residents can be addressed through the implementation of approval conditions. Technical assessments, where appropriate, should be submitted to demonstrate that the proposed uses would not have adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.

- The application is for renewal of the planning permission for temporary open storage of vehicles and container trailers / tractors park for a period of 3 years in "AGR" zone. Although the development is not in line with the planning intention of the "AGR" zone which is intended 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 purposes, DAFC has no comment on the application. It is considered that approval of the application for another three years would not jeopardize the long-term planning intention of the "AGR" zone.
- 12.3 The development is considered not incompatible with the surrounding areas which are mixed with open storage / storage yards, a warehouse, parking of vehicles, residential structures/dwellings vacant / unused land and ATWTW (Plan A-2). Similar applications for various temporary open storage uses were approved in the vicinity of the Site as mentioned in paragraph 7 above (Plan A-1).

- 12.4 The application is generally in line with the TPB PG-No. 13F and TPB PG-No. 34C in that previous approval (Application No. A/YL-KTS/793) for the same applied use was granted on 17.8.2018 and all the approval conditions of the last application have been complied with. There is also no adverse comment from the relevant departments except DEP. As there is no major change in the planning circumstances since the last approval, sympathetic consideration could be given to the current application. Previous applications have been approved by the Committee, approval of the current application is in line with the Committee's previous decisions.
- 12.5 While DEP does not support the application as there are sensitive receivers, i.e. residential dwellings in the vicinity (the nearest one about 15m to its west) (Plan A-2) and environmental nuisance is expected, no environmental complaint was received by DEP in the past three years. In order to address the concern of DEP on the possible nuisance generated by the temporary use, approval conditions restricting the operation hours and prohibiting dismantling, maintenance, repairing, cleansing, paint-spraying or other workshop activities are recommended in paragraphs 13.2 (a) and (b) below. 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. The applicant will also be advised to adopt the "Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites" in order to alleviate any potential impact. The technical requirements of C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS on traffic, landscape, drainage and fire safety aspects could be addressed by imposing approval conditions (c) to (i) in paragraph 13.2 below.
- One public comment objecting the application was received during the statutory publication period as mentioned in paragraph 11 above. In this regard, The departmental comments of C for T, DEP and D of FS on the renewal application and planning considerations and assessments as stated above are also relevant.

13. Planning Department's Views

- 13.1 Based on the assessment made in paragraph 12 above and having taken into account the public comment in paragraph 11 above, the Planning Department considers that the renewal of planning approval of temporary open storage of vehicles and container trailers/trackers park <u>could be tolerated</u> for a period of 3 years.
- 13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years, and be renewed from 6.10.2021 until 5.10.2024. The following approval conditions and advisory clauses are also suggested for Members' reference:

Approval Conditions

(a) no operation between 7:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;

- (b) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities shall be carried out on the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverser onto/from public road at any time during the planning approval period;
- (d) the existing trees and landscape plantings on the Site shall be maintained at all times during the planning approval period;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a record of the existing drainage facilities on the Site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.1.2022;
- (g) the provision of fire extinguisher(s) within a valid fire certificate (FS 251) within **6** weeks from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 17.11.2021;
- (h) the submission of a fire service installations proposal within 6 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.4.2022;
- (i) in relation to (h) above, the provision of the fire service installations within 9 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.7.2022;
- (j) if any of the above planning condition (a), (b), (c), (d) or (e) 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;
- (k) if any of the above planning condition (f), (g), (h) or (i) 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
- (l) 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.
 - [The above approval conditions are the same as those under the planning permission for previous application No. A/YL-KTS/793.]

Advisory Clauses

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

13.3 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 to retain and safeguard good agricultural land/farm/fish pond for agricultural purposes. This zone is also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

14. <u>Decision Sought</u>

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

15. <u>Attachments</u>

Appendix I Application Form with Supplementary Information received

on 7.7.2021

Appendix Ia FI received on 12.8.2021

Appendix II Relevant Extracts of Town Planning Board Guidelines for

Renewal of Planning Approval and Extension of Time for Compliance with Planning Condition for Temporary Use or

Development (TPB PG-No. 34C)

Appendix III Relevant Extracts of Town Planning Board Guidelines for

Application for Open Storage and Port Back-up uses (TPB

PG-No. 13F)

Appendix IV Previous Applications covering the Site

Appendix V Similar Applications within the Same Zone in the vicinity of

the Site on the Kam Tin South OZP

Appendix VI Public Comment

Appendix VII Good Practice Guidelines for Open Storage Sites

Appendix VIII Advisory Clause

Drawing A-1 Layout Plan

Plan A-1 Location Plan with Previous and Similar Applications

Plan A-2 Site Plan

Plan A-3 Aerial Photo

Plans A-4 Site Photos

PLANNING DEPARTMENT AUGUST 2021