

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

APPLICATION NO. A/YL-KTS/851

<u>Applicant</u>	: Mr. Tang Tin Wai represented by Goldrich Planners & Surveyors Limited
<u>Site</u>	: Lots 565 (Part), 566 (Part), 613 (Part) and 616 RP (Part) in D.D. 106 and Adjoining Government Land, Ng Ka Tsuen, Kam Sheung Road, Yuen Long
<u>Site Area</u>	: About 3,985 m ² (including Government land of about 53m ² (1.3%))
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15
<u>Zonings</u>	: “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) [Maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]
<u>Application</u>	: Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (motor vehicles showroom) for a period of 3 years. According to the Notes of the OZP, ‘shop and services’ is a column 2 use in the “OU(RU)” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission (**Plans A-2 to 4b**).
- 1.2 The Site involves 18 previous applications for various temporary open storage, parking of vehicles and shop and services (motor vehicles showroom) uses. The last application (No. A/YL-KTS/718) for proposed temporary shop and services (motor vehicle showroom) was approved with conditions by the Rural and New Town Planning Committee (the Committee) in 2016. All the approval conditions had been complied with and the planning permission lapsed on 24.12.2019.

1.3 According to the applicant, fifteen structures with a total floor area of about 2,622m² and height of 2.6m to 7m (1-2 storeys) are erected within the Site for showroom, office, storeroom, open shed (for motor-vehicle showroom) and toilet uses. About 100 vehicles will be displayed at the Site. The operation hours are from 8:00 a.m. to 9:00 p.m. daily. 7 private car and 3 light goods vehicle parking spaces are provided within the Site. The Site is accessible from Kam Sheung Road. The layout plan submitted by the applicant is at **Drawing A-1**.

1.4 Compared with the previous approved application (No. A/YL-KTS/718), the current application is submitted by a different applicant for the same applied use, and the comparison of major development parameters is as follows:

	Previous Approved Application (A/YL-KTS/718) (a)	Current Application (A/YL-KTS/851) (b)	Difference ((b) – (a))
Site Area (m ²)	3,715	3,985	+270m ² / +7.3%
Total Floor Area (m ²)	1,729	2,622	+893m ² /+51.6%
Number of Structures	7	15	+8/+114.3%
Building Height	4m - 7m	2.6m to 7m	--
No. of Storeys	1-2 storeys	1-2 storeys	--
Parking Space	7 private car 3 light bus	7 private car 3 light goods vehicles	--

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

- (a) Application Form with supplementary statement (**Appendix I**) received on 8.6.2020
- (b) Further information (FI) received on 23.7.2020 in (**Appendix Ia**) response to department comments
[exempted from publication requirement]
- (c) FI received on 27.7.2020 in response to department (**Appendix Ib**) comments
[exempted from publication requirement]

1.6 In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 7.8.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Committee at this meeting.

2. **Justifications from the Applicant**

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

- (a) The Site is subject to a previous approved planning application for the same applied use. The increase in site area and floor area of the structures is to reflect the existing situation as some area and structures were not included in the last application. The applicant wants to continue the motor vehicle showroom operation on the Site. The applied use can provide job opportunities to the local residents.
- (b) The motor vehicles showroom provides a venue for display of new and second-hand vehicles, which include private cars and light goods vehicles only. No car beauty, car washing, car repairing, car dismantling or other workshop activities will be carried out at the Site.
- (c) There is a similar application for the same applied use adjacent to the Site approved by the Committee. Approval of the current application is in line with the Board's previous decision. The applied use is also visually compatible with the surrounding environment.
- (d) The approval conditions of the previous approved application (No. A/YL-KTS/718) on landscape and drainage aspects were complied with. The existing trees and drainage facilities will be properly maintained. The scale of the applied use is small. Sufficient space has been reserved at the central part of the Site for maneuvering of vehicles.
- (e) The vehicles on site are for display purpose so the movement is infrequent. The noise induced would be minimal. There is a 7m fencing along the Site to block the noise that may affect the adjacent residential development. The proposed development would not cause nuisance to the adjacent development.

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

The applicant is not the "current land owner" of the private land portion of the Site 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 site notice and sending notification to the Pat Heung Rural Committee. Detailed information would be deposited at the meeting for Members' inspection. For the Government land portion, the "Owner's Consent/Notification" Requirement is not applicable.

4. **Town Planning Board Guidelines**

The Town Planning Board Guidelines for Designation of "OU(RU)" Zone and Application For Development within "OU(RU)" Zone under Section 16 of the Town

Planning Ordinance (TPB PG-No. 38) are relevant to the application. The relevant assessment criteria are summarized as follows:

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

5. **Background**

As the use of shop and services (motor vehicles showroom) on the Site is in operation, the Site may be subject to planning enforcement action.

6. **Previous Applications**

6.1 The Site in part or in whole is the subject of 18 previous planning applications¹ for various temporary open storage, parking of vehicles and shop and services (motor vehicle showroom) uses. 14 were approved and 4 were rejected. Details of these applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.

14 Approved Applications

6.2 Applications No. A/YL-KTS/36 and 193 (covering the whole site and the adjoining area) for temporary open storage of vehicles were approved with conditions for a period of 3 years in 1995 and 2000 respectively mainly for the reasons that the development was compatible with the adjoining land uses; there was no adverse departmental comment; and approval of the application could relieve the acute shortage of sites for open storage activities. However, the planning permission of Application No. A/YL-KTS/193 was revoked due to non-compliance with approval conditions.

6.3 Applications No. A/YL-KTS/253, 275, 322, 406, 462 and 562 (covering most part of the Site) for temporary bus chassis and coach park with ancillary office/parts assembly were approved with conditions for a period of 1 to 3 years between 2001 and 2012 mainly for the reasons that possible environmental impacts could be minimized by imposition of approval conditions; the development was not incompatible with the surrounding land uses; temporary approval would not frustrate the planning intention of the “OU(RU)” zone; relevant government departments had no adverse

¹ Applications No. A/YL-KTS/36, 193, 253, 275, 308, 317, 322 and 340 were considered under the then “Undetermined” (“U”) zone. The Site was zoned “U” on the draft Kam Tin South OZP No. S/YL-KTS/1 gazetted on 17.6.1994 and was rezoned to “OU(RU)” on the draft Kam Tin South OZP No. S/YL-KTS/10 gazetted on 22.9.2006.

comments; and previous approvals for the same use had been granted. Application No. A/YL-KTS/562 was approved for 1 year to allow time for the relocation of the operation. However, the planning permission of Applications No. A/YL-KTS/253, 275, 406 and 562 were revoked due to non-compliance with approval conditions.

- 6.4 Applications No. A/YL-KTS/340, 416, 470, 479 and 569 (covering the western part of the Site) for temporary open storage of new coaches and new vehicle parks with or without ancillary workshop were approved with conditions for a period 1 to 3 years between 2005 and 2012 mainly for the reasons that the development was not incompatible with the surrounding land uses; the application was in line with Town Planning Guidelines on Application for Open Storage and Port Back-up Uses in that previous planning approvals were granted and the concern on environmental aspect could be addressed by imposition of approval conditions. Application No. A/YL-KTS/569 was approved for 1 year to allow time for the relocation of the operation. However, the planning permission of Applications No. A/YL-KTS/416, 470, 479 and 569 were revoked due to non-compliance with approval conditions.
- 6.5 The last application No. A/YL-KTS/718 for proposed temporary shop and services (motor vehicle showroom) was approved with conditions for a period of 3 years in 2016 mainly for the reasons that temporary approval would not frustrate the long-term planning intention of the “OU(RU)” zone; the development was not incompatible with the surroundings areas; relevant government departments had no adverse comments; and the environmental concerns could be addressed by approval conditions. All the approval conditions had been complied with and the planning permission lapsed on 24.12.2019.

4 Rejected Applications

- 6.6 Applications No. A/YL-KTS/308 and 317 (covering most part of the Site same as the applications mentioned in paragraph 6.3 above) for temporary bus chassis and coach park with ancillary office and temporary bus chassis and coach workshop with ancillary parking and office were both rejected in 2004 mainly on the grounds that the development was not compatible with the surrounding land uses; and there was insufficient information in the submissions to demonstrate that the development would not cause adverse environmental and drainage impacts on the surrounding areas.
- 6.7 Applications No. A/YL-KTS/525 and 616 (covering the western part of the Site same as the applications mentioned in paragraph 6.4 above) for temporary open storage of new coaches and new vehicle parks with ancillary workshop were rejected by the Committee and the Board on review in 2011 and 2014 respectively on the grounds that the development was not compatible with the existing and future residential land uses in the vicinity; there had been material change in the planning circumstances that the continuation of the temporary open storage use at the site would jeopardize the planning intention of the “OU(RU)” zone; the development did not comply with the Town Planning Guidelines on Application for Open

Storage and Port Back-up Uses in that the applicant failed to demonstrate genuine efforts in complying with the approval conditions of the previous planning applications, and that there were adverse departmental comments and public objections against the application.

7. Similar Application

There is one similar application (No. A/YL-KTS/734) for temporary shop and services (motor vehicles showroom) within the same “OU(RU)” zone. The application is located to the immediate west of the Site, and was approved with conditions by the Committee for a period of 3 years in 2017 mainly for the reasons that the temporary use would not frustrate the long-term planning intention of the “OU(RU)” zone; the development was not incompatible with the surroundings areas; and relevant government departments had no adverse comments on the application. The planning permission was revoked in 2019 due to non-compliance with approval conditions. Details of the application are summarise in **Appendix III** and its location is shown on **Plan A-1**.

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

8.1 The Site is:

- (a) currently used for the applied use without valid planning permission; and
- (b) accessible from Kam Sheung Road.

8.2 The surrounding area is rural in character predominated by open storage/storage yards, residential dwellings/structures, parking of vehicles, a warehouse, a restaurant, car services, church, kindergarten, fallow agricultural land and vacant/unused land. Some of them are suspected unauthorized development subject to enforcement action by the Planning Authority:

- (a) to its immediate west is an open storage yard. To its further west are fallow agricultural land, residential structures/dwellings, parking of vehicles and unused land;
- (b) to its southeast and south are a restaurant, a car services shop, residential structures/dwellings, open storage/storage yards (one with planning permission (No. A/YL-KTS/843)) and a church and a kindergarten;
- (c) to its immediate north is a residential development and to the further north is a church; and
- (d) to its east across Kam Sheung Road are residential structures/dwellings, open storage/storage yards and a warehouse.

9. Planning Intention

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

10. Comments from Relevant Government Departments

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

Land Administration

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

- (a) The Site comprises Government land (GL) and Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of GL (about 53m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) Within the Site, Lots 566, 613 and 616 RP in D.D. 106 are covered by STW 3043 to permit temporary parking of bus chassis and new coaches and ancillary uses.
- (d) Should planning approval be given to the application, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Application 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. Moreover, the applicant should either exclude the GL or apply to his office for Short Term Tenancy to cover the GL portion.

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 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.

10.1.3 Comments of the Chief Highway 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 Sheung Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

There was no environmental complaint concerning the Site received in the past 3 years. The applicant is advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP.

Landscape

10.1.5 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 on 12.9.2019, the Site is situated in an area of disturbed rural landscape character comprising of scattered tree groups, temporary structures, vehicle parks and open storages. The proposed use is considered not incompatible to the surrounding environment.

- (c) With reference to the site visit dated 22.6.2020, the Site is in operation as motor-vehicle showroom with some temporary structures observed within the Site. Number of existing trees of common species including *Bombax ceiba* (木棉), *Dimocarpus longan* (龍眼) and *Ficus benjamina* (垂葉榕) in good to fair conditions are recorded within the Site. Referring to the submitted layout plan, the development is not in direct conflict with existing trees. Significant adverse impact on landscape resources within the Site is not anticipated.
- (d) The applicant is reminded that approval of the planning application under Town Planning Ordinance does not imply approval of tree preservation/removal scheme under the Lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate.

Drainage

10.1.6 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 and the implementation and maintenance of the drainage proposal for the development should be included in the planning permission.

Fire Safety

10.1.7 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 Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) As there is no record of approval by the Building Authority (BA) for the existing structures at the Site, his office is not in a position to offer comments on their suitability for the use related to the application.
- (b) The applicant's attention is drawn to the followings:
 - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BA, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
 - (ii) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
 - (iii) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
 - (iv) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
 - (v) The Site does not abut on a specified street of not less than 4.5 m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

District Officer's Comments

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

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

10.2 The following Government departments have no comment on/ no objection to the application:

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

11. Public Comment Received During Statutory Publication Period

On 16.6.2020, the application was published for public inspection. During the three-week statutory publication period, one public comment was received from an individual (**Appendix IV**) objecting to the application mainly on the grounds that brownfield use should be reviewed to avoid affecting long-term development; and vehicle showroom should be accommodated in custom built high-rise or underground facilities.

12. Planning Considerations and Assessments

- 12.1 The application is for temporary shop and services (motor vehicles showroom) for a period of three years within "OU(RU)" zone. The planning intention of the "OU(RU)" zone is primarily for the preservation of the character of the rural area, and uses or development compatible with the rural landscape may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. The applied use is not entirely in line with the planning intention of the "OU(RU)" zone. Nevertheless, there is no known development programme for the Site. It is considered that the approval of the application on a temporary basis would not frustrate the long-term planning intention of the "OU(RU)" zone.
- 12.2 The development is considered not incompatible with the surrounding areas which are predominated with residential dwellings/structures, open storage yard and vacant/unused land.
- 12.3 In view of the nature of the motor vehicle showroom and the location of the Site which is abutting Kam Sheung Road, it is unlikely that it would generate

significant environmental nuisance to the nearby residential dwellings/structures. The relevant government departments consulted including C for T, CE/MN of DSD, DEP and D of FS have no adverse comment on the application. To minimize any possible environmental nuisance generated by the applied use, approval conditions restricting the operation hours and vehicle type are recommended in paragraph 13.2 (a) and (b) below. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, CE/MN of DSD and D of FS can be addressed by imposing the approval conditions recommended in paragraphs 13.2 (c) to (h) below.

- 12.4 The Site is subject to a previous application for the same applied use (No. A/YL-KTS/718) which was approved with conditions by the Committee in 2016. All the approval conditions have been complied with and the planning permission lapsed on 24.12.2019. Compared with the last application, the current application covers a larger site area with increase in number of structures and floor area, which is to reflect the existing situation of the Site according to the applicant. There is also a similar application adjacent to the Site for the same use approved by the Committee in 2016. Approval of the current application is in line with the Committee’s previous decision.
- 12.5 One public comment was received during the statutory publication period objecting to the application as detailed in paragraph 11 above. In this regard, the departmental comments and planning considerations and assessments as stated above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taking into account the public comment mentioned in paragraph 11 above, the Planning Department has no objection to the temporary shop and services (motor vehicles showroom) 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 until 15.9.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference.

Approval Conditions

- (a) no operation between 9:00 p.m. and 8:00 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 tractors/trailers, 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 the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.3.2021;
- (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 15.6.2021;
- (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 15.3.2021;
- (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 15.6.2021;
- (i) if any of the above planning condition (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; and
- (j) if any of the above planning condition (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.

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 "OU(RU)" zone which is primarily for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

Advisory Clauses

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

14. **Decision Sought**

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

15. **Attachments**

Appendix I	Application Form with supplementary statement received on 8.6.2020
Appendix Ia	FI received on 23.7.2020
Appendix Ib	FI received on 27.7.2020
Appendix II	Previous applications covering the Site
Appendix III	Similar applications in the same "OU(RU)" zone
Appendices IV	Public comment received during the statutory publication period
Appendix V	Advisory clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial photo
Plans A-4a and 4b	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2020**