

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/ST/935

<u>Applicant</u>	NG Sin Yee represented by WONG Chi Wing
<u>Premises</u>	G/F of Podium B (Portion), Julimount Garden, 1-5 Hin Tai Street, Sha Tin, N.T.
<u>Floor Area</u>	453.08m ² (about)
<u>Lease</u>	(a) STTL 167 R.P. (New Grant No. 11663) (b) modified by two Modification Letters dated 28.9.1985 and 7.5.1986 (c) restricted to be used as “supermarket and/or retail shops”
<u>Plan</u>	Draft Sha Tin Outline Zoning Plan (OZP) No. S/ST/33
<u>Zoning</u>	“Residential (Group B)” (“R(B)”)
<u>Application</u>	Proposed School (Kindergarten/Nursery)

1. The Proposal

- 1.1 The applicant seeks planning permission for a proposed kindergarten cum nursery at the application premises (the Premises), which falls within an area zoned “R(B)” on the draft Sha Tin OZP No. S/ST/33 (**Plan A-1**). According to the Notes of the OZP, while ‘School (in free-standing purpose-designed building only)’ is always permitted in “R(B)” zone, ‘School (not elsewhere specified)’ is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 The Premises, with a floor area of about 453.08m², is located on the G/F of the Podium B of the subject residential development (i.e. Julimount Garden). There is an existing kindergarten with 2 classrooms located on 1/F of the Podium B operating under the name of David (Exodus) Kindergarten. The proposed kindergarten cum nursery, with a total of 6 classrooms accommodating about 150 students and 6 teachers, will serve as an extension to the existing kindergarten and operate under the same management. In addition to the classrooms, there will be indoor play areas, offices, store, reception, pantry and toilet. The operation hours of the proposed kindergarten cum nursery are from 8am to 4pm, Mondays to Fridays. The layout and floor plans of the Premises submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.3 The Premises is directly accessible by Hin Hong Street and Hin Tai Street. The

applicant has proposed school buses serving between MTR Tai Wai Station and the proposed kindergarten cum nursery to pick up/drop off students. The Traffic Impact Assessment (TIA) submitted assumes that 50 students will reach the kindergarten by walking while the remaining will commute by the proposed school buses. For the loading/unloading activities, the applicant has obtained consent from the owner of the Podium B of the subject residential development to use the two existing loading/unloading bays of the subject residential development.

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

- (a) Application form with attachments received on 8.9.2017 **(Appendix I)**
- (b) Further information (FI) received on 27.12.2017 **(Appendix Ia)**
enclosing a traffic impact assessment (TIA)
- (c) FI received on 16.3.2018 enclosing a revised TIA **(Appendix Ib)**
- (d) FI received on 12.4.2018 and 13.4.2018 enclosing a **(Appendix Ic)**
revised TIA and a new market research report

1.5 The application was originally scheduled for consideration by the Committee on 27.10.2017. Upon request by the applicant, the Committee, on 27.10.2017 and 9.2.2018, agreed to defer a decision on the application for two months. On 27.12.2017, 16.3.2018, 12.4.2018 and 13.4.2018, the applicant submitted FI to address comments from Transport Department (TD) **(Appendices Ia to Ic)** and the application is re-scheduled for consideration by the Committee on 1.6.2018.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in part 9 of the application form at **Appendix I** and FI at **Appendices Ia to Ic**. They can be summarized as follows:

- (a) the applicant is enthusiastic in the education field and wishes to have a kindergarten/nursery to help the children to explore their potential and to establish positive learning attitude.
- (b) the proposed kindergarten is the extension of the existing David (Exodus) Kindergarten located on 1/F of Podium B of the subject residential development, which only provides classes of lower kindergarten and upper kindergarten with only two classrooms. The proposed kindergarten could provide nursery classes and more facilities to fulfil the requirement of the Education Bureau.
- (c) there are 72 nurseries registered in Sha Tin while 23 of them are private. With the increasing population and birth rate, more kindergarten and nursery will be required.
- (d) the proposed kindergarten would impose policy to limit the traffic of private cars and taxis. School buses are only permitted at the designated loading/unloading space for loading/unloading activities.

- (e) According to the HKPSG, a maximum of one parking space is required for the proposed kindergarten. A private car parking space will be rented at the private carpark of the subject residential development to fulfil the requirement.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicant is not a “current land owner” but has complied with the requirements as set out in the ‘Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance’ (TPB PG-No. 31A) by giving notification to the current land owner. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Applications

The Premises is part of the subject of three previous applications (Nos. NT/ST/32P, A/ST/197 and A/ST/676) (**Plans A-1 and A-2**). Application No. NT/ST/32P for proposed commercial facilities (one supermarket) on G/F and one kindergarten on 1/F was approved with conditions by the Rural and New Town Planning Committee (the Committee) on 16.4.1982. Application No. A/ST/197 for five retail shops on G/F was approved with conditions by the Committee on 10.4.1992 while application No. A/ST/676 for proposed eating place and shop and services on G/F was approved without condition by the Committee on 13.2.2009.

5. Similar Application

There is one similar application (No. A/ST/379) for kindergarten use within the same “R(B)” zone for regularization of the unauthorized extension of kindergarten on 1/F of Podium B of the subject residential development (**Plans A-1 and A-2**). While the existing kindergarten on 1/F with a GFA of 100m² was approved under application No. NT/ST/32P, the application No. A/ST/379 was for conversion of the porch area, which was an enclosed area forming part of the kindergarten, to necessary supporting facilities such as office and pantry. The application was approved without condition by the Committee on 1.9.1995 on the consideration that kindergarten use was compatible with the residential development.

6. The Premises and Its Surrounding Areas (Plans A-1 to A-3c)

6.1 The Premises is :

- (a) located on the G/F of the Podium B of the subject residential development (i.e. Julimount Garden). The subject residential development is composed of two portions separated by Hin Hong Street. Six residential blocks are erected on top of two separate podiums, namely Podium A and Podium B, which accommodates the ancillary recreational facilities and carparks;
- (b) partly occupied by a restaurant and real estate agencies and partly vacant; and
- (c) with direct access to Hin Hong Street and Hin Tai Street.

6.2 The surrounding areas have the following characteristics:

- (a) the surrounding area is predominantly residential in nature comprising high to medium-density residential developments (Lung Hang Estate, Parc Royale and Hill Paramount) and village type developments (Ha Keng Hau Village, Sheung Keng Hau Village and Hin Tin Village);
- (b) to the northwest of the Premises across Hin Tai Street is Choi Jun School which is a special school for children with mild intellectual disability; and
- (c) to the further southwest of the Premises is Union Hospital.

7. **Planning Intention**

The “R(B)” zone is intended primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.

8. **Comments from Relevant Government Departments**

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

Land Administration

8.1.1 Comments of the District Lands Officer/Shia Tin, Lands Department (DLO/ST, LandsD) :

- (a) the Premises consists of portion of G/F of podium of Julimount Garden situated on STTL 167 R.P. (“the Lot”). The Lot is governed by New Grant No. 11663 as modified by two Modification Letters dated 28.9.1985 and 7.5.1986 respectively (collectively as “the NG”). Pursuant to the modified SC (4)(c) of the NG, the Premises is restricted to be used as “Supermarket and/or retail shops, the nature of which are subject to the prior written approval of the Director of Lands”;
- (b) the current application, which involves using the Premises for a kindergarten cum nursery, is not in compliance with the lease conditions. If the Board approves the application, the owner of the Premises is required to apply to LandsD for a temporary waiver to implement the proposal. There is however no guarantee that the application, if received, will be approved by LandsD. The application will be considered by LandsD acting in its capacity as the landlord at its discretion and any approval given will be subject to such terms and conditions including, *inter alia*, payment of waiver fee and administrative fee as may be imposed by LandsD; and
- (c) having checked against his office’s record, the number of parking

spaces and the permissible users mentioned in para. 5.1.1 of the FI (**Appendix Ia**) are incorrect. Pursuant to Special Condition No. (16) of the lease governing the Lot, the loading/unloading and parking spaces provided within the Lot shall not be used for any purpose other than the purposes set out on the approved carpark layout plan. The Government reserves all rights to take appropriate enforcement action if any breach of lease arising from the operation of the proposed school use is detected in future.

Building Matters

8.1.2 Comments of the Chief Building Surveyor/New Territories East 1 & Licensing, Buildings Department (CBS/NTE1&L, BD):

- (a) he has no in-principle objection to the application under the Buildings Ordinance;
- (b) before any new building works are to be carried out on the Premises, the prior approval and consent of BD should be obtained or the simplified procedures under the Minor Works Control System should be followed, otherwise they are Unauthorized Building Works. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance; and
- (c) if the proposed use under application is subject to the issue of a licence, the applicant is reminded that the building safety and other relevant requirements as may be imposed by the licensing authority would need to be complied with. .

Traffic

8.1.3 Comments of the Commissioner for Transport (C for T):

- (a) he cannot render support to the application at this stage. He has the following comments on the revised TIA report submitted by the applicant (**Appendix Ic**);

Section 4.1.8 of TIA

- (b) the survey date (9.2.2018) is a school holiday due to the flu. Hence, the data collected may not reflect the real traffic condition in a normal school day;

Section 4.3.1 of TIA

- (c) the applicant should justify why 50 students will arrive at the school on foot;
- (d) the feasibility of implementation of the “no car” policy in an international kindergarten is doubtful. The applicant should provide successful examples, if any, for TD’s reference. Otherwise, the applicant should revise the analysis to reflect the anticipated situation;

Section 5.3.2 of TIA

- (e) the applicant should verify the assumption of “20% of students with adults will be concentrated at the last 5 minutes”, and clarify the waiting area for the caregivers;
- (f) it is likely that caregivers would use private cars to pick up/drop off students. In this regard, the traffic implication of this kind of activity should be assessed in the TIA;
- (g) the applicant should provide information on the current traffic condition of the existing kindergarten when the caregivers pick up/drop off the students;

Section 5.4.1 of TIA

- (h) the proposal to rent a parking space in a private carpark to fulfil the requirement of the school is considered not a correct approach to deal with parking provision in a TIA;

Section 5.5.2 of TIA

- (i) there are doubts if the owner of the car park has given consent for the applicant to use the loading/unloading bays. In this regard, the applicant should state clearly who is now owning the loading/unloading bays and provide a letter from the owner for the exclusive use of the said bays by the applicant;

Section 5.5.3 of TIA

- (j) for picking up/dropping off the students, it is considered that two school bus lay-bys and one taxi/private car lay-by should be provided. In this regard, the applicant should indicate clearly where such lay-bys will be provided. The drawings in Appendix C of the TIA are unclear;
- (k) for the safety of passengers, in particular young kindergarten kids, a pavement area must be provided right at the door opening of the school bus/taxi/private car. Using a goods loading/unloading bay as a pick up/drop off lay-by without the necessary modification works may not be safe. The applicant should review the proposal;

Section 5.5.4 of TIA

- (l) the applicant should provide a clear drawing showing the route for students from the dropping off/picking up points to the classrooms. Clear pictures should be provided at critical locations showing the proposed route is safe for use as a pedestrian path; and

Section 6.9 of TIA

- (m) the applicant should review if the caregivers are not allowed to use private cars or only recommended not to use private cars.

Fire Safety

8.1.4 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 being provided to the satisfaction of his department; and

- (b) detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans or referral from the licensing authority.

Education

8.1.5 Comments of the Secretary for Education (S for E):

- (a) according to the Education Ordinance (Cap 279), “school” means an institution, organization or establishment which provides for 20 or more persons during any one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post-secondary education or any other educational course by any means, including correspondence delivered by hand or through postal services; and every school shall be registered or provisionally registered; and
- (b) he has no comment on the proposed school use from school registration perspective so long as relevant provisions set out in the Education Ordinance (Cap 279) and the Education Regulations (Cap 279A) are observed.

District Officer’s Comments

8.1.6 Comments of the District Officer/Shu Tin, Home Affairs Department (DO/ST, HAD):

- (a) it is noted that Sha Tin District Council (STDC) members and locals are particularly concerned about the potential traffic impact brought about by new/decanting schools in the districts. For those proposals where potential traffic problems brought by additional traffic arising from the school are foreseen, STDC members would normally expect that suitable measures, e.g. no-car policy, be implemented so as to mitigate the problems. If not, STDC members and locals will likely not welcome those proposals. Given the proposed school is a kindergarten, it might be difficult to persuade the operator to implement no-car policy;
- (b) it is noted that Fu Kin Street is the only road leading to Hin Hong Street where the Premises and other housing estates are located, as well as Union Hospital. Moreover, there is a limited number of existing loading/unloading areas in the vicinity. School buses will give rise to potential impact on the traffic condition of both Hin Tai Street and Hin Hong Street. In particular, there may be possible delay for users of Union Hospital if Hin Hong Street is jammed with school buses; and

- (c) she noted that the incumbent STDC member of the constituency, as well as nearby residents, objects to the application.

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

- (a) Director of Environmental Protection;
- (b) Commissioner of Police;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Project Manager (New Territories East), Civil Engineering and Development Department;
- (e) Chief Engineer/Mainland South, Drainage Services Department; and
- (f) Chief Engineer/Development 2, Water Supplies Department.

9. **Public Comments Received During Statutory Publication Period**

On 15.9.2017, 9.1.2018 and 27.3.2018, the application and its FIs were published for public inspection. During the first three weeks of the statutory public inspection periods, a total of 831 public comments were received from the Incorporated Owners of Julimount Garden with 382 signatures collected, the Incorporated Owners of Parc Royale, members of the Legislative Council, a member of the Sha Tin District Council, residents of Julimount Garden, Parc Royal and Hill Paramount and private individuals. Most of them (829) object to the application while two of them support the application. The whole set of (831) public comments have been deposited in the Board's secretariat for Members' inspection. Samples of the public comments supporting/objecting to the application are at **Appendix II** for Member's reference. Their views are summarized as follows:

Objecting Views (829)

- (a) the proposed kindergarten would generate additional traffic load on the local road networks, particularly during peak hours. There are limited loading/unloading facilities at the subject residential development. The proposed kindergarten is anticipated to lead to adverse traffic impact including traffic congestion and illegal parking problems;
- (b) the existing minibus serving the area (No. 68K) cannot cope with the additional traffic demand resulted from the proposed kindergarten;
- (c) the proposed kindergarten is anticipated to attract non-residents to the area, causing nuisance and security problems to the nearby residents;
- (d) the Premises is not suitable for kindergarten use as it is fronting Hin Tai Street and Hin Hon Street. The safety of the students of the proposed kindergarten cannot be guaranteed. Besides, students of the proposed kindergarten are expected to use the outdoor recreational facilities nearby which will exacerbate the burden of such facilities and cause nuisance to the existing users;
- (e) Hin Hong Street branches off from Fu Kin Street, which is the road serving other residential developments as well as the Union Hospital in the vicinity. The proposed kindergarten might lead to traffic congestion or accidents at Fu Kin Street and affect

the emergency operation of the Union Hospital;

- (f) there is doubt about the applicant's claim that he has already obtained consent to use the existing parking space at the private carpark for the proposed kindergarten;
- (g) the proposed kindergarten would lead to the closure of the existing restaurant at the Premises, which is the only restaurant in the area. This would cause inconvenience to the residents nearby. There is no strong justification for another kindergarten in the same community;

Supporting Views (2)

- (h) the proposed kindergarten would be an asset to the community especially for young families nearby; and
- (i) there is a growing need in the community for more places in international kindergarten due to the increase of residences in the vicinity.

10. Planning Considerations and Assessments

10.1 The application is for a proposed kindergarten cum nursery, comprising six classrooms with a GFA of 453.08m², at G/F of podium B of the existing residential development (i.e. Julimount Garden) within an area zoned "R(B)", which serves as an extension to the existing kindergarten on 1/F at the same podium. The planning intention of "R(B)" zone is intended primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The surrounding area of the Premises is predominantly residential in nature comprising medium-density residential developments. There is a school located to the northwest of the Premises across Hin Tai Street. The proposed kindergarten cum nursery use is considered not incompatible with the surrounding land uses from land use planning perspective.

10.2 The Premises is accessible by Hin Hong Street and Hin Tai Street, which are the major roads serving the residential developments in the vicinity including the subject residential development and Parc Royale. In the TIA submitted (**Appendices Ia to Ic**), the applicant proposes to provide school buses for picking up/dropping off of students between the Premises and MTR Tai Wai Station and has obtained consent from the owner of the Podium B of subject residential development to use the existing loading/unloading bays for loading/unloading activities of the proposed kindergarten cum nursery. C for T cannot render support to the application at this stage as the survey data collected in the TIA cannot reflect the real traffic condition in a normal school day, the feasibility of the "no car" policy is doubtful and renting a private car parking space to fulfil the requirement of the school is not acceptable. There is insufficient information provided in the TIA to demonstrate that there would not be adverse traffic impact on the surrounding road networks in the vicinity. DO/ST, HAD also considers that it is difficult to implement "no car" policy as the proposed school is a kindergarten. Other Government bureaux/departments including EDB, EPD, FSD and HKPF have no comment on/objection to the application.

10.3 A similar application (No. A/ST/379) for kindergarten use within the same "R(B)" zone was approved by the Committee on 1.9.1995. Nevertheless, the application was

for regularization of unauthorised extension of the existing kindergarten on 1/F of the podium which mainly involves conversion of part of the porch area, which is less than 30m², to supporting office and pantry. Therefore, the planning circumstances of that application are not relevant to the subject application.

- 10.4 Among 831 of the public comments received, most of them object to the application. The objection grounds are mainly related to the adverse traffic impact, illegal parking, road safety problems and doubts on applicant's claim to use the existing carpark. In this regard, the planning assessment and comments of Government departments above are relevant.

11. Planning Department's Views

- 11.1 Based on the assessment made in paragraph 10 above and having taken into account the public comments mentioned in paragraph 9 above, the Planning Department does not support the application.

- 11.2 Should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

the applicant fails to demonstrate that the application would not pose adverse traffic impact to the surrounding road networks.

- 11.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 1.6.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following condition of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of a revised traffic impact assessment and implementation of the traffic mitigation measures identified therein to the satisfaction of Commissioner for Transport or of the Town Planning Board;
- (b) the provision of car parking, loading and unloading facilities to the satisfaction of the Commissioner for Transport or of the Town Planning Board; and
- (c) the provision of fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board.

Advisory Clauses

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

12. Decision Sought

- 12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 12.2 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 date when the validity of the permission should expire.
- 12.3 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.

13. Attachments

Appendix I	Application form with attachments received on 8.9.2017
Appendix Ia	FI received on 27.12.2017 enclosing a TIA
Appendix Ib	FI received on 16.3.2018 enclosing a revised TIA
Appendix Ic	FI received on 12.4.2018 and 13.4.2018 enclosing a revised TIA and a new market research report
Appendix II	Sample of public comments
Appendix III	Recommended advisory clauses
Drawing A-1	Layout Plan
Drawing A-2	Floor Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3a to 3c	Site Photos

**PLANNING DEPARTMENT
JUNE 2018**