

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

APPLICATION NO. A/HSK/58

- Applicant** : Tang Yau Tak represented by Metro Planning and Development Company Limited
- Site** : Lot No. 1046 RP (Part) in D.D. 125 and Adjoining Government Land, Ha Tsuen, Yuen Long, New Territories
- Site Area** : 275m² (about) (include Government Land (GL) of about 104m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Hung Shui Kiu and Ha Tsuen (HSK and HT) Outline Zoning Plan (OZP) No. S/HSK/1
- Zoning** : “Village Type Development” (“V”)
- Application** : Proposed Temporary Shop and Services (Convenient Store and Real Estate Agency) 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 (convenient store and real estate agency) for a period of 3 years (**Plan A-1**). According to the covering Notes of the OZP for “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for the use for a period of 3 years.
- 1.2 The Site is related to four previous approved planning applications (Nos. A/YL-HT/418, 560, 739 and 926) for temporary shop and services (convenient store) use. The last application No. A/YL-HT/926 was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 2.1.2015 (**Plan A-1**). All the time-limited approval conditions have been complied with and the planning permission expired on 3.1.2018. The Site is partly being used for convenient store without a valid planning permission.

- 1.3 The Site is accessible from San Sik Road via local track, with the ingress/egress located at the north-western side of the Site (**Plan A-2 and Drawing A-1**). As shown on the proposed layout plan at **Drawing A-2**, an open shed (3.6m high with floor area not exceeding 210m²) are proposed with three sub-structures underneath (including a single-storey structure with floor area of about 65m² for convenient store, a single-storey structure with floor area of about 45m² for real estate agency and a single-storey structure with floor area of about 45m² for conference room). Neither car parking spaces nor loading/unloading areas are proposed. The proposed landscape plan and as-built drainage plan are at **Drawings A-3 to A-4**. According to the applicant, the operation hours of the Site are from 8:00 a.m. to 10:00 p.m. daily (including Sundays and public holidays).
- 1.4 A comparison of the major development parameters of the last approved application and the current application is given in the following table:

Major Development Parameters	Previous Application No. A/YL-HT/926 (a)	Current Application No. A/HSK/58 (b)	Difference (b) – (a)
Site Area	About 275m ²	About 275m ²	-
Applied Use	Temporary Shop and Services (Convenient Store) for a Period of 3 Years	Temporary Shop and Services (Convenient Store and Real Estate Agency) for a Period of 3 Years	Additional Real Estate Agency use
No. of Structure(s)	1 open shed structure with 3 sub-structures underneath	1 open shed structure with 3 sub-structures underneath	-
Total Floor Area	About 168m ²	About 210m ²	+42m ²
No of parking space	Nil	Nil	-

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form received on 15.2.2018 with vehicular access plan, proposed layout plan, proposed landscape plan and as-built drainage plan **(Appendix I)**
 - (b) Further Information (FI) dated 27.2.2018 providing traffic generation rate **(Appendix Ia)**
 - (c) FI dated 14.3.2018 providing the type and access route of vehicle with updated traffic generation rate **(Appendix Ib)**
 - (d) FI dated 27.3.2018 clarifying the existing condition of the Site **(Appendix Ic)**

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 in **Appendix I**. They can be summarized as follows:

- (a) The Site is subject to 4 planning permissions for similar use with additional real estate agency use for the current application. All the planning conditions imposed to the previous planning permission have been complied with. Similar applications in the “V” zone were also approved by the Board.
- (b) The Site is zoned “V” and the proposed use is an “as-of-right” use at the ground floor of a New Territories Exempted House (NTEH) in the zone. Selected commercial and community uses serving the needs of villagers and in support of the village type development are always permitted on the ground floor of a NTEH.
- (c) The Site is situated at Sik Kong Wai and the proposed development would benefit the nearby residents.
- (d) There are no adverse traffic, environmental and drainage impacts from the development. The opening hour is proposed to be restricted from 8:00 a.m. to 10:00 p.m. daily (including Sundays and public holidays).

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

The applicant is not the “current land owner” and has also 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 site notice and sending notice to the Ha Tsuen Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site was being used as the applied use. Subject to the collection of sufficient evidence, appropriate enforcement action under the Town Planning Ordinance would be taken in due course.

5. **Previous Applications**

- 5.1 The Site is related to 4 previous applications (Nos. A/YL-HT/418, 560, 739 and 926) for temporary shop and services (convenient store) use. Details of these applications are summarized at **Appendix II** and their locations are shown on **Plan A-1**.
- 5.2 All of these applications were approved by the Committee. The last application No. A/YL-HT/926 was approved with conditions for a period of 3 years by the Committee on 2.1.2015. The applicant has complied with all the time-limit approval conditions and the planning permission expired on 3.1.2018.

- 5.3 Compared with the last application No. A/YL-HT/926, the current application is submitted by a different applicant for additional use of real estate agency on the same site with an increase of total floor area from about 168m² to 210m² (+42m²) and with same number of sub-structures but different site layout.

6. Similar Applications

- 6.1 There are 13 similar applications Nos. A/YL-HT/882, 889, 931, 955, 973, 977, 980, 996, 998, 1013, 1051 and 1069 and A/HSK/13 for temporary shop and services use (convenient store or real estate agency) within the same “V” zone. Particulars of these applications and the decisions of the Committee are summarized at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 All these applications were approved by the Committee between 2014 and 2017 taking into consideration that the applied use was not incompatible with the surrounding uses. However, two of the applications (No. A/YL-HT/882 and 977) was subsequently revoked due to non-compliance with approval conditions.

7. The Site and Its Surrounding Areas (Plan A-1a to Plan A-4)

- 7.1 The Site is:
- (a) being partly used for the convenient store without a valid planning permission; and
 - (b) accessible from San Sik Road via a local track.
- 7.2 The surrounding areas have the following characteristics:
- (a) to its east and south are the village settlements of Sik Kong Wai, a storage yard and a real estate agency which are suspected unauthorized developments (UDs);
 - (b) to its west are some residential dwellings, a shrine and an open storage yard of converted containers and parking of vehicles which are suspected UD while to its further southwest is a piece of vacant land; and
 - (c) to its north are 2 flood-control ponds and a pump house. Further north across San Sik Road and nullah are vacant land, the village settlements of Sik Kong Tsuen, a car park and a flood-control pond.

8. Planning Intention

The planning intention of the “V” zone in the draft HSK and HT OZP is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services.

9. Comments from Relevant Government Departments

9.1 The following Government departments have been consulted and their views on the application are summarised 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) No permission is given for occupation of GL (about 104m² subject to verification) included in the Site. The fact that the act of occupation of GL without Government's prior approval is not allowed.
- (c) The private land of Lot No. 1046RP in D.D. 125 is covered by a Short Term Wavier (STW) No. 4163 to permit structures for the purpose of "Temporary Shop and Services (Convenient Store)".
- (d) The Site is accessible to San Sik Road through both private lots and GL. His Office provides no maintenance work to the GL involved and does not guarantee any right-of-way.
- (e) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (f) According to his record, there is no small house applications having been approved or under processing within the "V" zone portion of the Site.
- (g) Should the application be approved, the STW holders will need to apply to his Office for modification of the STW conditions if there are any irregularities on site. The applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of the GL. Such application(s) will be considered by LandsD acting in the capacity of the landlord 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 premium or fee, as may be imposed by LandsD.

Traffic

9.1.2 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) No vehicles associated with the Site are allowed to queue back to public roads or reverse onto/from public roads.

- (c) The local track leading to the Site is not under TD's purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by TD.
- (b) Adequate drainage measures should be provided at the Site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) HyD shall not be responsible for the maintenance of any access connecting the Site and San Sik Road.

Building Matters

9.1.4 Comments of the Chief Building Surveyor/New Territories 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, Buildings Department (BD) is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without approval of the BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the application.
- (c) 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.
- (d) 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 coordinator for the proposed building works in accordance with the BO.
- (e) 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.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the Building (Planning) Regulations at the building plan submission stage.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to the satisfaction of D of FS.
- (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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed FSIs are to be installed should be clearly marked on the layout plans.
- (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.

Environment

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

- (a) There was no environmental complaint pertaining to the Site received in the past 3 years.
- (b) Should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling Environmental Aspects of Open Storage and Temporary Uses".

Drainage

9.1.7 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He notes that the drainage proposal is generally identical to the one submitted under the previously approved application No. A/YL-HT/926. He has no objection in principle to the proposed development from a drainage point of view.
- (b) Should the application be approved, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to submit a revised drainage proposal, to implement and maintain the proposed drainage facilities to the satisfaction of his Division.

Water Supply

9.1.8 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**). A Waterworks Reserve within 1.5m from the centre line of 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 or car-parking purpose.
- (c) The Water Authority and his officer and contractors, his or their workmen shall have free access at all times to the area with necessary plant and vehicles for the purpose of construction, inspection, operation, maintenance and repair works and all other services across, through or under it which the Water Authority may require or authorize.
- (d) No trees or shrubs with penetrating roots may be planted within the Waterworks Reserve or in the vicinity of the water main.
- (e) The developer shall bear the cost of any necessary diversion works affected by the proposed development.
- (f) 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.

Others

9.1.9 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) However, in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the mentioned application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the concerned site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer's Comment

9.1.10 Comment of District Officer/Yuen Long, Home Affairs Department (DO/YL, HAD):

His office has not received any comment from the locals on the application.

9.2 The following Government departments have no comment on the application:

- (a) Commissioner of Police (C of P);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC);
- (c) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD);
- (d) Chief Engineer/Land Works, Civil Engineering Development Department (CE/LW, CEDD); and
- (e) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD).

10. Public Comments Received During Statutory Publication Period

On 23.2.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 16.3.2018, 3 public comments were received from a Yuen Long District Council (YLDC) member and two individuals (**Appendix IVa to c**). The YLDC member supports the application without providing reasons while two individuals object to the application mainly on the grounds that the structure on Site had been used for a long time for residential use instead of the applied shops and services uses (convenient store and real estate agency).

11. Planning Considerations and Assessments

- 11.1 The planning intention of "V" zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Although the temporary shop and services use (convenient store and real estate agency) is not entirely in line with the planning intention of the "V" zone, it could provide convenient store and real estate agency service to meet any such demand in the area. DLO/YL also advises that no Small House application has been received at the Site. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.
- 11.2 The proposed temporary use is not incompatible with the existing land use for the area, which is predominately occupied by village houses and residential developments (**Plan A-2**).
- 11.3 There is no adverse comment from the concerned Government departments, including DEP, AC for T/NT of TD and CE/MN of DSD and significant environmental, traffic and drainage impact to the area is not expected. Relevant approval conditions have been recommended in paragraph 12.2 to minimize any possible nuisances or the technical requirements of the other concerned Government departments. Any non-compliance with these approval conditions

would result in revocation of the planning permission and UD on Site would be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will be advised to follow the 'Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites' in order to minimize the possible environmental impacts on the nearby sensitive receivers.

- 11.4 The Committee has approved 4 previous applications for similar use at the Site (**Appendix II**) and 13 similar applications within the same "V" zone on the OZP for similar temporary shop and services uses (**Appendix III**). Approval of the subject application is in line with the Committee's previous decisions.
- 11.5 Three public comments were received with one supporting but two objecting to the application mainly on grounds stated in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.4 are relevant. For the concern on the unauthorized use of the Site, any development/uses not covered by the planning approval or tolerated/permitted under the OZP are subject to planning enforcement actions.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 above and having taken into account the public comments mentioned in paragraph 10, the Planning Department considers that the temporary shop and services (convenient store and real estate agency) 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 **6.4.2021**. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 10:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the public road at all times during the planning approval period;
- (c) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of a condition record of existing drainage facilities within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **6.7.2018**;
- (e) the existing landscape planting on the Site shall be maintained at all time during the planning approval period;
- (f) the submission of a 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 **6.10.2018**;

- (g) in relation to (f) above, the implementation of the 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 **6.1.2019**;
- (h) if any of the above planning conditions (a), (b), (c) or (e) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (i) if any of the above planning conditions (d), (f) or (g) 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
- (j) 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 temporary shop and services (convenient store and real estate agency) is not in line with the planning intention of the "V" zone which is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within the zone is primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification in the submission for a departure from such 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 reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form received on 15.2.2018 with vehicular access plan, proposed layout plan, proposed landscape plan and as-built drainage plan
Appendix Ia	Further Information (FI) dated 27.2.2018 providing traffic generation rate
Appendix Ib	FI dated 14.3.2018 providing the type and access route of vehicle

Appendix Ic	with updated traffic generation rate
Appendix II	FI dated 27.3.2018 clarifying the existing condition of the Site
Appendix III	Previous applications covering the Application Site
	Similar s.16 Applications within the subject "V" Zone on the draft Hung Shui Kiu and Ha Tsuen Outline Zoning Plan
Appendix IVa-c	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape Plan
Drawing A-4	As-built Drainage Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
APRIL 2018**