

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

APPLICATION NO. A/HSK/97

- Applicant** : Mr. TANG Kwong Yiu represented by Metro Planning and Development Company Limited
- Site** : Lots 1743 S.G (Part), 1743 S.H (Part) and 1743 S.I (Part) in D.D. 125, San Uk Tsuen, Yuen Long, New Territories
- Site Area** : 268m² (about)
- 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”)
[restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Temporary Shop and Services (Real Estate Agency and Interior Design Sample Showroom) 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 (real estate agency and interior design sample showroom) 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. The Site is currently used for the applied use.
- 1.2 The Site is related to one previous application for the same applied use submitted by the same applicant. The last application No. A/YL-HT/931 was approved by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 24.11.2014 and was subsequently revoked on 16.4.2017 due to non-compliance with a time-specific approval condition. The current application is submitted by the same applicant with the same site area with an additional structure and slightly different internal layout.
- 1.3 The Site is accessible from Tin Ha Road via local track (**Plan A-2**). As shown on the proposed layout plan at **Drawing A-2**, 2 single storey structures (not exceeding

4m in height with total floor area not exceeding 167m²) are proposed for real estate agency, interior design showroom and water tank uses. No car parking spaces and loading/unloading areas are proposed. The proposed landscape and tree preservation plan and the as-built drainage plan are at **Drawings A-3 and A-4**. According to the applicant, the operation hours of the Site are from 9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays).

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

- (a) Application form received on 14.8.2018 **(Appendix I)**
- (b) Supplementary Planning Statement with vehicular access plan, proposed layout plan, proposed landscape and tree preservation plan and as-built drainage plan **(Appendix Ia)**
- (c) Letter from the applicant dated 27.9.2018 to provide a FSIs proposal **(Appendix Ib)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement in **Appendix Ia**. They can be summarized as follows:

- (a) The nature, layout and the form of the proposed development is compatible with the surrounding environment.
- (b) Shop and Services is a 'Column 2' Use in "V" zone. The proposed development is temporary in nature, which would not jeopardize the planning intention of the "V" zone in long run.
- (c) The proposed development would serve the nearby residents.
- (d) There are no adverse traffic, environmental and drainage impacts from the development.
- (e) Similar precedence at "V" zone have been approved by the TPB on temporary basis. Similar treatment should be delivered to this application.

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 is not subject to planning enforcement action. Should a material change of use be identified on site, which constitutes an unauthorised development under the Town Planning Ordinance, enforcement action would be instigated subject to sufficient evidence collected.

5. Previous Application

The Site is related to one previous application for the same applied use submitted by the same applicant. The last application No. A/YL-HT/931 was approved by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 24.11.2014 and was subsequently revoked on 16.4.2017 due to non-compliance with approval condition for the implementation of the FSIs proposal. Compared with the last application, the current application is submitted by the same applicant on the same site with an additional structure for water tank use (GFA +2m²) and slightly different internal layout. Details of the application are summarized at **Appendix II** and its location is shown on **Plan A-1**.

6. Similar Applications

There are 10 similar applications Nos. A/YL-HT/889, 955, 973, 980, 996, 1013 and 1069 and A/HSK/13, 58 and 62 for temporary shop and services (real estate agency) use within the same “V” zone between 2014 and 2018. All of them were approved by the Committee. Particulars of these applications and the decisions of the Committee are summarized at **Appendix III** and their locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently used for the applied use;
- (b) accessible from Tin Ha Road via a local track.

7.2 The surrounding areas have the following characteristics:

- (a) predominantly rural residential dwellings of San Uk Tsuen; and
- (b) parking of vehicles, open storage/storage yards, vehicle repair workshop and logistics centre can be found in the vicinity, while all of them are suspected unauthorized developments (UDs).

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) The Site is accessible from Tin Ha Road through Government Land (GL) and private lot(s). His Office provides no maintenance works to the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The private lots which are covered by Short Term Waivers (STWs) are listed below:

Lot No(s). in D.D.	STW	Purposes
125		
1743 S.H	4650	Temporary Shop and Service (Real Estate Agency and Interior Design Sample Showroom)
1743 S.I	4651	

- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) According to his record, there is 1 Small House (SH) application under processing within the Site. The SH application is still in preliminary stage.
- (f) Should the application be approved, the STW holders will need to apply to his Office for modification of the STW conditions where appropriate and the lot owner(s) of the lot(s) without STW will need to apply to his office for permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) for any of the above will be considered by the LandsD acting in the capacity of 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 premium or fee, as may be imposed by the LandsD.

Traffic

9.1.2 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 Tin Ha Road.

Environment

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

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

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

- (a) He notes that the drainage proposal was generally identical to the one submitted under the previous approved application No. A/YL-HT/931 on which he had no adverse comment.
- (b) He has no objection in principle to the proposed development from a drainage point of view.
- (c) Should the application be approved, he would suggest that a condition should be stipulated in the approval letter requiring the applicant to implement and maintain the proposed drainage facilities to the satisfaction of his Division.

Building Matters

9.1.5 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the Building Ordinance (BO) and should not be designated for any proposed use under the 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 coordinator 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 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

9.1.6 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.

District Officer's Comments

9.1.7 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) Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD)
- (c) Chief Engineer/Sewerage Projects, DSD (CE/SP, DSD);
- (d) Commissioner of Police (C of P);
- (e) Director of Agriculture, Fisheries and Conservation (DAFC);
- (f) Director of Electrical and Mechanical Services (DEMS);
- (g) Project Manager (New Territories West), Civil Engineering and Development Department (PM/NTW, CEDD); and

10. Public Comments Received During Statutory Publication Period

On 21.8.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 11.9.2018, 3 public comments were received from 3 individuals of the public (**Appendix IVa to c**) objecting to the application mainly on the grounds of traffic, visual, environmental and ecological impacts, fire hazard and public safety.

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 applied use is not entirely in line with the planning intention of the “V” zone, DLO/YL advises that a Small House application has been received at the Site and it is still in preliminary stage. The proposed temporary shop and services use (real estate agency and interior design sample showroom) under application is of a small scale and is meant to serve the local residents in the neighbourhood. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.
- 11.2 The applied use is considered not incompatible with the surrounding land uses which mainly comprise rural residential dwellings within San Uk Tsuen (**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. 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 to address the technical requirements of the 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 one previous application for the same applied use and 10 similar applications within the same “V” zone on the OZP for similar temporary

shop and services uses. Approval of the subject application is in line with the Committee's previous decisions.

- 11.5 However, the last application No. A/YL-HT/931 for the same applied use, submitted by the same applicant, was revoked due to non-compliance with the time-limit approval condition regarding to the implementation of FSIs proposal. For the current application, the applicant has submitted a FSIs proposal. Concerned government departments, including D of FS have no objection to the application. As such, sympathetic consideration may be given to current application. Nevertheless, shorter compliance periods are recommended in order to closely monitor the progress of compliance with approval conditions. Should the application be approved, the applicant should be advised that should the applicant fail to comply with any of the approval conditions again resulting in the revocation of planning permission, sympathetic consideration would not be given to any further application.
- 11.6 3 public comments were received objecting to the application mainly on grounds are stated in paragraph 10. The planning considerations and assessments in para. 11.1 to 11.5 above 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 proposed temporary shop and services (real estate agency and interior design sample showroom) 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 **5.10.2021**. The following conditions of approval with shorter compliance periods and advisory clauses are suggested for Members' reference:

Approval Conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the existing trees and landscape planting on the Site shall be maintained at all time during the planning approval period;
- (c) the implementation of the accepted drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **5.4.2019**;
- (d) the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) the submission of a fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **5.1.2019**;

- (f) in relation to (e) above, the implementation of the 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 **5.4.2019**;
- (g) if any of the above planning conditions (a), (b) or (d) 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;
- (h) if any of the above planning conditions (c), (e) or (f) 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
- (i) 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 applied use 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 14.8.2018
Appendix Ia	Supplementary Planning Statement with vehicular access plan, proposed layout plan, proposed landscape and tree preservation plan and as-built drainage plan
Appendix Ib	Letter from the applicant dated 27.9.2018 to provide a FSIs proposal

Appendix II	Previous s.16 Application covering the Application Site
Appendix III	Similar s.16 Applications within the subject “V” Zone on the draft Hung Shui Kiu and Ha Tsuen Outline Zoning Plan
Appendices IVa to c	Public Comments
Appendix V	Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation 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
OCTOBER 2018**