

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

**APPLICATION NO. A/TM-LTYYY/382**

- Applicant** : Ming Wai Management Company represented by Metro Planning and Development Company Limited
- Site** : Lots 3659 S.B ss.3 RP, 3676 RP in D.D. 124 and Adjoining Government Land Shun Tat Street, Tuen Mun, New Territories
- Site Area** : About 224 m<sup>2</sup> (Including Government Land (GL) of about 65m<sup>2</sup>)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYYY/10
- Zoning** : “Village Type Development” (“V”)  
[Restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (real estate agency) for a period of 3 years on the application site (the Site) (**Plan A-1**). The Site is currently occupied by selling and storage of light goods vehicles.
- 1.2 According to the Notes for the “V” zone on the OZP, ‘Shop and Services’ is a Column 2 use which requires permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 3 years.
- 1.3 Part of the Site is the subject of 2 previous applications (No. A/TM-LTYYY/124 and 128) for temporary vehicle exhibition area, vehicle repair workshop and sales and purchase of vehicles respectively, which were rejected by the Rural and New Town Planning Committee (the Committee)/the Board on 18.3.2005 and 20.1.2006.

- 1.4 According to information submitted by the applicant (**Appendices I to Ib**), the major development parameters of the proposed development are as follows:

Site Area	224 m <sup>2</sup> (including GL of about 65m <sup>2</sup> )
Total Floor Area	208 m <sup>2</sup> (non-domestic)
No. of Structure	1 (for open shed, real estate agency and toilet)
Height of Structure	Not exceeding 5m (1 storey)
Operation Hours	9:00a.m. to 8:00p.m. daily (including Sundays and public holidays).

- 1.5 The location plan, proposed layout plan, proposed drainage plan and proposed fencing proposal submitted by the applicant are at **Drawings A-1 to A-4**.

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

- (a) Application Form received on 2.8.2019 and supplementary information received on 6.8.2019 and 7.8.2019 (**Appendix I**)
- (b) Supplementary Planning Statement with location plan, proposed layout plan and proposed drainage plan received on 2.8.2019 (**Appendix Ia**)
- (c) Letter of 10.9.2019 clarifying the current use, no vehicular access, no vehicle will be entered, parked/stored at the Site, the rain shelter use of the remaining area other than the structures and the fencing proposal (*accepted and exempted from publication and recounting requirement*) (**Appendix Ib**)

## **2. Justifications from the Applicant**

The justifications put forth by the applicants in support of the application are detailed at **Appendices I to 1b**. They can be summarised as follows:

- (a) The proposed development which is temporary in nature would not jeopardise the planning intention of the “V” zone in the long run.
- (b) The proposed development, which is primarily to serve the villagers, is a commercial use serving villagers’ demand. The nature, form and layout of the proposed development are compatible with the surrounding environment. It would not affect the character of the indigenous village.
- (c) The Board has approved a number of similar real estate agencies at “V” zone in Yuen Long and Tuen Mun.
- (d) No vehicular ingress/egress is proposed at the Site. No vehicle will be entered, parked/stored at the Site. The proposed development would not generate adverse traffic impact.

- (e) Being a shop to provide real estate service to the nearby residents, the proposed development would generate neither environmental nor noise disturbance.
- (f) With the implementation of drainage facilities, the proposed development would not generate adverse drainage impact. All the proposed drainage facilities will be provided and maintained by the applicant's own expenses.
- (g) Other than real estate agency and toilet, the remaining area under the open shed would serve as a rain shelter for the use of visitors and the staff of real estate agency.

### **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 Section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Tuen Mun Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection

### **4. Background**

The temporary shop and services use on the Site would be subject to planning enforcement action.

### **5. Previous Applications**

- 5.1 Part of the Site is covered by two previous applications (No. A/TM-LTYYY/124 and 128) for temporary vehicle exhibition area, vehicle repair workshop and sales and purchase of vehicles respectively, which were rejected by the Committee/the Board on 18.3.2005 and 20.1.2006. Details of the applications are summarised in **Appendix II** and their locations are shown on **Plan A-1a**.
- 5.2 Application No. A/TM-LTYYY/124 for temporary vehicle exhibition area and office for a period of 3 years was rejected by the Committee on 18.3.2005 mainly on the grounds of not in line with planning intention of the "V" zone; not compatible with the residential dwellings in the surrounding areas; the proposed vehicular access point and the proposed pedestrian access were considered unacceptable and no information to demonstrate the development would not have adverse drainage and environmental impacts on the surrounding areas.
- 5.3 Application No. A/TM-LTYYY/128 for temporary vehicle repair workshop, sales and purchase of vehicles and ancillary office for a period of 3 years was rejected by the Board on review on 20.1.2006 mainly on the grounds of not in line with planning intention of the "V" zone; not compatible with the residential dwellings in the surrounding areas; the proposed vehicular access point was considered unacceptable and no information to demonstrate the development would not have adverse drainage and environmental impacts on the surrounding areas.

## **6. Similar Applications**

- 6.1 There are eight similar applications (No. A/TM-LTYYY/210, 245, 264, 268, 296, 321, 345 and 350) within the same “V” zone, which were all approved by the Committee/the Board. Details of the similar applications are summarised in **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/TM-LTYYY/210, 245, 264, 268, 296, 321, 345 and 350 for temporary shop and services (convenience store and/or real estate agency) uses are approved between 2011 and 2018 on a temporary basis for 3 years on the considerations that the proposed development was not incompatible with the uses in the surrounding area; the proposed development would provide real estate agency services to serve any such demand in the area; temporary approval would not jeopardize the long term planning intention of “V” zone; no Small House application at the site; the proposed development was unlikely to cause significant environmental, traffic, drainage and visual impacts to the surrounding areas and no adverse comments were received from the Government departments. Amongst these approved applications, two applications (No. A/TM-LTYYY/210 and 245) were subsequently revoked due to non-compliance with approval conditions.

## **7. The Site and Its Surrounding Areas (Plans A-1 to A-4)**

- 7.1 The Site is:
- (a) currently occupied by selling and storage of light goods vehicles; and
  - (b) accessible via Shun Tat Street and Castle Peak Road – Hung Shui Kiu Section.
- 7.2 The surrounding areas have the following characteristics (**Plan A-2**):
- (a) to the east are parking of vehicles which is a suspected unauthorised development (UD) and residential dwellings. To the further east and southeast are mainly village type developments/residential dwellings, a real estate agency, storage and parking vehicles which are suspected UD;
  - (b) to the south is Shun Tat Street. To the further south across Shun Tat Street are mainly village type developments/residential dwellings, parking of vehicles which are suspected UD and a car washing and repair workshop;
  - (c) to the west is Castle Peak Road – Hung Shui Kiu Section; and
  - (d) to the north is real estate agency (under a valid application No. A/TM-LTYYY/350) and vacant land. To the further north and northwest across Castle Peak Road – Hung Shui Kiu Section are mainly village type developments/residential dwellings, a refuse collection point, pet grooming shop and sitting-out area which are suspected UD.

## **8. Planning Intention**

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. 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. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

## **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/Tuen Mun, Lands Department (DLO/YL, LandsD):

- (a) The Site falls within Lot Nos. 3659 S.B ss.3 RP and 3676 RP in D.D. 124 (the Lots) and adjoining GL. The Lots are 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. A portion of the Site fronting Castle Peak Road – Hung Shui Kiu is GL. No permission has been given for the use of the land.
- (b) Site inspection revealed that the Site was parked with a number of vehicles.
- (c) The Site is accessible via a strip of GL leading from Shun Tat Street. His office does not carry out maintenance works for the said footpath nor guarantee any right-of-way will be given to the Site.
- (d) If planning permission is given by the Board, the lot owner may consider submitting a formal application to his office for a Short Term Waiver to permit erection of the proposed structures on the Lots. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by LandsD acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, deposit and administration fee etc.
- (e) Notwithstanding the above, his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of the structures affected

irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any structures are found erected without any prior approval given by his office or any unauthorized occupation of GL.

- (f) There is no Small House application at the Site, 3 outstanding Small House applications and 2 approved Small House applications in the vicinity of the Site.

### **Traffic**

#### 9.1.2 Comments of the Commissioner for Transport (C for T):

He has no adverse comment on the application from traffic engineering point of view.

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

- (a) On the understanding that there is no vehicular access to be proposed and no public road is affected under the application, he has no comment from highways maintenance perspective on the application.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

### **Environment**

#### 9.1.4 Comments of the Director of Environmental Protection (DEP):

- (a) In view of the small scale of nature of the proposal, it would unlikely cause major pollution. Hence, he has no objection to the application.
- (b) The applicant should be reminded that the sewage arising from the Site should be directed to nearby public sewer. If septic tank and soakaway system is used in case of unavailability of public sewer, its design and construction should follow the requirements of the Practice Note for Professional Persons (ProPECC PN) 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department (EPD)" and are duly certified by an Authorized Person (AP).

### **Landscape**

#### 9.1.5 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

With referenced to the aerial photo of 2019, the Site is hard paved with majority of the Site occupied by an existing temporary structure. The applied use appears to be already in operation. The Site is in an area of village landscape character. Significant change to the landscape character arising from the application is not envisaged.

### **Nature Conservation**

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

According to the aerial photo available from the Geospatial Information Hub of the LandsD, the Site is largely paved with a tree at the boundary of the Site. Noting that the proposed use would not involve felling or damage of trees, he has no strong views on the application from nature conservation perspective.

### **Drainage**

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

- (a) He has no objection in principle to the application from public drainage point of view.
- (b) Should the application be approved, a condition should be included to request the applicant to submit, implement and maintain a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area. In regards to the proposed drainage proposal, the applicant should note the following comments :
  - (i) The applicant should refer to the guidelines as specified in “Technical Note to prepare a Drainage Submission” which is available at DSD’s website ([http://www.dsd.gov.hk/EN/Technical\\_Manuals/DSD\\_Guidelines/index.html](http://www.dsd.gov.hk/EN/Technical_Manuals/DSD_Guidelines/index.html)).
  - (ii) Catchpit(s) should be provided at proposed drainage connection before connecting to the existing drainage system.
  - (iii) Details of the proposed u-channel, catchpit and pipe and how it would be connected to the existing drainage system should be clarified and clearly shown on the drawing.
  - (iv) Peripheral drainage channels should be provided to intercept the surface runoff from the uphill catchment so as to avoid the Site from overland flow influence.
  - (v) The proposed drainage works, whether within or outside the lot boundary, should be constructed and maintained by the lot owner at their own expense. For any works to be carried out outside his lot boundary, the applicant should consult DLO/TM, LandsD and seek consent from relevant lot owners before commencement of the drainage works.
  - (vi) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.

- (vii) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
- (c) There is currently no existing public sewerage facilities available for connection at the Site. In this regard, EPD, the planning authority of sewerage infrastructure, should be consulted on the sewage treatment/disposal arrangement.

### **Fire Safety**

#### 9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the proposal subject to FSIs being provided to the satisfaction of the D of FS.
- (b) In consideration of the design/nature of the structures, 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; and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (d) However, the applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

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

- (a) There is no record of approval by the Building Authority for the structures existing at the Site, BD is not in a position to offer comments on their suitability for the use proposed to the application.
- (b) If the existing structure is New Territories Exempted House (NTEH) under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap 121 or the previous Cap 322), DLO/TM should be in a better position to comment on the application.
- (c) 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 BO and should not be designated for any proposed use under the application.
- (d) 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.

- (e) 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 BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (f) 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.
- (g) 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 B(P)R at the building plan submission stage.

### **Others**

#### 9.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):

If the proposal involves any commercial/trading activities, its state should not as to be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

#### 9.1.11 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD) and the Chief Town Planner/Housing and Office Land Supply, Planning Department (CTP/HOLS, PlanD):

The Site falls within the Study Site of the on-going Preliminary Land Use Study for Lam Tei Quarry and the Adjoining Areas (the Study) jointly commissioned by CEDD and PlanD. They have no specific comment on the application as far as the Study is concerned.

#### 9.1.12 Comments of the CLP Power Hong Kong Limited (CLP):

- (a) He has no objection in-principle to the proposal.
- (b) The applicant/land user should not request CLP to divert, modify and/or improve existing 400kV overhead lines circuits.
- (c) Advance notification should be given to CLP prior to commence of site work in order to obtain safety advice and regular safety audit accordingly.
- (d) The applicant should strictly follow the Code of Practice (CoP) on working near electricity supply lines and the Electricity Supply Lines

(Protection) Regulation (Cap. 406H). Nevertheless, attention should be drawn that it is his responsibility to observe and comply with all statutory requirements from the Government.

### **District Officer's Comments**

9.1.13 Comments of the District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct. He has no further comment.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Leisure and Cultural Services (DLCS);
- (c) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police (C of P).

## **10. Public Comment Received During the Statutory Publication Period**

On 9.8.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period, which ended on 30.8.2019, no public comment was received.

## **11. Planning Considerations and Assessments**

11.1 The application is for proposed temporary shop and services (real estate agency) for a period of 3 years at the Site zoned "V". The planning intention of the "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within "V" zone is primarily intended for development of Small Houses by indigenous villagers. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted Houses. Whilst the proposed development is not entirely in line with the planning intention of the "V" zone, the development could provide real estate services to serve any such demand in the area. DLO/TM, LandsD also advises that there is currently no Small House application at the Site. Approval of the application on a temporary basis for 3 years would not jeopardize the long-term planning intention of the "V" zone.

11.2 The Site is at the fringe of the "V" zone and in an area predominantly occupied by village type developments/residential dwellings, parking of vehicles, storage and real estate agencies (**Plan A-2**). The proposed development is considered not incompatible with the surrounding land uses.

11.3 Relevant Government departments, including C for T, CHE/NTW of HyD, CE/MN of

DSD, DEP and CTP/UD&L of PlanD have no objection to or no adverse comment on the application. No major adverse impact on traffic, drainage, environment and landscape are expected. To minimize any potential environmental nuisances and to address the technical requirements of the concerned departments, appropriate approval conditions are recommended in 12.2 below. Non-compliance with any of the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority.

11.4 There were two previous applications for temporary vehicle exhibition area, vehicle repair workshop and sales and purchase of vehicles rejected by the Committee/the Board on the considerations, amongst others, that no information to demonstrate the development would not have adverse drainage and environmental impacts on the surrounding areas. However, the current application is for a real estate agency to serve the neighbourhood. Besides, there are eight similar applications (A/TM-LTY/210, 245, 264, 268, 296, 321, 345 and 350) for temporary shop and services (real estate agency and/or convenient store) uses for a period of 3 years approved by the Committee/the Board. Approval of the current application is in line with the previous decisions of the Committee.

11.5 There is no public comment received during the statutory publication period.

## **12. Planning Department's Views**

12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.

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 **20.9.2022**. The following conditions of approval and advisory clauses are also 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) no vehicle is allowed to be entered or parked/stored at the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) 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 **20.3.2020**;
- (d) in relation to (c) 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 **20.6.2020**;
- (e) the submission of a 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 **20.3.2020**;

- (f) in relation to (e) above, the implementation of the drainage proposal within **9 months** from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **20.6.2020**;
- (g) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the provision of boundary fencing, within **6 months** from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by **20.3.2020**;
- (i) if the above planning conditions (a), (b) or (g) 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 conditions (c), (d), (e), (f) 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.

Advisory clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for the rejection is suggested for Member's reference:

The planning intention of "V" zone is primarily intended for development of Small Houses by indigenous villagers. The development is not in line with the planning intention of the "V" zone. No strong planning justification has been given in the submission for a departure from the 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 date when the validity of the permission should expire.
- 13.3 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.

**14. Attachments**

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| <b>Appendix I</b>  | Application Form received on 2.8.2019 and supplementary information received on 6.8.2019 and 7.8.2019                     |
| <b>Appendix Ia</b> | Supplementary Planning Statement with location plan, proposed layout plan and proposed drainage plan received on 2.8.2019 |

<b>Appendix Ib</b>	Letter of 10.9.2019 clarifying the current use, no vehicular access, no vehicle will be entered, parked/stored at the Site, the rain shelter use of the remaining area other than the structures and the fencing proposal
<b>Appendix II</b>	Previous s.16 Applications Covering the Application Site
<b>Appendix III</b>	Similar s.16 Applications within the same “V” zone on the approved Lam Tei and Yick Yuen Outline Zoning Plan No. S/TM-LTTY/10
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Location Plan
<b>Drawing A-2</b>	Proposed Layout Plan
<b>Drawing A-3</b>	Proposed Drainage Plan
<b>Drawing A-4</b>	Proposed Fencing Proposal
<b>Plan A-1</b>	Location Plan
<b>Plan A-1a</b>	Previous Applications Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2019**