

**APPLICATION FOR RENEWAL OF PLANNING APPROVAL  
FOR TEMPORARY USE  
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/TM-LTYYY/387**

<b><u>Applicant</u></b>	: Tang Kam Chai represented by Metro Planning and Development Company Limited
<b><u>Site</u></b>	: Lot 2995 RP (Part) in D.D. 124 and Adjoining Government Land (GL), Chung Uk Tsuen, Tuen Mun, New Territories
<b><u>Site Area</u></b>	: About 186m <sup>2</sup> (including GL of about 100m <sup>2</sup> )
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTYYY/10
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [Restricted to maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Renewal of Planning Approval for Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks renewal of planning approval to continue using the application site (the Site) for temporary shop and services (real estate agency) for a period of 3 years (**Plan A-1**). The Site falls within an area zoned “V” on the approved Lam Tei and Yick Yuen OZP No. S/TM-LTYYY/10. According to the Notes for the “V” zone on the OZP, ‘Shop and Services’ is a Column 2 use and planning permission from the Town Planning Board (the Board) is required. The Site is currently being used for the applied use with valid planning permission (No. A/TM-LTYYY/321) until 9.12.2019. The applicant currently seeks renewal of planning approval for a period of 3 years.
- 1.2 The Site was involved in two previous applications (Nos. A/TM-LTYYY/264 and 321) for temporary shop and services (real estate agency). The last application No. A/TM-LTYYY/321 was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 9.12.2016. All the time-specific approval conditions have been complied with. The planning permission is valid until 9.12.2019. Details of the previous applications are summarised at paragraph 6 below and at **Appendix III**.

- 1.3 The major development parameters of the current application are the same as the approved application (No. A/TM-LTY Y/321):

Site area	About 186m <sup>2</sup> (including GL of about 100m <sup>2</sup> )
Maximum floor area	74.4m <sup>2</sup>
No. of structure	1
Maximum Height of structure	2 storeys and not exceeding 5.3m
Operation hours	9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays)

- 1.4 According to the applicant, there is no change to the layout comparing to the previously approved application (No. A/TM-LTY Y/321). No vehicular ingress/egress is proposed. The operation hours are between 9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays).

- 1.5 The proposed layout plan, as-planted landscape and tree preservation plan, as-built drainage plan and fire service installation layout plan are at **Drawings A-1 to A-4** respectively.

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

- (a) Application Form received on 27.9.2019 and supplementary **(Appendix I)** information received on 27.9.2019
- (b) Supplementary Planning Statement with location plan, **(Appendix Ia)** proposed layout plan, as-built landscape and tree preservation plan, as-built drainage plan received on 27.9.2019
- (c) Letter confirming the layout is the same as the last planning **(Appendix Ib)** approval and submitting a fire services installations layout plan and an updated certificate of fire services installation and equipment received on 16.10.2019  
*(accepted and exempted from publication and recounting requirements)*

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

The justifications put forth by the applicant in support of the application are detailed in the application form at **Appendix Ia**. They can be summarised as follows:

- (a) All approval conditions for the last planning permission under Application No. A/TM-LTY Y/321 were complied with.
- (b) The proposed development is in line with the planning intention of the “V” zone. The site is not subject to impending Small House application. The proposed temporary use would not jeopardize the planning intention of the “V” zone in long term. The proposed development is primarily to serve the villagers.

- (c) 'Shop and Services' is a Column 2 use in "V" zone and is always permitted at the ground floor of a New Territories Exempted House. The nature of the proposed development is clean, tidy and free from nuisance.
- (d) The scale, nature, layout and form of the proposed development are compatible with the surrounding environment and would not affect the character of the village.
- (e) Similar applications for temporary shops and services (real estate agency) in "V" zone on the same OZP and other OZPs have been approved by the Board.
- (f) No vehicular ingress/egress is proposed. There would be no adverse traffic impact.
- (g) The proposed development would generate neither environmental nor noise disturbance. There will be no operation between 8:00p.m. to 9:00a.m.
- (h) The proposed development will have insignificant drainage impact and all proposed drainage facilities will be provided and maintained by the applicant's own expenses.

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

For the private land portion of the Site, 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 sending a registered mail to the Tuen Mun Rural Committee and by posting notice at the Site. Detailed information would be deposited at the meeting for Members' inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

### **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines on Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development (TPB PG-No. 34C) are relevant to the application. The relevant assessment criteria are at **Appendix II**.

### **5. Background**

The Site is not subject to planning enforcement action.

### **6. Previous Applications**

- 6.1 The Site was involved in two previous applications (No. A/TM-LTYT/264 and 321) for temporary shop and services (real estate agency). Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-1**.
- 6.2 Application No. A/TM-LTYT/264 and A/TM-LTYT/321 for the same use at the same site with the same development parameters and same layout were approved by the Committee on 8.11.2013 and 9.12.2016 respectively each for a period of 3 years on

considerations that not jeopardizing planning intention of the “V” zone, not incompatible with the surrounding land uses, no adverse comment from government departments and in line with previous decision of the Committee. All approval conditions of the applications were complied with.

- 6.3 Compared with the last approved application (No. A/TM-LTY Y/321), the current application is submitted by a different applicant for the same use on the same site with the same development parameters and same layout.

## 7. **Similar Applications**

There are five similar applications (No. A/TM-LTY Y/210, 245, 268, 296 and 345) within the same “V” zone, which were all approved. Among these permissions, two of them (No. A/TM-LTY Y/210 and 245) were revoked due to non-compliance with approval conditions. Details of the similar applications are summarized at **Appendix IV** for Members’ reference. The locations are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) paved and occupied by a 2-storey structure, which is currently used for the applied use with valid permission under application No. A/TM-LTY Y/321; and
- (b) accessible from Castle Peak Road – Hung Shui Kiu (**Plan A-2**).

8.2 The surrounding areas have the following characteristics:

- (a) to the immediate east are residential dwellings, some storage uses which are suspected unauthorised developments;
- (b) to the south are residential dwellings and a rehabilitation centre, to the further south is a vacant school;
- (c) to the southwest are yard for open storage (sand depot), storage use, parking of vehicles and a vehicle workshop which is a suspected unauthorized development;
- (d) to the immediate west is a cycle track and Castle Peak Road-Hung Shui Kiu section; and
- (e) to the further north across Castle Peak Road-Hung Shui Kiu section is a playground and Tin Ha Road and further northeast is open storage yard, residential dwellings and Tin Tei Yan Road.

## 9. **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 re-provisioning 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.

## **10. Comments from Relevant Government Departments**

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

### **Land Administration**

10.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):

- (a) The Site falls within Lot No. 2995 RP (Part) in DD. 124 (“the Lot”) and adjoining GL. The Lot is Old Schedule Lot 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) Site inspection revealed that there is an existing structure within the Site. A Short Term Waiver (STW) and Short Term Tenancy (STT) have been granted to permit the erection of the structure with the Lot and the GL concerned for the use as Shop and Services (Real Estate Agency).
- (c) The Site is accessible via a strip of track leading from the Castle Peak Road – Hung Shui Kiu. His office does not carry out maintenance works for the said track nor guarantee that right-of-way will be given to the Site.
- (d) In the event that planning permission is not given by the Board, the Government may consider terminating the STW and STT concerned. The Lot owner is required to demolish and remove all structures and debris on the Lot and the adjoining GL at his own cost upon termination of the STW and STT.
- (e) Notwithstanding the above, his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of structures on the site or any unauthorized occupation of GL at any time and irrespective of whether planning permission will be given or not.
- (f) There is no Small House application approved or under processing at the Site. In the vicinity, 3 Small House applications have been approved.

### **Traffic**

#### 10.1.2 Comments of the Commission for Transport (C for T):

He has no comment on application from traffic engineering viewpoints on the understanding that there is no vehicular access for the Site.

#### 10.1.3 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**

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

- (a) The proposed temporary shop and services use within a “V” zone is not anticipated to have adverse environmental implications and he has no objection to the application.
- (b) The applicant is reminded to refer to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP to minimise any potential environmental nuisances.

### **Landscape**

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

- (a) With reference to the site photos and aerial photo of 2019, the Site is hard paved with trees generally along the site boundary within the Site. The Site is situated in an area of village landscape character. Significant change to the landscape character arising from the continued use of the application is not envisaged.
- (b) The applicant is advised that approval of the section 16 application by the TPB does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. Applicant is reminded to approach relevant authority/government department(s) direct to obtain the necessary approval on tree works.
- (c) There shall be no storage or stacking of materials within 1m of any tree.
- (d) The applicant is reminded of the importance of undertaking proper tree care for existing trees within the site. Useful information published by

the GLTM Section, DEVB on general tree maintenance and tree risk management is available for reference in the following links:

- 護養樹木的簡易圖解  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/Pictorial\\_Guide\\_for\\_Tree\\_Maintenance.pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf)
- 樹木管理手冊  
[https://www.greening.gov.hk/tc/tree\\_care/Handbook\\_on\\_Tree\\_Management.html](https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html)
- 樹木風險評估及管理安排  
[https://www.greening.gov.hk/tc/tree\\_care/tra\\_arrangements.html](https://www.greening.gov.hk/tc/tree_care/tra_arrangements.html)
- 護養樹木 保障安全  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/Chinese\\_Leaflet\\_Big\\_font\\_size\\_v1\\_2012\\_03\\_29.pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/Chinese_Leaflet_Big_font_size_v1_2012_03_29.pdf)
- 減低樹木風險及樹木護養簡易圖解  
[http://www.greening.gov.hk/filemanager/content/pdf/tree\\_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk\(eng\).pdf](http://www.greening.gov.hk/filemanager/content/pdf/tree_care/PictorialGuideForTreeMaintenanceToReduceTreeRisk(eng).pdf)

- (e) In event any tree requiring replacement, the applicant may wish to consider other tree Species with small mature size in lieu of Ficus microcarpa which has the characteristics of vigorous root system and large tree canopy in mature size.

### **Nature Conservation**

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

The Site has been paved and used for similar use for some years. As such, he has no comment on the application from nature conservation perspective.

### **Drainage**

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

- (a) It is noted that the applicant intended to adopt the drainage facilities, which is as per the applicant's submission section 2.5 had been accepted in previous application No. A/TM-LTTY/264. In this regard, he has no comment from public drainage point of view to the drainage proposal.
- (b) Should the application be approved, conditions should be included to request the applicant to maintain the drainage facilities as per the drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area and to submit a condition record of existing drainage facilities on the Site to the satisfaction of the Director of Drainage Services or of the Town Planning Board.
- (c) Please note the following comments, the applicant should be reminded to incorporate when submitting their drainage proposal:

- (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 ([https://www.dsd.gov.hk/EN/Technical\\_Documents/DSD\\_Guidelines/index.html](https://www.dsd.gov.hk/EN/Technical_Documents/DSD_Guidelines/index.html)).
- (ii) The applicant should be reminded to review the current condition of the drainage works and submit the drainage proposal with updates, if any, for his review and retention.
- (iii) 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 and seek consent from relevant lot owners before commencement of the drainage works.
- (iv) The applicant should implement the drainage facilities on site in accordance with the drainage proposal.
- (v) 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.
- (vi) The proposed works should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

### **Fire Safety**

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

He has no objection in principle to the application subject to the existing Fire Services Installations implemented on the Site being maintained in efficient working order at all times.

### **Building Matters**

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

- (a) There is no record of approval by the Building Authority (BA) for the existing structures at the Site and BD is not in a position to offer comments on their suitability for the use related to the application.
- (b) His comments under the Buildings Ordinance on the application are as follows:
  - (i) If the existing structures are erected on leased land without approval of the BA (not being a New Territories Exempted House



(NTEH)), they are unauthorised under the BO and should not be designated for any approved use under the application.

- (ii) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, the prior approval and consent of the BA should be obtained, otherwise they are Unauthorised Building Works (UBW). An Authorised Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (iii) For UBW erected on lease land, enforcement action may be taken by the BA 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.
- (iv) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively.

### **Others**

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

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.

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

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

He has distributed consultation letters to the concerned locals and understand that they will provide their comments (if any) to the Board direct.

10.2 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) Director of Food and Environmental Hygiene (DFEH);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Executive Secretary (Antiquities and Monuments), Antiquities and Monuments Office (ES(A&M), AMO); and
- (f) Commissioner of Police (C of P).

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

On 4.10.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 25.10.2019, no public comment was received.

## **12. Planning Considerations and Assessments**

- 12.1 The subject application is for renewal of planning approval for temporary shop and services (real estate agency) for a period of 3 years at a site zoned “V” on the OZP. The planning intention of the “V” zone is primarily intended for development of Small House by indigenous villagers. Commercial, community and recreational uses may be permitted on application to the Board. 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. According to DLO/TM, LandsD, there is no Small House application under processing at the Site. Approval of the application on a temporary basis would not jeopardize the long-term planning intention of the zone.
- 12.2 The Site is at the fringe of the “V” zone and in an area with residential and rural character which is dominated by residential dwellings (**Plan A-2**). The proposed development is considered not incompatible with the surrounding land uses and the rural character of the surrounding area.
- 12.3 The application is generally in line with TPB PG-No. 34C in that there is no material change in planning circumstances since the previous temporary approval was granted; adverse planning implications arising from the renewal of the planning approval are not envisaged; all conditions under previous approval have been complied with; and the approval period sought is the same as the previous approval.
- 12.4 There is no adverse comment on the application from relevant government departments. To address the technical requirements of concerned government departments, relevant approval conditions are recommended in paragraph 13.2 below. Any non-compliance with the approval conditions will result in revocation of the planning permission and unauthorized development on the Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will also be advised to follow the relevant mitigation measures and requirements set out in the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by DEP in order to minimize any potential environmental nuisances.
- 12.5 The Committee has approved two previous applications for the same use at the Site. Within the same “V” zone, there are five similar applications approved by the Committee since 2011. Approval of the current application is in line with the previous decisions of the Committee.
- 12.6 There is no public comment received during the publication period.

### 13. Planning Department's Views

13.1 Based on the assessment made in paragraph 12 above, the Planning Department has no objection to the application.

13.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years from 10.12.2019 until 9.12.2022. The following conditions of approval and advisory clauses are also suggested for Members' reference:

- (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 enter or be parked/stored on the site, as proposed by the applicant, at any time during the planning approval period;
- (c) the existing trees on the site shall be maintained at all times during the planning approval period;
- (d) the existing drainage facilities on the site shall be maintained at all times during the planning approval period;
- (e) the submission of a condition record of the existing drainage facilities on the site within 3 months from the date of commencement of the renewed planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 10.3.2020;
- (f) the existing fire service installations implemented on the site shall be maintained in efficient working order at all times during the planning approval period;
- (g) if any of the above planning conditions (a), (b), (c), (d) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (h) if the above planning condition (e) 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.

*[Approval conditions (a) and (b) are the same as the previous application No. A/TM-LTYT/321, conditions (c), (d), (e) and (f) have been revised to accord with the latest departmental comments and the reinstatement clause is deleted.]*

#### Advisory clauses

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

13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' 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.

#### **14. Decision Sought**

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

#### **15. Attachments**

<b>Appendix I</b>	Application Form received on 27.9.2019 and supplementary information received on 27.9.2019
<b>Appendix Ia</b>	Supplementary Planning Statement with location plan, proposed layout plan, as-built landscape and tree preservation plan, as-built drainage plan received on 27.9.2019
<b>Appendix Ib</b>	Letter confirming the layout is the same as the last planning approval and submitting a fire services installations layout plan and an updated certificate of fire services installation and equipment received on 16.10.2019
<b>Appendix II</b>	Extracts of Town Planning Board Guidelines for Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use of Development (TPB-PG No. 34C)
<b>Appendix III</b>	Previous s.16 applications covering the Site
<b>Appendix IV</b>	Similar applications within the same “V” zone on the approved Lam Tei and Yick Yuen OZP No. S/TM-LTYYY/10
<b>Appendix V</b>	Advisory Clauses
<b>Drawing A-1</b>	Proposed Layout Plan
<b>Drawing A-2</b>	As-planted Landscape and Tree Preservation Plan
<b>Drawing A-3</b>	As-built Drainage Plan
<b>Drawing A-4</b>	Fire Service Installation Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos