

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

**APPLICATION NO. A/YL-TT/421**

- Applicant** : Mr. LAM Sun Tak
- Site** : Lots 4891 RP (Part), 4892 RP (Part), 4893 (Part) and 4894 in D.D. 116 and Adjoining Government Land, Tai Tong Road, Yuen Long, New Territories
- Site Area** : About 520 m<sup>2</sup> (including Government Land (GL) of about 50m<sup>2</sup>)
- Lease** : Block Government Lease (demised for agricultural purposes)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Village Type Development” (“V”)  
[Restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Building Surveying Consultancy) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (building surveying consultancy) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, shop and services use requires planning permission from the Town Planning Board (the Board). The Site is currently used for storage use (**Plans A-2, A-4c and A-4d**).
- 1.2 The site is the subject of 5 previous applications (No. A/YL-TT/289, 302, 327, 344 and 357) for temporary shop and services (real estate agency/environmental consultancy and landscape services) uses submitted by the same applicant. Applications No. A/YL-TT/289 and 302 were approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) of the Board, but both planning permissions were revoked subsequently due to non-compliance with associated approval conditions. Application No. A/YL-TT/327 was allowed for a period of 12 months by the Town Planning Appeal Board (TPAB) on appeal, yet the planning permission was revoked subsequently due to non-compliance with associated approval conditions. The last two applications (No. A/YL-TT/344 and 357) were rejected

by the Board on review and dismissed by TPAB respectively. Compared with the last application (No. A/YL-TT/357), the current application is submitted by the same applicant for a similar shop and services use on the same site with similar site layout but with an additional structure for covered parking spaces and different car parking spaces layout.

1.3 The Site is accessible from Tai Tong Road to its west via a strip of GL (**Plan A-2**). According to the applicant, the proposed development aims to provide building surveying consultancy services. The site layout plan, the landscape plan, the as-built drainage plan and the fire service installations proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.

1.4 The major development parameters of the previously rejected application and the current application are slightly different and as follows:

<b>Major Development Parameters</b>	<b>Previously Rejected Application No. A/YL-TT/357 (a)</b>	<b>Current Application No. A/YL-TT/421 (b)</b>	<b>Difference (b)-(a)</b>
Proposed Use	Temporary Shop and Services (Environmental Consultancy and Landscaping Services) for a Period of 3 Years	Temporary Shop and Services (Building Surveying Consultancy) for a Period of 3 Years	Similar shop and services use
Site Area	About 520m <sup>2</sup> (including about 50m <sup>2</sup> of Government land)		--
Total Floor Area (Non-domestic)	45.96m <sup>2</sup>	120.96m <sup>2</sup>	+75 m <sup>2</sup> (+62%)
No. of Structures	3 (for office, storage and toilet use)	4 (for office, storage, toilet and covered parking space use)	+1 (+25%)
Height of Structures	2m to 3m (1 storey)		--
Parking Spaces	14 for Private Cars (5m x 2.5m)	19 for Private Cars (5m x 2.5m)	5 (+26.3%)
Loading/Unloading Spaces	Nil		Nil
Operation Hours	10:00 a.m. to 8:00 p.m. with no operation on Sundays and Public Holidays	8:00 a.m. to 8:00 p.m. daily	Different Operation Hours

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

- (a) Application Form received on 12.12.2017 **(Appendix I)**
- (b) Further Information dated 3.1.2018 providing minor clarification on the current use of the Site with replacement page for the application form **(Appendix Ia)**

- (c) Further Information dated 19.1.2018 providing **(Appendix Ib)** responses to comments of the Commissioner of Transport, the Chief Highway Engineer/New Territories West, Highways Department and the Director of Fire Services
- (d) Further Information dated 26.1.2018 providing **(Appendix Ic)** responses to comments of the Chief Town Planner/Urban Design and Landscape, Planning Department

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

The justifications put forth by the applicant in support of the application are detailed in Appendix I of the Application Form in **Appendix I, Appendices Ib and Ic**. They can be summarized as follows:

- (a) The proposed development would be occupied by a building surveying consultancy that offers a range of professional services, including building inspection and project management.
- (b) As there are lots of projects for the proposed building surveying consultancy, the working hours will be longer, i.e. 8:00 a.m. to 8:00 p.m. daily.
- (c) Should the planning application be approved, the applicant undertakes that there will be no night-time operation, no open storage activities on the Site and no vehicle will be allowed to queue back to or reverse onto/from public road. The Site will be fenced off. The applicant committed that he will follow the requirements of relevant Government departments to comply the planning conditions if the application being approved.
- (d) The applicant promises to propose an acceptable traffic generation and attraction arising from the proposed development, a new run-in/run-out proposal and a fire service installations (FSIs) proposal; ensure that sufficient space within the Site for manoeuvring of vehicles; and comply with the Buildings Ordinance.
- (e) The applicant also promises to comply with the landscape condition to mitigate the landscape impact. If he fails to comply with the condition, he will accept any penalty resulting from the non-fulfilment.

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

The applicant is one of the “current land owners”. In respect of the other “current land owners”, the applicant 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 obtaining consent from the other “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

#### 4. **Background**

The use in the Site is subject to investigation. Should a material change of use be identified and confirmed in this site, which constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be instigated.

#### 5. **Previous Applications**

- 5.1 The site was involved in 5 previous applications (No. A/YL-TT/289, 302, 327, 344 and 357) for various temporary shop and services on the same site submitted by the same applicant. Details of the applications are summarized in **Appendix II** and the location of the site is shown on **Plan A-1**.
- 5.2 Application No. A/YL-TT/289 was approved with conditions for a period of 3 years by the Committee on 19.8.2011 on the consideration that the development was considered not incompatible with the surrounding land uses; the environmental nuisance generated would unlikely be significant in view of the small scale of the development and its frontage onto Tai Tong Road; temporary approval would not jeopardize the planning intention of the “V” zone; Government departments consulted had no adverse comments; and relevant departmental concerns could be addressed through the imposition of approval conditions. The planning approval was revoked on 19.2.2012 due to non-compliance with the approval conditions on the submission of run in/run-out, landscaping and tree preservation, drainage and FSIs proposals.
- 5.3 The subsequent application (No. A/YL-TT/302) was approved with conditions for a period of 3 years by the Committee on 20.4.2012 on similar considerations as for Application No. A/YL-TT/289. However, shorter compliance periods were proposed to monitor the progress on compliance with approval conditions in view of the previous revocation. Although the applicant has complied with the approval condition requiring the submission and implementation of FSIs within the specified time limit, the planning approval was subsequently revoked on 20.10.2013 due to non-compliance with other approval conditions on the submission and implementation of parking arrangement, run in/run-out, landscaping and tree preservation and drainage proposals.
- 5.4 Applications No. A/YL-TT/327 and A/YL-TT/344 were rejected by the Board on review on 24.10.2014 and 15.5.2015 respectively mainly on the grounds that the applicant had failed to demonstrate that the development would not cause adverse traffic, landscape and drainage impacts on the surrounding area, and approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism. In this regard, the applicant applied for appeal for application No. A/YL-TT/327 and it was then allowed by TPAB on 22.12.2015. Planning permission was granted for a period of 12 months instead of three years as applied, with conditions. Major considerations of the TPAB, amongst others, that the Appellant had accepted all the suggested conditions and promised to comply with them; and it was very likely that the Appellant would remedy the issues and comply with the approval conditions to be imposed. However, the planning approval was subsequently revoked on 22.3.2016 due to

non-compliance with approval conditions on the submission and implementation of parking arrangement, run in/run-out, landscaping and tree preservation and implementation of drainage proposal.

- 5.5 The progress of compliance with the approval conditions by the applicant are summarised as follows:

<b>Approval Conditions</b>	<b>Application No. A/YL-TT/289</b>	<b>Application No. A/YL-TT/302</b>	<b>Application No. A/YL-TT/327</b>
Provision of boundary fencing	N.A.	N.A.	✓
Parking arrangement proposal	N.A.	✗	✗
Run-in/out proposal	✗	✗	✗
Drainage proposal	✗	✗	✗ (only fulfilled submission part)
Tree preservation and landscape proposal	✗	✗	✗
Fire service installations proposal	✗	✓ (fully fulfilled submission and implementation parts)	✗ (only implementation is required)

- 5.6 The last application (No. A/YL-TT/357) were rejected by the Board on review on 3.6.2016 mainly on the same grounds as applications No. A/YL-TT/327 and A/YL-TT/344. Subsequently, the applicant applied for appeal and it was then dismissed by TPAB on 25.8.2017. The main considerations were that the application under appeal was the appellant's fifth application. The appellant was still unable to provide a convincing proposal to satisfy the requirements of relevant Government departments. The Appellant seemed to have no intention to seek professional assistance. The TPAB was not convinced that, if the appeal was allowed with conditions, the appellant would be able to comply with relevant approval conditions within a reasonable period of time; and allowing the appeal would set an undesirable precedent, allowing other applicants to believe that even if an application was revoked due to non-compliance with approval conditions, they could continue to submit planning applications. Allowing these types of application was no different than extending the compliance period of approval conditions indefinitely.
- 5.7 Compared with the last application (No. A/YL-TT/357), the current application is submitted by the same applicant for a similar shop and services use (i.e. building surveying consultancy) on the same site with similar site layout but with an additional structure for covered parking spaces and different car parking spaces layout.

## 6. Similar Applications

- 6.1 There are 5 similar applications (No. A/YL-TT/301, 343, 384 and 418) in the subject “V” zone. Detailed information of the applications is at **Appendix III** and the location is shown on **Plan A-1**.
- 6.2 Applications No. A/YL-TT/301, 343 and 418 for temporary shop and services (real estate agency) covering the adjoining site to the north and submitted by the same applicant were approved with conditions by the Committee for a period of 3 years on 20.4.2012, 16.1.2015 and 12.1.2018. Whilst the planning permission under Application No. A/YL-TT/301 was revoked on 20.7.2014 due to non-compliance with approval conditions on parking arrangement, run in/run-out and landscape aspects, all time-specified approval conditions were complied with under subsequent permission No. A/YL-TT/343. Renewal of the permission was later granted under Application No. A/YL-TT/418 for 3 years up to 16.1.2021.
- 6.3 Application No. A/YL-TT/384 for proposed temporary shop and services (local provision store with ancillary storage area and real estate agency) were approved with conditions by the Committee for a period of 3 years on 29.7.2016 on the grounds that the development was not incompatible with the surrounding land uses; it could serve the demand in the area; and the proposed development would unlikely cause significant adverse environmental, traffic and drainage impacts to the surrounding areas.

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

- 7.1 The Site is:
- (a) accessible from Tai Tong Road to its west via a strip of Government land;
  - (b) paved and fenced off;
  - (c) part of the Site is used for open-air and/or covered vehicle parking (**Plans A-2 and A-4a to A-4c**); and
  - (d) currently with storage of furniture without valid planning permission (**Plans A-2 and A-4c**).
- 7.2 The surrounding areas have the following characteristics:
- (a) the surrounding areas are predominated by residential dwellings intermixed with car parks, a few open storage/storage yards, workshop and warehouses, a kindergarten, real estate agencies, cultivated/fallow agricultural land and vacant/unused land;
  - (b) to the immediate north of the site is a real estate agency subject of Application No. A/YL-TT/418 for temporary shop and services (real estate agency) use by the same applicant;

- (c) to the west of the site across Tai Tong Road in the adjoining “V” zone is a real estate agency operating under Application No. A/YL-TT/371; and
- (d) except for the storage to the southwest of the site which is tolerated under the Town Planning Ordinance, the other open storages/storage yards, warehouses and car parks in the vicinity of the site are mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

## **8. Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized 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. 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 (NTEH). 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 and the public comments received are summarized 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 Government land (GL) (about 50m<sup>2</sup> subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without government’s prior approval is not allowed.
  - (c) Lot No. 4892 RP and 4893 in D.D. 116 are covered by Short Term Waivers (STWs) No. 4340 and 4341 respectively to permit structures erected thereon for the purpose of “Temporary Shop and Services (Real Estate Agency)”.
  - (d) Portion of Lot No. 4891 RP in D.D. 116 is covered by STW No. 633 to permit structures erected thereon for the purpose of “Kindergarten”.

- (e) The Site is accessible to Tai Tong Road via GL. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way to the Site.
- (f) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (g) There are 3 Small House applications located within the boundary of the Site and 3 such applications within the 30m radius circle of the Site under processing. The Small House applications are still in preliminary stage. Her office has no comment on the application provided that the Site will be available in case the Small House applications are eventually approved by her office.
- (h) Should planning approval be given to the subject planning application, the STW holder(s) will need to apply to her office for modification of the STW conditions if there is any irregularities on the Site and the lot owner(s) of the lot(s) without STW will need to apply to her office for permit the structures to be erected or regularize any irregularities on the Site. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a formal approval prior to the actual occupation of the GL portion. Such application(s) will be considered by LandsD acting in the capacity as 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 LandsD.

## **Traffic**

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

- (a) The applicant should advise the traffic generation and attraction arising from the proposed development. Such information is still outstanding.
- (b) With reference to the layout plan of the Site submitted by the applicant, some of the proposed parking spaces will be blocked by the adjacent parked vehicles. Vehicles will not be able to move in or out of these parking spaces. Therefore the parking layout is not acceptable. The applicant is required to revise it and indicate the width of the run in/run-out. The revised parking layout is still outstanding.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, vehicle queuing and reverse movement of



vehicles on public road are allowed.

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 the Transport Department (TD).
- (b) If the proposed run-in/run-out is agreed by TD, the applicant should construct a run-in/run-out at the access point at Tai Tong Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing pavement.
- (c) Since the last application was rejected by the Board, we consider this is a new application. The applicant is required to submit the run-in/run-out proposal for our consideration
- (d) His department shall not be responsible for the maintenance of any access connecting the Site and Tai Tong Road.

**Environment**

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

The latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the Environmental Protection Department (EPD) should be observed by the applicant.

**Landscape**

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

- (a) The Site, located near the junction of Sham Chung Road and Tai Tong Road falls within an area zoned “V”. The Site is subject to five previous applications (No. A/YL-TYST/289, 302, 327, 344 and 357) for various shop and services uses. The planning approvals of the first three previous applications were revoked due to non-compliance with approval conditions related to landscape issues and other matters. The same applicant is seeking planning permission for a similar use for a period of 3 years.
- (b) Based on the site photos dated 2.12.2017 and aerial photo of 2017, the Site is formed and hard paved with one existing tree along Tai Tong Road boundary. The Site is situated in an area of village landscape character dominated by village houses and temporary structures.

- (c) Having reviewed the submitted information he has reservations on the application from the landscape planning perspective for the reasons below.
- (d) Based on aerial photos taken on 24.11.2009 and 1.11.2010, the Site was originally grassland with some trees at the western and southern boundary. Noticeable disturbance to the existing landscape resources had been caused prior to the application. Approval of the application may encourage applicants to clear and develop the sites prior to planning permission is obtained.
- (e) Though the applicant proposes 8 planters (without indication of what would be planted inside) and 2 trees in planter boxes, in addition to retaining the existing tree. It is opined inadequate to compensate for the affected landscape resources.
- (f) Despite several approvals of extension of time for compliance with planning conditions in previous applications, the landscape proposals were still not satisfactory. The applicant's commitment to mitigate the landscape impact is in doubt.
- (g) In continuation to the above, the 2 trees proposed along the southern boundary are far apart. The applicant is reminded that all trees should be planted at-grade at 4 to 5m intervals generally along the boundary to provide reasonable screening for the Site.
- (h) Due to the public frontage to Tai Tong Road, the applicant should consider setting back the fence to allow planting outside the fence to maximise the benefit of the planting.
- (i) The proposed size of the planters is considered insufficient for sustainable growth of the tree and/or shrubs. Furthermore, it appears that the proposed tree locations along the southern boundary are in conflict with the drainage.
- (j) The applicant is advised that the minimum soil provision for all new tree planting should be 1m (W) x 1m (L) x 1.2m (D). The applicant is advised to refer to the "Technical Note on the Submission and Implementation of Landscape Proposals for Compliance with Conditions for Approved Applications for Open Storage and Port Back-up Uses" for useful information on what is required for tree preservation and landscape proposal.
- (k) The applicant is also advised that the approval of the landscape proposal does not imply approval of tree works such as pruning/transplanting and felling under lease. Tree works applications should be submitted direct to District Lands Officer for approval.

- (l) Should the Board approve this application, in view of the above, he would recommend approval condition requiring the submission and implementation of a tree preservation and landscape proposal to the satisfaction of the Director of Planning or of the Board be included in the permission.
- (m) With regards to the further information dated 26.1.2018 (**Appendix Ic**), as a revised tree preservation and landscape proposal is not submitted for consideration, there is inadequate information to ascertain the feasibility and sustainability of the proposal.

### **Drainage**

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

- (a) Based on the drainage proposal/planning statement enclosed in the application, apparently the applicant would maintain the existing drainage facilities as those implemented under previous planning applications.
- (b) In view of the above, he has no objection in principle to the proposed development. Should the application be approved, approval conditions should be stipulated requiring the submission of records of the existing drainage facilities on the Site and maintenance of the existing drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.

### **Fire Safety**

9.1.7 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 his satisfaction.
- (b) In addition, he has the following comments on the submitted FSIs proposal (**Drawing A-4**):
  - (i) Sufficient FS notes with proper standard(s) should be provided to indicate the proposed FSI provision;
  - (ii) Appropriate scale should be adopted to illustrate the span of the Site;
  - (iii) Emergency lighting shall be provided in accordance with BS 5266-1:2011 and BS EN 1838:2013; and
  - (iv) Directional sign or exit sign shall be provided in

accordance with FSD Circular Letter No.5/2008.

- (c) Nevertheless, 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.

### **Building Matters**

9.1.8 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 for the existing structures at the application site, we are not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant's attention is drawn to the following points:
  - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of BD, they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any proposed use under the captioned application.
  - (ii) 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 application site under the BO.
  - (iii) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on application site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with 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.
  - (v) 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) Regulation at the building plan submission

stage.

### **Others**

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

In the interest 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 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 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.

9.1.10 Comments of the Chief Engineer/Cross-Boundary and Infrastructure Development, Planning Department (CE/CID, PlanD):

CEDD and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation” (the Study). The Site falls within the Study Area of YLS but outside the development area of YLS. Hence, the Site would not be affected by any development proposal under the Study.

### **District Officer’s Comments**

9.1.11 Comments of the District Officer (Yuen Long), Home Affairs Department (DO(YL), HAD):

The local consultation has been completed and his office has not received any comments, from the village representatives in the vicinity, regarding the application.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD); and
- (d) Commissioner of Police (C of P).

## **10. Public Comments Received During Statutory Publication Period**

On 19.12.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.1.2018, 3 public comments were received raising objection to the application (**Appendices IV-1 to IV-3**)

mainly on the grounds that the development would have adverse impacts on the residential dwellings, inducing traffic and environmental issues, and legitimizing illegal brownfield activities.

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

- 11.1 The subject application is for temporary shop and services (building surveying consultancy) at a site zoned “V” on the OZP. The planning intention of the “V” zone is to designate both existing recognized 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. The proposed use is considered not entirely in line with the planning intention of the “V” zone. Whilst there are 3 Small House applications under processing on the Site, DLO/YL, LandsD advises that they are still in preliminary stage and his office has no comment on the current application provided that the Site will be available in case the Small House applications are eventually approved by his office. As such, the proposed development, which is temporary in nature, is considered not jeopardising the long-term planning intention of the “V” zone.
- 11.2 The nature of use and scale of the proposed development is considered not incompatible with the surrounding uses which are predominated by residential dwellings intermixed with car parks, a few open storage/storage yards, workshop and warehouses, a kindergarten, real estate agencies, cultivated/fallow agricultural land and vacant/unused land (**Plan A-2**).
- 11.3 However, the Site is the subject of previous 2 planning permissions for similar shop and services uses on the same site by the same applicant granted in 2012 and 2013. Both planning approvals were subsequently revoked due to non-compliance with the approval conditions regarding parking arrangement, run in/run-out, drainage, tree preservation and landscape and fire service installations proposals. Whilst a further planning approval (No. A/YL-TYST/327) was granted by TPAB in 2015, the planning approval was also revoked due to non-compliance with the aforesaid approval conditions, except submission of a drainage proposal. In this regard, it should be noted that the 5 previous applications were all by the same applicant covering the same site with similar layout for similar shop and services use. In effect, the applicant has yet to comply with the time-specified conditions even for more than 5 years’ time since the first grant of planning approval. In this regard, the Board has rejected Applications No. A/YL-TT/327, 344 and 357 for the reason of, amongst others, the repeated revocation history. In dismissing the appeal of Application No. A/YL-TT/357, TPAB was not convinced that the applicant would be able to comply with the approval conditions and considered that allowing the appeal would be no different than extending the compliance period indefinitely (see paragraph 5.4 above).
- 11.4 For the current application, whilst the applicant has submitted proposals on the parking arrangement, run in/run-out, landscape, drainage and fire safety aspects (**Drawings A-1 to A-4**), these proposals (except the as-built drainage plan) are similar to those submitted in the previous applications, which have yet to be accepted by the concerned departments. In particular, CTP/UD&L of PlanD has reservations on the application from the landscape perspective in view of the

previous non-compliances with approval conditions on the landscaping aspect. He also comments that the submitted landscape proposal is inadequate to provide reasonable screening and to ensure sustainable growth of the proposed plants, and that approval may set an undesirable precedent for prior clearance of vegetation before obtaining planning approval. On the traffic aspect, the applicant has not provided any information to address the request of C for T for traffic generation and attraction rates arising from the proposed development. C for T also considers that the submitted parking layout and run in/run-out proposals are not acceptable. CHE/NTW, HyD still requests the applicant to re-submit run in/run-out proposal. On the fire safety aspect, there are outstanding comments from D of FS on the submitted FSIs proposal that the applicant has yet to address. In response to the departmental comments, the applicant only indicates that relevant information and assessments will be submitted, but without any convincing evidence to show genuine effort to comply with such approval conditions if planning approval is granted (**Appendix Ib**).

- 11.5 Although the previous real estate agency use has ceased operation, the structures on the Site remain largely unchanged. Having considered the departmental concerns as mentioned above and the applicant's repeated failures to comply with the approval conditions of the previous planning approvals, it is considered that approval of the application with repeated non-compliances would set an undesirable precedent for other similar planning permissions for temporary uses which are also subject to the requirement to comply with the approval conditions, thus nullifying statutory planning control.
- 11.6 There are 3 public comments received on the application during the statutory publication period raising objection to the application (**Appendices IV-1 to IV-3**). As regards the concern over traffic impacts, C for T has advised the applicant to provide the traffic generation and attraction rates of the proposed development, to which the applicant has not responded. In regard to the concern on adverse impacts on the residential dwellings, environmental issues and legitimizing illegal brownfield activities, the considerations and assessments in paragraphs 11.1 to 11.5 are also relevant.

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

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for the following reasons:
- (a) the applicant fails to demonstrate that the development would not cause adverse traffic and landscape impacts on the surrounding area; and
  - (b) previous planning permissions granted to the applicant by the Board/TPAB under Applications No. A/YL-TT/289, 302 and 327 were revoked due to non-compliance of the approval conditions. Approval of the application with repeated non-compliances with approval conditions would set an undesirable precedent for other similar applications, thus nullifying the statutory planning control mechanism.

12.2 Alternatively, 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 up to 9.2.2021 but with shorter compliance periods to monitor the fulfilment of the approval conditions. The following conditions of approval with shorter compliance periods and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00p.m. and 8:00a.m., as proposed by the applicant, is allowed on the site during the planning approval period;
- (b) no open storage activity is allowed on the Site at any time during the planning approval period;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) the existing fencing shall be maintained at all times during the planning approval period;
- (e) the submission of a parking arrangement proposal within **3** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.5.2018;
- (f) in relation to (e) above, the implementation of the parking arrangement proposal within **6** months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 9.8.2018;
- (g) the submission of a revised run in/run-out proposal within **3** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 9.5.2018;
- (h) in relation to (g) above, the provision of run in/run-out within **6** months from the date of planning approval to the satisfaction of the Director of Highways or of the Town Planning Board by 9.8.2018;
- (i) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) the submission of a condition record of the existing drainage facilities 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 9.5.2018;
- (k) the submission of a revised tree preservation and landscape proposal within **3** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 9.5.2018;



- (l) in relation to (k) above, the implementation of the revised tree preservation and landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 9.8.2018;
- (m) the submission of a revised 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 9.5.2018;
- (n) in relation to (m) above, the implementation of the revised 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 9.8.2018;
- (o) if any of the above planning conditions (a), (b), (c), (d) or (i) 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;
- (p) if any of the above planning conditions (e), (f), (g), (h), (j), (k), (l), (m) or (n) 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
- (q) upon the 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 at **Appendix V**.

**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 reason(s) for rejection should be given to the applicant.

**14. Attachments**

**Appendix I**

Application Form received on 12.12.2017

<b>Appendix Ia</b>	Further Information dated 3.1.2018 providing minor clarification on the current use of the Site with replacement page for the application form
<b>Appendix Ib</b>	Further Information dated 19.1.2018 providing responses to comments of the Commissioner of Transport, the Chief Highway Engineer/New Territories West, Highways Department and the Director of Fire Services
<b>Appendix Ic</b>	Further Information dated 26.1.2018 providing responses to comments of the Chief Town Planner/Urban Design and Landscape, Planning Department
<b>Appendix II</b>	Previous Applications covering the Application Site
<b>Appendix III</b>	Similar Applications within the same “V” Zone on the OZP
<b>Appendices IV-1 to IV-3</b>	Public comments received during the statutory publication period
<b>Appendix V</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Site Layout Plan
<b>Drawing A-2</b>	Landscape Plan
<b>Drawing A-3</b>	As-built Drainage Plan
<b>Drawing A-4</b>	Fire Service Installations Proposal
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4d</b>	Site Photos

**PLANNING DEPARTMENT  
FEBRUARY 2018**