

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/440

<u>Applicant</u>	: Mr. WONG Kin Chung represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lot 1607 RP (Part) in D.D. 119, Muk Kiu Tau Tsuen, Yuen Long, New Territories
<u>Site Area</u>	: 910m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<u>Zoning</u>	: “Village Type Development” (“V”) [Restricted to a maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Proposed Temporary Shop and Services (Sales of Building Materials) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services (sales of building materials) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant seeks planning permission for 3 years. The Site is currently largely vacant with four temporary structures (**Plans A-2, A-4a and A-4b**). The Site is not subject to any previous application.
- 1.2 The Site abuts Kiu Hing Road with its ingress and egress at the western periphery of the Site (**Plan A-2 and Drawing A-1**). According to the applicant, the ingress/egress is 8m wide and one loading/unloading space is provided within the Site. The operation hours of the proposed use are from 10:00 a.m. to 4:00 p.m., Mondays to Sundays (including public holidays). According to the applicant, the proposed development is intended to serve the demand for building materials for the nearby villagers at Muk Kiu Tau Tsuen and Pak Sha Tsuen as well as warehouses along Kung Um Road. The sales of building materials include the sales of metal, PVC pipes and sanitary wares. No medium goods vehicles, heavy

good vehicles, container tractor and container trailer will access the Site. The Site will be surrounded by 2.5m-high corrugated metal sheets or wire mesh fence. A layout plan, a landscape plan and a drainage plan submitted by the applicant are at **Drawings A-1 to A-3** respectively.

1.3 The major development parameters of the application are summarized as follows:

Site Area	About 910m ²
Total Floor Area (Non-domestic)	About 235m ²
No. of Structures	4 (for site office, guard room, toilet with open shed and open shed for sales of building materials)
Height of Structures	Not exceeding 3.5m (1 storey) (for all structures)
No. of loading/unloading space (Drawing A-1)	1 (3.5m x 7m) (for light goods vehicle)
Operation Hours	10:00a.m. to 4:00p.m. daily (including Sundays and public holidays)

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

- (a) Application Form received on 23.7.2018 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Further Information received on 30.8.2018 providing revised operation hours in response to Transport Department's comments **(Appendix Ib)**
[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 Section 3 of the Supplementary Planning Statement in **Appendix Ia**. They can be summarized as follows:

- (a) The Site is owned by Tso Tong so that it is not subject to impending Small House application and temporary use could be therefore considered in the interim. The proposed development, which is primarily to serve the villagers, is a commercial use serving villagers' demand. The nature and size of the proposed development would not affect the character of the village. The proposed development would not jeopardize the planning intention of the "V" zone in the long run.
- (b) The proposed development is a Column 2 use in "V" zone and is always permitted on the ground floor of a New Territories Exempted House. The Site is situated within Muk Kiu Tau Tsuen and is an ideal location for shop and services to attract business. The proposed development is clean, tidy and non-polluting.

Considering the scale, nature, layout and form of the proposed development, they are compatible with the surrounding environment and would not affect the character of the village. Similar real estate agencies in “V” zone are normally approved by the Board and some precedents were noted in the rural Yuen Long (such as Applications No. A/YL-TT/318, A/YL-TT/342, A/YL-TT/429, A/YL-HT/1069 and A/HSK/58).

- (d) Various assessments undertaken conclude that the proposed development would not generate significant adverse impact. Adequate manoeuvring space is proposed within the Site for the manoeuvring of vehicle. The proposed development will generate neither environmental nor noise disturbance and the applicant will implement measures (e.g. restriction of operation hours and hard paving the Site and its frontage). All accrued runoff would be intercepted by the proposed 300mm surface U-channel along the site periphery and all proposed drainage facilities will be provided and maintained by the applicant at his own expense. Also, surface channel will be cleaned at regular interval to ensure unhindered flow of surface runoff along the channel. With the implementation of the drainage facilities, the proposed development would not generate adverse drainage impact.

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 Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting a notice of the application outside the Site and sending the notice to the Shap Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to planning enforcement action against unauthorized development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued on 17.5.2018 requiring discontinuation of the UD. The site inspection on 20.7.2018 revealed that the UD still continued upon expiry of the notice, prosecution action may be taken.

5. Previous Application

The Site is not a subject of any previous application.

6. Similar Applications

- 6.1 There are two similar applications (No. A/YL-TT/276 and 436) in the subject “V” zone. Detailed information of the applications is at **Appendix II** and the locations are shown on **Plan A-1**.
- 6.2 Application No. A/YL-TT/276 for temporary retail shop for restaurant groceries for a period of 3 years in the subject “V” zone was rejected by the Committee on

18.2.2011 on consideration of not in line with the planning intention of “V” zone; being more akin to a warehouse and not compatible with surrounding rural land uses; failure to demonstrate that the development would not cause adverse drainage impact on the surrounding areas; and approval of the application would set an undesirable precedent.

- 6.3 Application No. A/YL-TT/436 for temporary shop and services (vehicle parts shop) for a period of 3 years was approved with conditions by the Committee on 17.8.2018 on consideration of not frustrating the long-term planning intention of the “V” zone; not incompatible with the surrounding land uses; and no significant adverse traffic, environmental, infrastructural, landscape and fire safety impacts on the surrounding area anticipated.

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

7.1 The Site is:

- (a) abutting Kiu Hing Road to its west (**Plan A-2**);
- (b) hard-paved and fenced off; and
- (c) currently largely vacant with four temporary structures.

7.2 The surrounding areas have the following characteristics:

- (a) intermixed with fallow agricultural/vacant land, open storage/storage yards, warehouses, workshops, parking of vehicles and scattered residential dwellings (**Plans A-2 to A-4b**);
- (b) scattered residential dwellings of Muk Kiu Tau Tsuen are mainly located to the north, northeast, east and further south of the Site, with the closest one being about 5m away to its north (**Plans A-1 and A-2**);
- (c) to its east is vacant land;
- (d) to its west across the nullah are areas zoned “Undetermined” (“U”) on the approved Tong Yan San Tsuen OZP No. S/YL-TYST/12 with vehicle repair workshops, car services, warehouses, open storage yards and residential dwellings;
- (e) to the south are some open storage/storage yards and warehouses, and to the north are some open storage/storage yards and residential dwellings;
- (f) except for the warehouses, a storage yard and a vehicle workshop to its southeast across the nullah which may be tolerated under the Town Planning Ordinance, the open storage/storage yards, warehouses and workshops in the vicinity are mostly suspected “unauthorized developments” subject to enforcement action to be 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 the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the 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 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 an Old Schedule Agricultural 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) The Site is accessible to Kiu Hing Road via government land (GL). Her office does not provide maintenance works for GL involved and does not guarantee any right-of-way over the GL to the Site.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) There is no Small House application located within the boundary of the Site, and there are 9 applications under processing and 10 applications approved within the 30m radius circle of the Site.
- (e) Should planning approval be given to the subject planning application, the lot owners will need to apply to her office to permit the structures to be erected or regularize any irregularity on site. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application 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) He has no comment on the further information received on 30.8.2018 (**Appendix Ib**).
- (b) The operation hours of the proposed development should be restricted to 10:00 a.m. to 4:00 p.m. daily only.
- (c) No medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (d) The land status of the access road/path/track leading to the Site at Kiu Hing Road shall be checked with the lands authority.
- (e) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (f) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road area are allowed.

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

- (a) The proposed access arrangement should be commented by the Transport Department (TD).
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Kiu Hing Road.
- (c) 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) There was no substantial environmental complaint concerning the Site received in the past 3 years.
- (b) The latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” issued by his department should be observed by the applicant.

Drainage

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

- (a) He has no objection in-principle to the application from the public drainage point of view.
- (b) The detailed comments on the submitted drainage proposal (**Drawing A-3**) are at **Appendix III**.
- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a revised drainage proposal and the implementation and maintenance of drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Landscape

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

With reference to the aerial photo of 2018, it is observed that the Site is hard paved and without any significant vegetation. The Site is situated in an area of rural fringe landscape character. Significant change to the landscape character arising from the application is not anticipated.

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 fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his Department for approval. In addition, the applicant should also be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, 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 (BA) for the existing structures at the Site, he is 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 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 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 Site under the BO.
 - (iii) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of 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.
 - (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 (B(P)R) 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 B(P)R at the building plan submission stage.

District Officer's Comments

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

The local consultation was 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 comments on the application:

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

10. Public Comments Received During the Statutory Publication Period

On 31.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 21.8.2018, two public comments (**Appendices IV-1 to IV-2**) were received from a member of public and 12 indigenous villagers of Muk Kiu Tau Tsuen. A commenter (**Appendix IV-1**) objects to the application on the ground of the incompatibility of the proposed use with the surrounding areas and suggests that the Site could be used for temporary housing. The 12 indigenous villagers of Muk Kiu Tau Tsuen (**Appendix IV-2**) object to the application on the grounds of ecological impact, environmental nuisances, and flooding and traffic impacts.

11. Planning Considerations and Assessments

- 11.1 The current application is for proposed temporary shop and services (sales of building materials) at the Site zoned “V” on the OZP. The planning intention of the “V” zone is primarily to designate both existing recognized villages and areas of land considered suitable for village expansion and 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board. The proposed use is not entirely in line with the planning intention of “V” zone. However, according to DLO/YL, LandsD, there is no Small House application approved/under processing at the Site currently. In this regard, approval of the application on a temporary basis would not frustrate the long-term planning intention of the zoned use on the OZP.
- 11.2 The proposed use is not entirely incompatible with the surrounding uses which are predominantly rural land uses with scattered residential dwellings of Muk Kiu Tau Tsuen intermixed with fallow agricultural/vacant land, open storage/storage yards, warehouses, workshops, parking of vehicles (**Plan A-2**).
- 11.3 Government departments consulted, including C for T, DEP, CHE/NTW, HyD, DEP, CE/MN, DSD, CTP/UD&L, PlanD and D of FS have no objection to or adverse comment on the application. Significant adverse traffic, environmental, infrastructural, landscape and fire safety impacts on the surrounding areas are not envisaged. To minimize any possible environmental nuisances generated by the temporary use or to address the technical requirements of other concerned

government departments, relevant approval conditions are also recommended in paragraph 12.2 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 latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact.

- 11.4 Given a similar application for the similar temporary shop and services use (No. A/YL-TT/436) has been approved by the Committee in the subject “V” zone on 17.8.2018, approval of the current application is in line with the Committee’s previous decision.
- 11.5 There are two public comments received on the application during the statutory publication period objecting to the application for reasons as summarized in paragraph 10 above. The planning consideration and assessment in paragraphs 11.1 to 11.4 are 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 above, the Planning Department considers that the temporary shop and services (sales of building materials) could be tolerated for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for 3 years until 21.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 4:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, as proposed by the applicant, are allowed to be parked/stored on or enter/exit 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 submission of a 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 21.3.2019;
- (e) in relation to (d) above, the implementation of the landscape proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 21.6.2019;

- (f) the submission of a revised drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.3.2019;
- (g) in relation to (f) above, the implementation of the revised drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 21.6.2019;
- (h) in relation to (g) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (i) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.3.2019;
- (j) in relation to (i) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 21.6.2019;
- (k) if any of the above planning conditions (a), (b), (c) or (h) 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;
- (l) if any of the above planning conditions (d), (e), (f), (g), (i) or (j) 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
- (m) 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 attached at **Appendix V**.

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

the proposed development is not in line with the planning intention of the "V" zone which is primarily for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission to justify 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 period of which the permission should be valid on a temporary basis.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 23.7.2018
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further Information Received on 30.8.2018 Providing Revised Operation Hours in Response to Transport Department's Comments
Appendix II	Similar Applications within the Same "V" Zone on the OZP
Appendix III	Detailed Comments of Chief Engineer/Mainland North, Drainage Services Department
Appendices IV-1 and IV-2	Public Comments Received During the Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Landscape Plan
Drawing A-3	Drainage Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2018**