

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

**APPLICATION NO. A/YL-TT/450**

- Applicant** : Mr. LEE King Chok represented by Metro Planning and Development Company Limited
- Site** : Lots 1958 (Part), 1959 (Part) and 1960 (Part) in D.D. 119 and Adjoining Government Land (GL), Yuen Long, New Territories
- Site Area** : 2,650m<sup>2</sup> (about) (including about 120m<sup>2</sup> of GL)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Agriculture” (“AGR”) (93.2%)  
“Village Type Development” (“V”) (6.8%)  
[restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : Proposed Temporary Shop and Services (Retail Shop for Plants) with Plant Nursery 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 (retail shop for plants) with plant nursery for a period of 3 years (**Plan A-1**). The majority of the Site (about 93.2%) falls within an area zoned “AGR” with a minor portion (about 6.8%) straddling the adjacent “V” zone. According to the Covering Notes of the OZP, ‘provision of plant nursery’ is always permitted within the zones. Moreover, temporary use or development of any land or buildings not exceeding a period of 3 years within the zones requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP (i.e. ‘Shop and Services’ use within the “AGR” zone). As for the “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Board. The Site is currently occupied by a plant nursery with some temporary structures under construction (**Plans A-2, A-4a and 4b**).

- 1.2 The Site is accessible from Kiu Hing Road to its west via a local track (**Plan A-3**). According to the applicant, the Site is primarily intended as a plant nursery for ornamental trees with ancillary facilities and a retail shop selling plants grown on the Site. The Site would be unpaved with all existing paving removed. The plant nursery and the open shed consisting of the associated retail shop and storage for tools and fertilisers would cover about 1,140.8m<sup>2</sup> (43.9%) and 180m<sup>2</sup> (6.8%) of the Site respectively. The trees would primarily be supplied to open storage yards and warehouses in the area. Plants and fertilisers would be delivered to the Site by light goods vehicle. No workshop activities would be carried out at the Site and the Site would be fenced off by 2.5m high hoarding. The applicant also pledges to preserve all existing trees and provide additional trees at the site periphery. Drainage facilities would also be provided and maintained at the Site at the applicant's own expenses. Plans showing the vehicular access to the Site, site layout, landscape and tree preservation proposal and drainage proposal submitted by the applicant are at **Drawings A-1 to A-4**.
- 1.3 The major development parameters of the application are summarised as follows:

Major Development Parameters	Application No. A/YL-TT/450
Site Area	About 2,650m <sup>2</sup> (including about 120m <sup>2</sup> of GL)
Total Floor Area (Non-domestic)	About 203m <sup>2</sup>
No. of Structures	3 - open shed containing a retail shop for plants and storage of farm tools and fertilisers (180m <sup>2</sup> ) - an electricity metre room (20m <sup>2</sup> ) - a toilet (3m <sup>2</sup> )
Height of Structures	Not exceeding 3.5m (1 storey)
Parking Space	--
Loading/Unloading Spaces	1 for light goods vehicles (3.5m x 7m)
Operation Hours	10:00 a.m. to 4:00 p.m. daily

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with plans received on 5.11.2018 **(Appendix I)**
  - (b) Supplementary Planning Statement **(Appendix Ia)**
  - (c) Supplementary Information received on 21.11.2018 providing a revised landscape plan **(Appendix Ib)**
  - (d) Further Information received on 12.2.2019 providing responses to comments from the Agriculture, Fisheries and Conservation Department (AFCD) **(Appendix Ic)**  
*[accepted and exempted from publication and recounting requirements]*
  - (e) Further Information received on 19.2.2019 providing further responses to comments from AFCD **(Appendix Id)**  
*[accepted and exempted from publication and recounting requirements]*

*requirements]*

- 1.5 On 4.1.2019, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer a decision on the application for two months as requested by the applicant's representative. On 12.2.2019, further information was received (**Appendix Ic**) and the application is submitted to the Committee for consideration at this meeting.

## **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 at **Appendix Ia** and further information at **Appendices Ic and Id**. They can be summarised as follows:

- (a) The portion of the Site within the "V" is too small to accommodate Small Houses. The proposed development is in line with the planning intention of the "V" zone. The proposed development is a temporary use and would not jeopardise the long-term planning intentions of the "AGR" and "V" zones.
- (b) 'Plant nursery' is always permitted within the zones. 'Shop and Services' is a Column 2 use in the "V" zone and always permitted at the ground floor of a New Territories Exempted House (NTEH).
- (c) The form, layout and nature of the proposed development is compatible with the surrounding environment, consisting mainly of vacant land, agricultural activities and village houses. Should the application be approved, the applicant will apply for a Short Term Waiver to regularise the temporary structures on the Site.
- (d) Similar shop and services uses have previously been approved by the Board within "V" zones. Similar treatment should be given to the current application.
- (e) There will be insignificant traffic, environmental and drainage impacts arising from the development. No medium or heavy goods vehicle and container trailer/tractor would be allowed to access the Site. The proposed use would not generate excessive noise. The "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" (Code of Practice) would be adhered to. The surface channel will be cleaned at regular intervals to ensure unhindered flow of surface runoff along the channel.

## **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 through registered post. Detailed information would be deposited at the meeting for Members' inspection.

#### **4. Background**

The Site is subject to planning enforcement action against an unauthorised development (UD) involving storage use (including deposit of containers). Enforcement Notice was issued to the concerned parties on 21.9.2018 requiring discontinuance of the UD. Subsequent site inspection revealed that the UD has been discontinued. A Compliance Notice and a Reinstatement Notice (RN) requiring reinstatement of the concerned land were issued on 4.3.2019 and 7.3.2019 respectively. The RN will expire on 7.6.2019 and if it is not complied with, prosecution action may be taken by the Planning Authority.

#### **5. Previous Application**

The Site was not involved in any previous application.

#### **6. Similar Application**

There is no similar application within the subject “AGR” zone on the OZP.

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

7.1 The Site is:

- (a) accessible from Kiu Hing Road to its west via a local track (**Plan A-2**);
- (b) fenced off and partly hard paved; and
- (c) occupied by a plant nursery with some temporary structures under construction (**Plans A-4a and A-4b**).

7.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) predominantly rural residential in character comprising mainly dwellings intermixed with storage yards, parking of vehicles, a plant nursery and some unused land; and
- (b) apart from the storage and parking of vehicle uses found within the “V” zone, the other parking of vehicles to its immediate east and the storage yards in the vicinity are mostly UD subject to enforcement action taken by the Planning Authority.

#### **8. Planning Intentions**

8.1 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

- 8.2 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. 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.

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

- 9.1 The following government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
- (a) The Site comprises Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
  - (b) No permission is given for occupation of the GL (about 120m<sup>2</sup> subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
  - (c) The Site is accessible from Kiu Hing Road via GL and private land. Her office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
  - (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
  - (e) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a direct grant Short Term Tenancy for use of the Site. Applications for any of the above will be considered by her department acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application 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 her department.

### **Traffic**

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

- (a) The ~~working~~ **operation hours of the proposed development** should be restricted from 10:00 a.m. to 4:00 p.m. **to avoid additional traffic loading to Kung Um Road and Kiu Hing Road during AM and PM peak periods on Mondays to Sundays including public holidays as proposed by the applicant.**
- (b) No medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (c) 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 are allowed.
- (d) The land status of the access road/path/track leading to the Site from 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 with the relevant management and maintenance authorities accordingly.

#### 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.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water running from the Site to nearby public roads/drains.
- (c) His department shall not be responsible for the maintenance of any access connecting the Site and Kiu Hing Road.

### **Environment**

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

- (a) The applicant is advised to follow the relevant mitigation measures and requirements in the latest Code of Practice issued by the Environmental Protection Department to minimise any potential environmental nuisance.
- (b) There was no substantiated environmental complaint concerning the Site received in the past three years.

### **Agriculture and Nature Conservation**

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

According to the further information (**Appendices Ic and Id**), the whole site will be unpaved and the plant nursery part will be used for growing ornamental trees. As such, she has no strong view on the application from agriculture point of view.

### **Landscape**

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

- (a) She has reservations on the application from the landscape planning perspective.
- (b) With reference to the aerial photo of 2018, the Site is observed to be partly hard paved and partly vegetated. The Site is situated in an area of rural landscape character dominated by village houses but disturbed by open storage yards. The proposed use is not entirely compatible with the surrounding environment.
- (c) When comparing the aerial photo of 2012 and 2015, the Site was originally mainly an active farm in 2012 but was blanket cleared and used as an open storage yard in 2015. Landscape impact had taken place.
- (d) The approval of the application would likely set an undesirable precedent to encourage other similar application to clear the site prior to obtaining planning permission. The cumulative impact would result in the degradation of the rural landscape character in general.
- (e) Noted that the nature of the proposed retail shop for plants and plant nursery would not cause any adverse landscape impact, and that the planting (and nursery stock) would be subject to regular rotation and change, imposition of landscape condition would not be necessary.

### **Drainage**

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

- (a) He has no objection in-principle to the proposed development from the public drainage point of view.

- (b) He has the following comments on the submitted drainage proposal:
- (i) Consideration should be given to provide catchpit at the turning points of the u-channel.
  - (ii) The invert levels of the proposed catchpits should be shown on the drainage plan for reference.
  - (iii) The existing drainage facilities, to which the stormwater of the development from the Site would discharge, are not maintained by his office. The applicant should identify the owner of the existing drainage facilities to which the proposed connection will be made and obtain consent from the owner prior to commencement of the proposal works. In the case that it is a local village drains, District Officer (Yuen Long) (DO(YL)) should be consulted.
  - (iv) The applicant should check and ensure the hydraulic capacity of the existing drainage facilities would not be adversely affected by the development.
  - (v) Standard details should be provided to indicate the sectional details of the proposed u-channel and the catchpit.
  - (vi) The development should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.
  - (vii) The applicant should consult DLO/YL, LandsD and seek consent from the relevant owners for any drainage works to be carried out outside his lot boundary before commencement of the drainage works.
- (c) Should the Board consider the application acceptable from the planning point of view, approval conditions should be stipulated requiring the submission of a revised drainage proposal and the implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board.

### **Fire Safety**

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

- (a) He has no objection in principle to the proposal subject to 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. The applicant is advised to submit



relevant layout plans incorporated with the proposed FSIs to his department for approval. The applicant should 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, if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **Building Matters**

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

- (a) 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 the BD should be obtained, otherwise they are unauthorised building works (UBW). An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under BO.
- (c) 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.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

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

9.1.10 Comments of the DO(YL), Home Affairs Department (DO(YL), HAD):

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

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (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 23.11.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 14.12.2018, one public comment was received from the World Wild Fund For Nature Hong Kong (**Appendix II**) objecting to the application mainly for the reasons that the approval of this “destroy first, develop/apply later” case would set an undesirable precedent.

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

- 11.1 The subject application is for proposed temporary shop and services (retail shop for plants) with plant nursery for a period of 3 years within an area mainly zoned “AGR” (about 93.2%) and partly zoned “V” (about 6.8%) on the OZP. The provision of ‘plant nursery’ is always permitted within the zones. According to the applicant, only ornamental trees would be grown at the plant nursery covering about 43.9% of the Site. The vast majority of the remaining 56.1% of the Site would be unpaved and would serve as circulation/ vehicular access/loading and unloading space, storage of farm tools/fertilisers, toilet and electricity metre room, etc., which are incidental and ancillary to the plant nursery. About 6.8% of the Site (about 180m<sup>2</sup>) would be used as storage of farm tools/fertilisers and retail shop for plants grown on the Site. Given the comparatively small retail shop, the nature of the plants grown on the Site (i.e. ornamental trees), and the applicant proposed to unpave the Site, DAFC has no strong view on the application. Approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the subject “AGR” zone.
- 11.2 The Site is located at the fringe of the village cluster of Muk Kiu Tau Tsuen. The proposed development, which is predominantly a plant nursery for ornamental trees, is considered not incompatible with the surrounding uses, which are largely rural in character with residences intermixed with storage yards, parking of vehicles, a plant nursery and some unused land (**Plans A-2**).
- 11.3 Relevant government departments consulted, including DAFC, C for T and CE/MN, DSD have no strong views/objection/adverse comment on the application. Significant adverse agricultural/nature conservation, traffic, landscape, environmental and drainage impacts on the surrounding area are not envisaged. Although CTP/UD&L, PlanD has reservations, this is primarily due to the landscape impact caused by an unauthorised open storage use of the Site in 2015. However, the applicant has pledged to unpave the entire Site for the current proposed plant nursery use, to which no adverse landscape impact is envisaged.

Relevant approval conditions are also recommended in paragraph 12.2 below to minimise any potential nuisance on the surrounding areas or to address the concerns of the public and technical requirements of the concerned departments. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the latest Code of Practice in order to minimise any potential environmental impact.

- 11.4 There is one public comment received during the statutory publication period objecting to the application for the reasons as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.3 above are relevant.

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

- 12.1 Based on the assessments made in paragraph 11 above and having taken into account the public comment in paragraph 10 above, the Planning Department considered that the proposed temporary shop and services (retail shop for plants) with plant nursery could be tolerated for a period of 3 years.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 12.4.2022. 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 and heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no workshop activities, as proposed by the applicant, shall be carried out on the Site at any time during the planning approval period;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) 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 12.10.2019;
- (f) in relation to (e) 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 12.1.2020;

- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) 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 12.10.2019;
- (i) in relation to (h) 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 12.1.2020;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (k) if any of the above planning conditions (e), (f), (h) or (i) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

#### Advisory clauses

The recommended advisory clauses are attached at **Appendix III**.

- 12.2 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 "AGR" zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. 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 reason(s) for rejection should be given to the applicant.

**14. Attachments**

<b>Appendix I</b>	Application Form with plans received on 5.11.2018
<b>Appendix Ia</b>	Supplementary Planning Statement
<b>Appendix Ib</b>	Supplementary Information received on 21.11.2018 providing a revised landscape plan
<b>Appendix Ic</b>	Further Information received on 12.2.2019 providing responses to comments from AFCD
<b>Appendix Id</b>	Further Information received on 19.2.2019 providing further responses to comments from AFCD
<b>Appendix II</b>	Public Comment received during Statutory Publication Period
<b>Appendix III</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Vehicular Access Plan
<b>Drawing A-2</b>	Site Layout Plan
<b>Drawing A-3</b>	Proposed Landscape and Tree Preservation Plan
<b>Drawing A-4</b>	Proposed Drainage Plan
<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 and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
APRIL 2019**