

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/959

- Applicant** : Mr. XU Wu Xiong represented by Metro Planning and Development Company Limited
- Site** : Lots 617 S.A, 617 RP, 618 and 620 in D.D. 119 and Adjoining Government Land (GL), Pak Sha Tsuen, Yuen Long, New Territories
- Site Area** : 1,898m² (about) (including GL of about 21m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
- Zoning** : “Green Belt” (“GB”)
- Application** : Temporary Warehouse for Storage of Exhibition 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 warehouse for storage of exhibition materials for a period of 3 years. The Site falls within an area zoned “GB” on the OZP (**Plan A-1**). According to the covering Notes of the OZP, 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. warehouse use within the “GB” zone). The Site is currently occupied for the applied use without valid planning permission (**Plans A-2, A-4a to A-4c**).
- 1.2 The Site was involved in a previous application (No. A/YL-TYST/378) for temporary war game field for a period of 3 years (**Plan A-1**) which was rejected by the Rural and New Town Planning Committee (the Committee) of the Board on 20.6.2008. Details of the previous application are at paragraph 6 and **Appendix III**.
- 1.3 The Site is accessible via a local track leading from Kung Um Road to its southeast (**Plan A-3a** and **Drawing A-1**) with an ingress/egress provided at the eastern periphery of the Site. According to the applicant, no workshop activity would be

carried out on the Site. Plans showing the vehicular access leading to the Site and site layout submitted by the applicant are at **Drawings A-1 and A-2**.

1.4 The major development parameters of the application are summarised as follows:

Site Area	1,898m ² (about) (including GL of about 21m ²)
Total Floor Area (Non-domestic)	Not exceeding 1,038m ²
No. of Structures	2 (for warehouse use)
Height of Structures	Not exceeding 8m (1 storey)
Parking Spaces	---
Loading/ Unloading Spaces	1 (7m x 3.5m) (for light goods vehicle)
Operation Hours	10:00 a.m. to 4:00 p.m. with no operation on Sundays and Public Holidays

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

- (a) Application Form with Estimated Traffic Generation (**Appendix I**) and Plans received on 12.3.2019
- (b) Further Information received on 10.4.2019 (**Appendix Ia**) confirming the operation days
[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 Part 9 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) The applied development is temporary in nature and would not jeopardise the planning intention of “GB” zone.
- (b) The applied development is limited in scale and not incompatible with the surrounding environment which comprises warehouse and open storage activities to the east of the Site.
- (c) No workshop activity is proposed in the application. No vehicle exceeding 5.5 tonnes including medium and heavy goods vehicles and container tractors/trailers will be allowed on the Site. Sufficient space would be provided for manoeuvring of vehicles. No queuing and reverse movement of vehicles on public road would be allowed. Insignificant traffic, environmental and drainage impacts are anticipated.

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 Ping Shan Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for "Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance" (TPB PG-No. 10) are relevant to this application. The relevant assessment criteria are summarised as follows and extracted at **Appendix II**:

- (a) there is a general presumption against development (other than redevelopment) in "GB" zone. In general, the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use;
- (b) an application for new development in "GB" zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
- (c) the design and layout of any proposed development should be compatible with the surrounding area. It should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;
- (d) the proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area; and
- (e) the vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.

5. Background

A warning poster has been posted at the Site that any unauthorised development (UD) may be subject to prosecution and the Site would be kept under close monitoring for further action, if necessary.

6. Previous Application

The Site was part of a previous application No. A/YL-TYST/378 for temporary war game field for a period of 3 years (**Plan A-1**) which was rejected by the Committee of the Board on 20.6.2008 on the grounds that there was insufficient information in the submission to demonstrate that the development, including management of the proposed war game centre and its access road, would not generate adverse environmental, traffic, drainage and landscaping impacts on the surrounding areas. Details of the application are summarised in **Appendix III** and the boundary of the site is shown on **Plan A-1**.

7. Similar Application

7.1 There is no similar application within the same "GB" zone.

7.2 For Members' information, application No. A/YL-TYST/958 for temporary warehouse for storage of construction materials for a period of 3 years to the northeast of the Site within the subject "GB" zone on the OZP (about 99.4% zoned "GB" and about 0.51% zoned "Undetermined" ("U")) will also be considered at this meeting (**Plan A-1**).

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

8.1 The Site is:

- (a) accessible via a local track leading from Kung Um Road to its southeast (**Plan A-3a** and **Drawing A-1**);
- (b) paved; and
- (c) currently occupied for the applied use without valid planning permission.

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

- (a) comprise mainly woodland and vegetated slopes to the northwest, west and southwest within the subject "GB" zone and warehouses intermixed with some open storage yards, workshops, parking of vehicles, vacant land and scattered residential structures to the northeast, east and southeast within the adjoining "U" zone; and
- (b) the warehouses, open storage yards, workshops and parking of vehicles in the vicinity of the Site are suspected UD subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the "GB" zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.

10. Comments from Relevant Government Departments

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

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises GL and 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 GL (about 21m² subject

to verification) included in the Site. The attention of the applicant is drawn to the fact that the act of occupation of GL without Government's prior approval is not allowed.

- (c) The Site is accessible from Kung Um 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) Her site investigation revealed that unauthorised structures had been erected on Lot Nos. 617 S.A, 617 RP and 620 in D.D. 119. Her office had issued warning letters to the respective registered owners of the lots. Further lease enforcement actions will also be taken by her office.
- (f) Should planning approval be given to the subject planning application, the lot(s) 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 of the 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

10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) The land status of the access road/path/track leading to the Site from Kung Um Road should be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (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.

10.1.3 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 flowing 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 Kung Um Road.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past 3 years.
- (b) Should the planning application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimise any potential environmental nuisances.
- (c) The applicant should be reminded to comply with various pollution control ordinances, such as, the Air Pollution Control Ordinance, Noise Control Ordinance, and Water Pollution Control Ordinance, to address various potential environmental concerns.

Landscape

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

- (a) She has reservations on the application from landscape planning point of view.
- (b) With reference to her site visit on 27.3.2019, the Site is occupied by temporary structures with no major existing vegetation found within its boundary. However, as shown in the aerial photos taken during the period between April 2014 and December 2015, the Site was formed with blanket vegetation clearance, and adverse impact on existing landscape resources had taken place. Approval of the application may set an undesirable precedent and encourage other similar UD in “GB” zone without seeking prior planning approval.
- (c) Since the Site has been almost fully occupied by the temporary structures with no space for any meaningful landscape treatment, should the Board approve this application, it is considered not necessary to impose a landscape condition as its effect on enhancing the quality of public realm is not apparent.

Nature Conservation

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

- (a) Based on the aerial photo of 10.1.2011 (**Plan A-3c**), the Site was vegetated. However, aerial photo of 30.6.2013 (**Plan A-3b**) revealed that the Site was occupied by temporary structures. The applicant also indicated in the application that the current use of the Site is the applied use. The Board should take into account the history of the Site, especially if it is a “Destroy First, Build Later” case and if approving the subject application would set an undesirable precedent, when considering the subject application.
- (b) Should the application be approved due to other considerations, the applicant should be advised to adopt appropriate measures to avoid causing disturbance or pollution to the adjacent woodland in “GB” zone and adjacent watercourse. Trees within or in vicinity to the Site should also be preserved.

Drainage

10.1.7 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) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a 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 should be stipulated.

Fire Safety

10.1.8 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. 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 FSI 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 (BO)

(Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

10.1.9 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 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 the approval of the BD, they are unauthorised building works (UBW) under the 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 and land filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorised 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 (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 the B(P)R at the building plan submission stage.

District Officer's Comments

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

His office has not received any feedback from the locals on the application.

10.2 The following government departments have no comment to the application:

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

11. Public Comments Received During the Statutory Publication Period

On 19.3.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 9.4.2019, four public comments were received from the Kadoorie Farm and Botanic Garden Corporation (**Appendix IV-1**), the Hong Kong Bird Watching Society (**Appendix IV-2**), Designing Hong Kong Limited (**Appendix IV-3**) and a general public (**Appendix IV-4**) raising objections to the application mainly on the grounds that the applied use is not in line with the planning intention of the “GB” zone, the Board should not encourage “Destroy First, Build Later” application, approval of the application would set a undesirable precedent for other similar applications within the “GB” zone, a previous application was rejected by the Board on the Site and the applied brownfield operation should be accommodated in high-rise industrial estates.

12. Planning Considerations and Assessments

- 12.1 The subject application is for temporary warehouse for storage of exhibition materials for a period of 3 years at a Site zoned “GB” on the OZP. The planning intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. The proposed development is not in line with the planning intention of the “GB” zone and there is a general presumption against development within this zone. No strong planning justifications have been provided in the submission for a departure from the planning intention, even on a temporary basis.
- 12.2 The applied use is considered not compatible with the surrounding land uses, which mainly comprise woodland and vegetated slopes within the subject “GB” zone. Although warehouses, open storage yards, workshops and parking of vehicle are also found in the vicinity, they are mainly situated in the adjoining “U” zone and most of them are suspected UD subject to enforcement action being taken by the Planning Authority.
- 12.3 CTP/UD&L, PlanD has reservations on the application from the landscape planning perspective. Blanket vegetation clearance and adverse impact on existing landscape resources had already taken place. There is concern that approval of the application may set an undesirable precedent and would likely encourage other similar UD in “GB” zone. DAFC also shared the same view. Approving the current application would set an undesirable precedent. The cumulative effect of approving such similar applications, even on a temporary basis, would result in further encroachment into the “GB” zone and general degradation of the rural environment and landscape quality of the area.
- 12.4 According to TPB PG-No.10, there is a general presumption against development within the “GB” zone and an application for new development within “GB” zone will only be considered in exceptional circumstances and it must be justified with

very strong planning grounds. The development should not affect the existing natural landscape and cause any adverse landscape impact on the surrounding areas. Although the Site is located at the fringe of the “GB” zone, further proliferation of brownfield operations into the “GB” zone leading to site formation/land filling works and vegetation clearance would have adverse impact on the existing landscape resources in the area. Taking into account paragraphs 12.2 and 12.3 above, the proposed development does not comply with TPB-PG No. 10 in that the development is not compatible with the surrounding areas and the development has affected the existing natural landscape and the integrity of the “GB” zone.

- 12.5 There is no similar application within the same “GB” zone. The Site was part of a previous application (No. A/YL-TYST/378) for temporary war game field for a period of 3 years which was rejected by the Committee of the Board on 20.6.2008 on the grounds that there was insufficient information in the submission to demonstrate that the development, including management of the proposed war game centre and its access road, would not generate adverse environmental, traffic, drainage and landscaping impacts on the surrounding areas. Rejecting this application would be in line with the Committee’s previous decision.
- 12.6 There were four objecting public comments received on the application during statutory publication period as summarised in paragraph 11 above. The planning considerations and assessments in paragraphs 12.1 to 12.5 are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comments in paragraph 11, the Planning Department does not support the application for the following reasons:
- (a) the development is not in line with the planning intention of the “GB” zone which is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets and there is a general presumption against development within this zone. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
 - (b) the development is not in line with the Town Planning Board Guidelines No. 10 for Application for Development within the Green Belt Zone in that the development has affected the existing natural landscape; and
 - (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “GB” zone. The cumulative effect of approving such applications would result in further encroachment into the “GB” zone and general degradation of the rural environment of the area.
- 13.2 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 until 3.5.2022. The following approval conditions 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 operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site 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 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;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road, as proposed by the applicant, at any time during the planning approval period;
- (f) the provision of boundary fencing on the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 3.11.2019;
- (g) the submission of a 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 3.11.2019;
- (h) in relation to (g) above, the implementation of the 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 3.2.2020;
- (i) in relation to (h) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (j) 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 3.11.2019;
- (k) in relation to (j) 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 3.2.2020;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e) or (i) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (m) if any of the above planning conditions (f), (g), (h), (j) or (k) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory clauses

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

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 14.3 Alternatively, 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.

15. Attachments

Appendix I	Application Form with Estimated Traffic Generation and Plans received on 12.3.2019
Appendix Ia	Further Information received on 10.4.2019 confirming the operation days
Appendix II	Extract of Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance (TPB PG-No. 10)
Appendix III	Previous Application covering the Site
Appendices IV-1 to IV-4	Public comments received during the statutory publication period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Plan showing vehicular access leading to the Site
Drawing A-2	Site Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plans A-3a to A-3c	Aerial Photos
Plans A-4a to A-4c	Site Photos

**PLANNING DEPARTMENT
MAY 2019**