

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/996

<u>Applicant</u>	: Ming Wai Management Limited represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lot 2631 RP in D.D. 120, Shan Ha Tsuen, Yuen Long, New Territories
<u>Site Area</u>	: 1,215 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
<u>Zoning</u>	: “Open Storage” (“OS”)
<u>Application</u>	: Proposed Temporary Shop and Services 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 for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “OS” zone, ‘Shop and Services (not elsewhere specified)’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by an open storage yard (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site was the subject of a previous application (No. A/YL-TYST/788) for proposed temporary concrete batching plant for a period of 5 years which was rejected by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 15.7.2016 (**Plan A-1**). Compared with the previous application, the current application is submitted by a different applicant for a different use on largely the same site.
- 1.3 According to the applicant, various construction materials (such as tiles, pipes, sand and gravel) would be sold at the proposed shop. No open storage, repairing, assembling, dismantling and other workshop activities will be carried out at the Site. The applicant also undertakes that all existing trees/proposed drainage facilities within the Site will be preserved/provided at his own expense. Furthermore, no medium or heavy goods vehicles will be allowed to be parked or

enter the Site. Plans showing the site layout, tree preservation proposal and drainage proposal submitted by the applicant are at **Drawings A-1 to A-3** respectively.

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

Site Area	1,215 m ² (about)
Total Floor Area (Non-domestic)	587.5 m ² (about)
No. and Height of Structures	4 <ul style="list-style-type: none"> • one for shop and services (7m, 1 storey) • one for site office (6.5m, 2 storeys) • one for pump room (3.5m, 1 storey) • one for toilet (3m, 1 storey)
No. of Parking Spaces	Nil
No. of Loading/ Unloading Space	1 (for light goods vehicles) (7m x 3.5m)
Operation Hours	9:00 a.m. to 7:00 p.m., with no operation on Sundays and Public Holidays

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

- (a) Application Form received on 5.11.2019 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Further Information (FI) dated 12.12.2019 clarifying the proposed operation **(Appendix Ib)**
[accepted and exempted from publication and recounting requirements]
- (d) FI dated 24.12.2019 further clarifying the proposed operation **(Appendix Ic)**
[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 mainly detailed in Section 3 of the Supplementary Planning Statement (**Appendix Ia**) and the FIs at **Appendices Ib** and **Ic**. They can be summarised as follows:

- (a) The proposal is not incompatible with the planning intention of the “OS” zone. The proposed use could offer retail services of construction materials to nearby open storage yard operators.
- (b) The Site is neither sufficient for the access by medium/heavy goods vehicles nor the storage of bulky goods. As such, the proposal is a better option to use the Site.

- (c) Open storage yards are located in the vicinity of the Site and the proposal is akin to such uses. The development is compatible with the surrounding environment.
- (d) The Board has approved a number of similar shop and services uses in other “OS” zones within Yuen Long; similar treatment should be given to the current proposal.
- (e) There will be minimal traffic, environmental, visual and drainage impacts arising from the proposal. The development would not generate queuing of traffic outside the Site and adequate space for manoeuvring of vehicles will be provided. The applicant undertakes to follow the environmental mitigation measures in the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Use” (Code of Practice), where applicable.

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 on the Site and sending the notice to the Ping Shan Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Application

The Site was the subject of a previous application (No. A/YL-TYST/788) for proposed temporary concrete batching plant for a period of 5 years which was rejected by the Committee on 15.7.2016 on the ground that the applicant failed to demonstrate that the proposed development would not generate adverse environmental and traffic impacts on the surrounding areas. Details of the application are summarised in **Appendix II** and the site boundary is shown on **Plan A-1**. Compared with the previous application, the current application is submitted by a different applicant for a different use on largely the same site.

6. Similar Application

There is no similar planning application within the subject “OS” zone.

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

7.1 The Site is:

- (a) accessible via Shan Ha Road to its west (**Plans A-2 and A-3**);
- (b) paved and fenced off; and

- (c) currently occupied by an open storage yard.

7.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) predominantly comprises warehouses and open storage/storage yards, with scattered construction sites, residences, parking of vehicles, a car service, an eating place, a refuse collection point, agricultural land and some vacant land/structures;
- (b) there are residential structures in the vicinity with the nearest one located about 5m to its northeast;
- (c) to its west is a nullah bisected by Shan Ha Road and Long Hon Road located in an area zoned “Residential (Group D)” on the OZP;
- (d) to its southeast is an area zoned “Village Type Development” on the OZP; and
- (e) except for the warehouses and open storage/storage yards within the subject “OS” zone and an open storage yard to the west of the Site, the other open storage/storage yards, warehouses, parking of vehicles, eating place and car service in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “OS” zone is primarily intended for the provision of land for appropriate open storage uses and to regularise the already haphazard proliferation of open storage uses. It provides for the orderly development of land for open storage uses that cannot be accommodated in conventional godown premises.

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 an Old Schedule Agricultural Lot held under 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 from Shan Ha Road via Government land (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.

- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the 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. 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 land status of the access road/path/track leading to the Site from Shan Ha Road shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall 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.

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

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

Environment

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

- (a) There was no substantiated environmental complaint concerning the Site received in the past three 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 to minimise any potential environmental nuisances on the surrounding area.

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 proposed development from the public drainage point of view and no adverse comment on the submitted drainage proposal (**Drawing A-3**).
- (b) Nevertheless, the applicant should be reminded to note the following:
 - (i) The applicant should implement the drainage facilities on site in accordance with the agreed drainage proposal.
 - (ii) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.
 - (iii) The proposed development would neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
 - (iv) The applicant should consult DLO/YL, LandsD and seek consent from relevant lot owners for any works to be carried out outside his lot boundary before commencement of the drainage works.
- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the implementation and maintenance of the agreed drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Fire Safety

9.1.6 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. 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, 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

9.1.7 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 the approval of the BA, 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, demolition and land filling) are to be carried out on the Site, prior approval and consent of the BA 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.

Others

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

- (a) The Civil Engineering and Development Department (CEDD) and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation”. According to the Recommended Outline Development Plan (RODP) of YLS promulgated on 8.8.2017, the Site partly falls within an area zoned as “Other Specified Uses” annotated “Mixed Use” (“OU(MU)”) and partly within an area shown as ‘Road’.
- (b) The objective of YLS is to transform the degraded rural land predominantly occupied by brownfield operations including open storage yards, warehouses and rural industrial uses into housing and other uses with supporting infrastructure and community facilities, and to improve the existing environment. It is noted that the application is for temporary use for a period of 3 years. In considering the application for temporary uses, due consideration should be given on the possible implication on land clearance which would affect the future implementation of YLS.

9.1.9 Comments of Project Manager (West), CEDD (PM(W), CEDD):

- (a) He has no objection to the subject application.
- (b) Part of the Site falls within the boundary of the proposed YLS Development – Stage 2. The land resumption and clearance programme of the project is subject to Executive Council’s authorisation on land resumption and Finance Committee’s funding approval of the project. Land clearance operation is tentatively targeted to commence in 2024. Thus, the applicant shall be reminded that extension of the planning permission may not be supported in future and shall be advised not to carry out any substantial works in view of the planned YLS Development – Stage 2.

District Officer’s Comments

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

His office has not received any feedback from locals.

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) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 12.11.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 3.12.2019, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The subject application is for proposed temporary shop and services for a period of 3 years at a site zoned “OS” on the OZP. Although the proposal is not entirely in line with the planning intention of the “OS” zone, which is primarily for the provision of land for appropriate open storage uses, the proposal could satisfy any such demand for retail of construction materials in the area. Whilst the Site falls partly within an area zoned “OU(MU)” and partly within an area shown as ‘Road’ on the RODP of YLS promulgated on 8.8.2017, CE/CID, PlanD does not raise objection to the application and PM(W), CEDD has no objection to the proposed temporary use for 3 years. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.
- 11.2 The surrounding area comprises mainly warehouses and open storage/storage yards (**Plan A-2**). The proposed development is generally not incompatible with the surrounding uses in the subject “OS” zone.
- 11.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. There has been no environmental complaint concerning the Site received in the past three years. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to minimise any potential environmental nuisances or to address the technical requirements of other concerned government 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 planning application be approved, the applicant will also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.
- 11.4 There is one previous application for proposed temporary concrete batching plant rejected by the Committee mainly on the ground that the applicant failed to demonstrate that the proposed development would not generate adverse environmental and traffic impacts on the surrounding areas. However, the current application is for a different use, on which the concerned departments have no adverse comments.
- 11.5 There is no public comment received on the application during the statutory publication period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.

- 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 3.1.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no repairing, assembling, dismantling and other workshop activities, as proposed by the applicant, are allowed on the Site at any time during the planning approval period;
- (b) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/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 vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) all existing trees within the Site shall be maintained at all times, as proposed by the applicant, during the planning approval period;
- (e) the implementation of the accepted 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 3.7.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 3.7.2020;
- (h) in relation to (g) 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 3.10.2020;
- (i) if any of the above planning conditions (a), (b), (c), (d) or (f) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (j) if any of the above planning conditions (e), (g) or (h) 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 III**.

- 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 “OS” zone, which is primarily intended for the provision of land for appropriate open storage uses. 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

Appendix I	Application Form received on 5.11.2019
Appendix Ia	Supplementary Planning Statement
Appendix Ib	FI dated 12.12.2019 clarifying the proposed operation
Appendix Ic	FI dated 24.12.2019 further clarifying the proposed operation
Appendix II	Previous Application covering the Site
Appendix III	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Tree Preservation Proposal
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan with Previous Application
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2020**