

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/516

<u>Applicant</u>	: Kin Luen Company 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>	: 910 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Draft Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/17
<u>Zoning</u>	: “Village Type Development” (“V”) <i>[Restricted to a maximum building height of 3 storeys (8.23m)]</i>
<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, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use within the “V” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by storage of assorted items without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site involves one previous application (No. A/YL-TT/440) for the same use as the current application which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board for a period of 3 years on 21.9.2018. However, the planning permission was revoked on 21.2.2021 due to non-compliance with time-limited approval conditions on implementation of landscape, drainage and fire service installations (FSIs) proposal. Compared with the last application, the current application is submitted by a different applicant for the same use on the same site with similar site layout and different development parameters.

- 1.3 According to the applicant, the proposal is mainly for a shop selling building materials such as PVC pipes, packed cement and hand tools to serve nearby residents. No medium or heavy goods vehicles exceeding 5.5 tonnes will be allowed to access the Site. Plans showing the site layout, landscape proposal, drainage proposal and FSIs proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.
- 1.4 The major development parameters of the current application and the previously approved application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TT/440 (a)	Current Application No. A/YL-TT/516 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services for a Period of 3 Years		---
Site Area	About 910 m ²		---
Total Floor Area (Non-domestic)	About 235 m ²	About 390 m ²	+155 m ² (+ 66%)
No. and Height of Structures	4 <ul style="list-style-type: none"> one open shed for sale of building materials (3.5m, 1 storey) one for guard room (3.5m, 1 storey) one for site office (3.5m, 1 storey) one for toilet (3.5m, 1 storey) 	5 <ul style="list-style-type: none"> same 4 structures plus one for rain shelter (3.5m, 1 storey) 	+1 (+ 25%)
No. of Parking and Loading/Unloading Spaces	1 (for light goods vehicle (LGV)) (7m x 3.5m)	3 <ul style="list-style-type: none"> two for private cars (5m x 2.5m each) one for LGV (7m x 3.5m) 	+2 (+ 200%)
Operation Hours	10:00a.m. to 4:00p.m. daily	9:00a.m. to 8:00p.m. daily	Longer Operation Hours

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application Form with annexes and plans received on **(Appendix I)** 26.1.2021
 - (b) Further Information (FI) received on 1.3.2021 **(Appendix Ia)** responding to departmental comments
 - (c) FI received on 15.3.2021 clarifying the proposed operation **(Appendix Ib)**
[(b) and (c) 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 the Application Form (**Appendix I**). They can be summarised as follows:

- (a) The Site is subject to planning permission for the proposed use since 2018. The applicant of the previous application had terminated the tenancy of the Site in mid-2020 due to COVID-19. The current applicant is a new occupant. Nevertheless, the planning circumstance pertaining to the Site is similar to that of the last planning permission.
- (b) The proposal is temporary in nature and would not jeopardise the long-term planning intention of the “V” zone. It could benefit the nearby residents by meeting their demand for building materials.
- (c) Similar application (No. A/YL-TT/436) in the vicinity of the Site had been approved by the Board. The proposed development is not incompatible with the surrounding environment.
- (d) There will be no significant environmental, traffic and drainage impacts arising from the proposal.

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 site notice 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 currently not subject to planning enforcement action.

5. Previous Application

The Site involves one previous application (No. A/YL-TT/440) for the same use as the current application which was approved with conditions by the Committee for a period of 3 years on 21.9.2018 mainly on the consideration that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “V” zone; the proposal was not incompatible with the surrounding uses; and the concerns of the departments could be addressed by imposing approval conditions. However, the planning permission was revoked on 21.2.2021 due to non-compliance with time-limited approval conditions on implementation of landscape, drainage and FSIs proposals. Compared with the last application, the current application is submitted by a different applicant for the same use on the same site with similar site layout and different development parameters. Details of the application are summarised in **Appendix II** and the site boundary is shown on **Plan A-1**.

6. Similar Applications

- 6.1 There are three similar applications for various temporary shop and services uses within/ straddling the subject “V” zone. Details of the applications are at **Appendix III** and the locations of the sites are shown on **Plan A-1**.

Rejected Application (1 Case)

- 6.2 Application No. A/YL-TT/276 for temporary retail shop for restaurant groceries for a period of 3 years was rejected by the Committee in 2011, mainly on the considerations that the development was not in line with the planning intention of the “V” zone; the proposal was akin to a warehouse and hence not compatible with the surrounding areas; there was potential adverse drainage impact; and the setting of undesirable precedent.

Approved Applications (2 Cases)

- 6.3 Applications No. A/YL-TT/436 for proposed temporary shop and services (vehicle parts shop) and A/YL-TT/450 for proposed temporary shop and services (retail shop for plants) with plant nursery were approved with conditions by the Committee each for a period of 3 years in 2018 and 2019 respectively, mainly on the considerations that approval of the applications on a temporary basis would not frustrate the long-term planning intention of the “V” zone; the proposals were not incompatible with the surrounding uses; and the concerns of the departments could be addressed by imposing approval conditions. However, both planning permissions were subsequently revoked in 2019 and 2021 respectively due to non-compliance with approval conditions.

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

- 7.1 The Site is (**Plans A-2 and A-3**):

- (a) accessible from Kiu Hing Road via a short local track to its west;
- (b) paved and largely fenced off; and
- (c) currently occupied by storage of assorted items without valid planning permission (**Plans A-2 and A-4**).

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

- (a) comprise predominantly village houses intermixed with scattered open storage/storage yards, warehouses, car parks, car services, agricultural land, shrubland and vacant land/structures;
- (b) there are residential structures nearby with the nearest one located to the immediate northeast of the Site, while the main cluster of the village houses of Muk Kiu Tau Tsuen is about 60m to its northeast;
- (c) the area to the south of the Site is zoned “Government, Institution or Community (1)” (“G/IC(1)”) on the subject OZP, while to the west across a nullah flanked by Kung Um Road and Kiu Hing Road are areas zoned

“Residential (Group A) 3” and “G/IC(1)” on the draft Tong Yan San Tsuen OZP No. S/YL-TYST/13; and

- (d) except for a warehouse to the south of the Site, the other open storage/ storage yards, warehouses, car parks and car services 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 “V” zone is to designate both existing recognised 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application and public comment, where relevant, 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 the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Should planning approval be given to the 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. 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 is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by her department.
- (c) There is no Small House applications approved/ under processing within the Site.

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 Kiu Hing 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 Kiu Hing Road.

Environment

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

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” (Code of Practice) issued by the Environmental Protection Department 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.
- (b) The applicant should note the detailed comments on the submitted drainage proposal at **Appendix V**.
- (c) Should the Board consider that the application is acceptable from the planning point of view, conditions requiring submission, implementation and maintenance of a revised drainage proposal 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 proposed use and the FSIs proposal (**Drawing A-4**) is considered acceptable.
- (b) The applicant should note the detailed comments at **Appendix V**.

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 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 should be reminded of the detailed comments at **Appendix V**.

Long-Term Development

9.1.8 Comments of the Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD):

- (a) He has no objection to the application.
- (b) However, a very small portion of western part of the Site near Kiu Hing Road encroaches on the boundary of Yuen Long South (YLS) Development - Stage 2 Phase 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 advised not to carry out any substantial works at the concerned small portion of the Site in view of the planned YLS Development – Stage 2 Phase 2.

District Officer's Comments

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

Her 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) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
and
- (c) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 2.2.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one comment was received from an individual (**Appendix IV**) alleging that the proposal is for open storage use and raising concerns on the non-compliance with approval conditions of the previous application.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services for a period of 3 years at the Site zoned “V” on the OZP. Although the proposed use is not entirely in line with the planning intention of the “V” zone, which is primarily for development of Small House by indigenous villagers, the proposed use could meet any such demand for shop and services in the area. According to DLO/YL, LandsD, there is currently no Small House application approved/ under processing at the Site. Furthermore, PM(W), CEDD has no objection to the proposed temporary use for a period of 3 years notwithstanding that a very small portion of the Site encroaches on the boundary of YLS Development – Stage 2 Phase 2. As such, approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area. However, should the application be approved, the applicant should be reminded that the concerned small portion of the Site might be subject to land resumption for the implementation of the YLS Development – Stage 2 Phase 2 and no substantial works shall be carried out at the concerned small portion of the Site in view of the planned project.
- 11.2 The surrounding area comprises predominantly village houses intermixed with car parks, warehouse and open storage/storage yards (**Plan A-2**). The development is generally not incompatible with the surrounding uses.
- 11.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. 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, and to note that the planning permission does not condone any other development/ use not covered by the application.
- 11.4 Given that one previous application for the same applied use and two similar applications within/ straddling the subject “V” zone have been approved, approval of this application is generally in line with the Committee’s previous decisions. Although there was one similar application rejected on the grounds, amongst others, that the development was not compatible with the surrounding uses; and there was potential adverse drainage impacts. Such considerations are generally not applicable to the current application as the current proposal is considered not

incompatible with the surrounding areas and there is no adverse comments from CE/MN, DSD.

- 11.5 There was one public comment received on the application during the statutory publication period as summarised in paragraph 10. The planning considerations and assessments 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 comment as summarised in paragraph 10 above, 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 26.3.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no medium or heavy goods vehicles, 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) 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 26.9.2021;
- (e) in relation to (d) 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 26.12.2021;
- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) the implementation of the accepted 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 26.9.2021;
- (h) if any of the above planning conditions (a), (b), (c) 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

- (i) if any of the above planning conditions (d), (e) or (g) 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**.

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

the proposed use 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 for 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 with annexes and plans received on 26.1.2021
Appendix Ia	FI received on 1.3.2021
Appendix Ib	FI received on 15.3.2021
Appendix II	Previous application covering the Site
Appendix III	Similar applications within/ straddling the same "V" zone on the OZP
Appendix IV	Public comment received during the statutory publication period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Landscape Proposal
Drawing A-3	Drainage Proposal
Drawing A-4	FSIs Proposal
Plan A-1	Location Plan with Previous and Similar Applications

Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
MARCH 2021**