

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

**APPLICATION NO. A/YL-TT/522**

<b><u>Applicant</u></b>	: Ms. CHEN Yan represented by Metro Planning and Development Company Limited
<b><u>Site</u></b>	: Lots 1958 (Part), 1959 (Part) and 1960 (Part) in D.D. 119 and Adjoining Government Land (GL), Yuen Long, New Territories
<b><u>Site Area</u></b>	: 2,650m <sup>2</sup> (about) (including about 120m <sup>2</sup> of GL (about 4.5%))
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Draft Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/17
<b><u>Zonings</u></b>	: “Agriculture” (“AGR”) (about 93.2%)  “Village Type Development” (“V”) (about 6.8%) <i>[Restricted to a maximum building height of 3 storeys (8.23m)]</i>
<b><u>Application</u></b>	: Proposed Temporary Shop and Services 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 with plant nursery for a period of 3 years (**Plan A-1**). According to the covering Notes of the OZP, provision of plant nursery is always permitted within the OZP. According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ is a Column 2 use requiring planning permission from the Town Planning Board (the Board). Although ‘Shop and Services’ is neither a Column 1 or 2 use in the “AGR” zone, temporary use or development of any land or buildings not exceeding a period of 3 years requires planning permission from the Board notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is unpaved and currently partly occupied by open storage of construction materials/machinery and containers (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site involves one previous application (No. A/YL-TT/450) for the same use as the current application which was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) of the Board on 12.4.2019. However, the planning permission was revoked on 12.3.2021

due to non-compliance with time-limited approval conditions on implementation of drainage and fire service installations (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 the same development parameters and similar site layout albeit with longer operation hours.

- 1.3 According to the applicant, the Site is primarily intended as a plant nursery for ornamental trees with ancillary shop selling plants grown on the Site. The plant nursery and the open shed consisting of the associated retail shop and storage for tools and fertilisers would cover about 1,160m<sup>2</sup> (about 43.8% of the Site) and 180m<sup>2</sup> (about 6.8%) respectively. The trees would primarily be supplied to the private gardens of residential dwellings, open storage yards and warehouses in the area. The whole Site will be unpaved. No workshop activities will be carried out at the Site and only light goods vehicles (LGVs) will access the Site. Drainage facilities at the Site will be provided and maintained 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**.
- 1.4 The major development parameters of the previously approved application and the current application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TT/450 (a)	Current Application No. A/YL-TT/522 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Shop and Services with Plant Nursery for a Period of 3 Years		---
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. and Height of Structures	3 • one open shed for retail shop for plants and storage of farm tools and fertilisers (3.5m, 1 storey) • one for meter room (3.5m, 1 storey) • one for toilet (3.5m, 1 storey)		---
No. of Parking Space	---		---
No. of Loading/Unloading (L/UL) Space	1 (for LGV) (7m x 3.5m)		---
Operation Hours	10:00a.m. to 4:00p.m. daily	9:00a.m. to 5:00p.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 25.6.2021 (**Appendix I**)
  - (b) Further Information (FI) received on 3.8.2021 clarifying the proposed operation (**Appendix Ia**)  
[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 the Application Form and FI (**Appendices I and Ia**). They can be summarised as follows:

- (a) The Site is subject to planning permission for the proposed use since 2019. The applicant of the previous application had terminated the tenancy of the Site. The current applicant is a new occupant and she possesses knowledge to comply with approval conditions. Furthermore, the planning circumstance pertaining to the Site is similar to that of the last planning permission.
- (b) Plant nursery and laying of soil not exceeding 1.2m for cultivation purpose are always permitted within the “AGR” zone. The proposed shop for plants is small in scale and will only occupy about 7% of the Site. Moreover, the temporary proposal would not jeopardise the long-term planning intentions. It could also benefit the nearby residents by meeting their demand for plants and trees.
- (c) The proposed development is not incompatible with the surrounding environment, including residential developments. Similar shop and services in the area have been approved by the Board.
- (d) There will be insignificant traffic, environmental and drainage impacts arising from the development.

## **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 at 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. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

## **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/450) for the same use as the current application which was approved with conditions by the Committee for a period of 3 years on 12.4.2019 mainly on the considerations that approval of the application on a temporary basis would not frustrate the long-term planning intention of the “AGR” 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 12.3.2021 due to non-compliance with time-limited approval conditions on implementation of 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 the same development parameters and similar site layout albeit with longer operation hours. 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 four similar applications for various temporary shop and services uses within the subject “V” zone and no similar applications within the subject “AGR” 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 as the proposal was akin to a warehouse and also not compatible with the surrounding areas; there was potential adverse drainage impact; and the setting of undesirable precedent.

### ***Approved Applications (3 Cases)***

- 6.3 Applications No. A/YL-TT/436, 440 and 516 were approved with conditions by the Committee each for a period of 3 years in 2018 and 2021 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, the former two 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-4b)**

- 7.1 The Site is:

- (a) accessible from Kiu Hing Road to its west via a local track;
- (b) unpaved and fenced off; and
- (c) currently partly occupied by open storage of construction materials/machinery and containers (**Plans A-2, A-4a and A-4b**).

- 7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) mixed in nature with mainly unused land and warehouses with scattered open storage/storage yards, carpark, residential structures, orchard and vacant land/structures in the subject “AGR” zone;
- (b) predominantly village houses and unused land/vacant land with an open storage/storage yard, warehouse, construction site and carpark in the subject “V” zone;

- (c) to the immediate west of the Site in an area zoned “Government, Institution or Community (1)” on the subject OZP are mainly warehouses, open storage/storage yard, car services and unused land;
- (d) there are residential structures nearby with the nearest one located to the immediate north of the Site, while the main cluster of the village houses of Muk Kiu Tau Tsuen is about 70m to its northeast; and
- (e) the 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 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. It is also intended 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 the zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

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

- 9.1 The following government departments have been consulted and their views on the application 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 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 120m<sup>2</sup> subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
  - (c) 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 to 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. Furthermore, the applicant has to either exclude the GL from the Site or apply for a formal approval prior to the actual occupation of GL. 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.

- (d) 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.

### **Agriculture and Nature Conservation**

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

Agricultural use (including the proposed plant nursery) is always permitted in the “AGR” zone. However, any non-agricultural development or related proposal is not supported at the Site, which has potential for agricultural rehabilitation.

## **Environment**

### 9.1.5 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 Use” (Code of Practice) to minimise any potential environmental nuisances on the surrounding areas.

## **Landscape**

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

- (a) She has no objection to the application from landscape planning perspective.
- (b) According to the aerial photo of 2020 (**Plan A-3**) and her site inspection, there are existing temporary structures and many existing trees of common species, including dominant species *Ficus microcarpa* (細葉榕), *Ficus benjamina* (垂葉榕), *Broussonetia papyrifera* (構樹), *Spathodea campanulata* (火焰木) and *Roystonea regia* (王棕) along the site boundary and within the Site. The Site is situated in an area of miscellaneous rural fringe landscape character dominated by village houses, temporary structures and farmlands. The proposed use is considered not incompatible with the landscape character of the surrounding area. Significant adverse landscape impact arising from the proposed use is not envisaged.
- (c) The applicant should be reminded of the detailed comments at **Appendix V**.

## **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 no adverse comment on the submitted drainage proposal (**Drawing A-4**). Nevertheless, the applicant should be reminded of the detailed comments at **Appendix V**.
- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring 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**

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

- (a) He has no objection in principle to the proposal subject to 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 be reminded of the detailed comments at **Appendix V**.

### **Building Matters**

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

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

### **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 comment from the locals.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (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 2.7.2021, 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 questioning the reasons why the previous planning permission was revoked and whether the Site has been unpaved by the previous applicant (**Appendix IV**).

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

- 11.1 The application is for proposed temporary shop and services with plant nursery for a period of 3 years at the Site mainly zoned "AGR" (about 93.2%) and partly zoned "V" (about 6.8%) on the OZP. While the proposed plant nursery is always permitted, the proposed 'Shop and Services' requires planning permission. According to the applicant, ornamental trees would be grown at the plant nursery (1,160m<sup>2</sup>, about 43.8% of the Site). The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds



for agricultural purposes, and the planning intention of the “V” zone is primarily for development of Small Houses by indigenous villagers. While DAFC advised that any non-agricultural development or related proposal is not supported at the Site as it has potential for agricultural rehabilitation, the vast majority of the remaining 56.2% of the Site would be used as the associated circulation/ vehicular access/ L/UL spaces and toilet, etc. serving the plant nursery. Only 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. While the proposed use is not entirely in line with the planning intentions, it could serve the needs for plants and trees in the area. Moreover, DLO/YL, LandsD advised that there is currently no Small House application approved/under processing at the Site. Approval of the application on a temporary basis for three years would not frustrate the long-term planning intentions of the subject “AGR” and “V” zones.

- 11.2 The surrounding area comprises predominantly unused land, warehouses and village houses intermixed with car parks and open storage/storage yards (**Plan A-2**). The development is generally not incompatible with the surrounding uses.
- 11.3 Apart from DAFC, other concerned departments have no comment/no adverse comment, including C for T, DEP and CE/MN, DSD. Significant traffic, environmental and drainage impacts are not anticipated. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to address the technical requirements of 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 there is previous approval for the same use at the Site and three similar applications approved within the subject “V” zone, approval of this application is generally in line with the Committee’s previous decisions. While the planning permission for the last application was revoked due to non-compliance with time-limited conditions, the current application is submitted by a different applicant and the previous approved proposal has not been implemented on the Site. Although there was one similar application rejected by the Committee mainly on the grounds that the development was akin to a warehouse and hence not compatible with the surrounding uses and there was potential adverse drainage impact, such considerations are generally not applicable to the current application as the current proposal is considered not incompatible with the surrounding areas and there are no adverse comments from CE/MN, DSD.
- 11.5 There was one public comment providing views 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 mentioned in paragraph 10 above, the Planning Department

considers that the proposed temporary shop and services 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 13.8.2024. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 5:00 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 existing boundary fencing on the Site shall be maintained at all times 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 13.2.2022;
- (f) in relation to (e) above, the implemented drainage facilities 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 13.2.2022;
- (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 13.5.2022;
- (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 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 intentions of the "AGR" and "V" zones. The planning intention of the "AGR" zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, while the planning intention of the "V" zone is primarily for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission to justify a departure from the planning intentions, 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 annexes and plans received on 25.6.2021
<b>Appendix Ia</b>	FI received on 3.8.2021
<b>Appendix II</b>	Previous Application covering the Site
<b>Appendix III</b>	Similar Applications within the same "V" zone on the OZP
<b>Appendix IV</b>	Public Comment received during the Statutory Publication Period
<b>Appendix V</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>	Landscape and Tree Preservation Proposal
<b>Drawing A-4</b>	Drainage Proposal
<b>Plan A-1</b>	Location Plan with Similar and Previous Applications
<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  
AUGUST 2021**