

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1101

<u>Applicant</u>	:	Mr. CHAN Ka Seng represented by Metro Planning and Development Company Limited
<u>Site</u>	:	Lots 1816 (Part) and 1820 (Part) in D.D. 121, Tong Yan San Tsuen, Yuen Long, New Territories
<u>Site Area</u>	:	1,327 m ² (about)
<u>Lease</u>	:	New Grant Lots (demised for agricultural/orchard use)
<u>Plan</u>	:	Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/13
<u>Zoning</u>	:	“Open Space” (“O”)
<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 “O” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant with structures (**Plans A-2 and A-4**).
- 1.2 The Site involves three previous applications for open storage or shop and services uses. The last application (No. A/YL-TYST/973) for the same use as the current application was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) of the Board on 16.8.2019. However, the planning permission was revoked on 16.2.2021 due to non-compliance with time-limited approval conditions on submission and implementation of fire service installations (FSIs) proposal. Compared with the last application, the current application is submitted by a different applicant for the same use at the same site with the same site layout and development parameters albeit with increase in car parking spaces.
- 1.3 According to the applicant, the proposed temporary shop is intended to serve the nearby residents by selling hardware accessories (e.g. nuts, pipes and hand tools). No medium or heavy goods vehicles, including container tractor/trailers, are allowed to access/park at the Site. Plans showing the vehicular access leading to

the Site, site layout, tree preservation, as-built drainage and FSIs proposals submitted by the applicant are at **Drawings A-1 to A-5** 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-TYST/973 (a)	Current Application No. A/YL-TYST/1101 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services for a Period of 3 Years		---
Site Area	About 1,327 m ²		---
Total Floor Area (Non-domestic)	About 424 m ²		---
No. and Height of Structure	4 • for retail shops, site office and toilet (3-5m, 1 storey)		---
No. of Parking Space(s)	Nil	1 (for private car) (5m x 2.5m)	+1
No. of Loading/ Unloading Space(s)	1 (for light goods vehicle) (7m x 3.5m)		---
Operation Hours	9:00 a.m. to 7:00 p.m. daily		---

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

- Application Form with annex and plans received on (Appendix I) 31.5.2021
- Supplementary Information dated 7.6.2021 providing (Appendix Ia) FSIs proposal
- Further Information (FI) received on 15.7.2021 clarifying (Appendix Ib) the proposed operation
[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 (Appendix I). They can be summarised as follows:

- The Site was the subject of two previous planning permissions for the same use as the current application. The previous applicant was abroad and hence failed to commission a FSIs contractor to submit FSIs plan for the previous application (No. A/YL-TYST/973), even though the FSIs have been installed at the Site. Nevertheless, the current application is submitted by a new operator. Similar shop and services have been approved in the area.
- The proposal is not incompatible with the surrounding environment. The temporary proposal would not jeopardise the long-term planning intention.

- (c) There will be insignificant environmental, drainage and traffic impacts on the surrounding area.

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 Ping Shan Rural Committee by 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 Applications

- 5.1 The Site involves three previous applications (No. A/YL-TYST/421, 799 and 973)¹, of which only the latter two were for shop and services use and relevant to the current application. Details of all three applications are summarised in **Appendix II** and the locations of the sites are shown on **Plan A-1**.
- 5.2 Applications No. A/YL-TYST/799 and 973 for the same use as the current application were approved with conditions each for a period of 3 years by the Committee in 2016 and 2019 respectively, mainly on the considerations that approval of the application on a temporary basis would not frustrate the long-term planning intention; the applied use was not incompatible with the surrounding uses; there were no adverse comments/objection from relevant departments; and the departmental and public concerns could be addressed by imposing approval conditions. However, the planning permission under application No. A/YL-TYST/973 was revoked in 2021 due to non-compliance with time-limited approval conditions on submission and implementation of FSIs proposal.
- 5.3 Compared with the last application (A/YL-TYST/973), the current application is submitted by a different applicant for the same use at the same site with the same site layout and development parameters albeit with increase in car parking spaces.

6. Similar Application

There is no similar planning application for shop and service use within the subject “O” zone.

¹ The application sites were zoned “Residential (Group B)1” (“R(B)1”) on previous versions of OZPs at the time of consideration by the Committee.

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

7.1 The Site is:

- (a) accessible from Tong Yan San Tsuen Road to its northwest via a local track;
- (b) paved and fenced off; and
- (c) vacant with structures.

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

- (a) mixed in nature with mainly residential developments/structures and scattered open storage/storage yards, a religious institution, Tong Yan San Tsuen Garden, agricultural land, unused land and vacant land/structures generally to the east and south of Tong Yan San Tsuen Road within the subject “O” zone and adjoining “Residential (Group D)” and “R(B)1” zones on the OZP;
- (b) to the west of Tong Yan San Tsuen Road are storage yards, warehouse, office, car service, logistics centre and workshop within the “Other Specified Uses” annotated “Storage and Workshop Use” (“OU(SW)”) zone, while to the north is Yuen Long Highway;
- (c) there are residential structures in the vicinity of the Site with the nearest ones located to its immediate north and south; and
- (d) except for a logistics centre operating with valid planning permission (No. A/YL-TYST/913), as well as the aforesaid uses within the “OU(SW)” zone (except office) and another storage yard to the west of the Site, the other open storage/storage yard, office and religious institution 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 “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application and public comments, 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 of New Grant Lots. Lot No. 1816 in D.D 121 is held under Tai Po New Grant No. 5897 for agricultural purposes. Lot No. 1820 in D.D 121 is held under Tai Po New Grant No. 6894 for orchard use.
- (b) Lot Nos. 1816 and 1820 in D.D. 121 are covered by Short Term Waiver (STW) No. 4897 to permit structures erected thereon for the purpose of 'Temporary Shop and Services (Retail Shop for Hardware Groceries)'.
- (c) Should planning approval be given to the subject planning application, the STW holder(s) will need to apply to her office for modification of the STW conditions where appropriate. 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.

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 Tong Yan San Tsuen 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 Tong Yan San Tsuen 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 Aspect of Temporary Uses and Open Storage Use” (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.
- (b) Based on the drainage proposal/planning statement enclosed in the application, apparently the applicant would maintain the same drainage facilities as those implemented under the previous planning application No. A/YL-TYST/973.
- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-TYST/973 and the submission of records of the existing drainage facilities on site 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):

He has no objection in principle to the proposal subject to FSIs being provided to his satisfaction; the submitted FSIs proposal (**Drawing A-5**) is also considered acceptable. Should the application be approved, the applicant should be advised of the detailed comments at **Appendix IV**.

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 granted 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 IV**.

Water Supply

9.1.8 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application.
- (b) Existing water mains will be affected (**Plan A-2**). In case it is not feasible to divert the affected water mains, a waterworks reserve within 1.5m from the centerline of the water mains shall be provided to his department. The applicant should also be reminded of the detailed comments at **Appendix IV**.

Open Space

9.1.9 Comments of the Director of Leisure and Cultural Services (DLCS):

- (a) He has no in-principle objection to the proposal.
- (b) The Site is not on the priority list for development agreed by the Yuen Long District Council. His department has no plan to develop the Site into public open space at present.

Long Term Development

9.1.10 Comments of the Chief Engineer/Cross-Boundary Infrastructure and Development, Planning Department (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 Revised Recommended Outline Development Plan (RODP) of YLS promulgated in May 2020, the Site falls partly within an area zoned “District Open Space (1)” (“DO(1)”) 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.

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

- (a) He has no objection to the application.

- (b) However, the Site falls within the boundary of 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 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 Phase 2.

District Officer’s Comments

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

Her office has not received any comment from the locals.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC); and
- (b) Commissioner of Police (C of P).

10. Public Comments Received During the Statutory Publication Period

- 10.1 On 8.6.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, a total of 13 public comments were received. Of which, 10 raised objection, two expressed adverse views and the remaining one expressed other views on the application. A full set of public comments will be deposited at the meeting for Members’ inspection.
- 10.2 12 objections/adverse comments were received from various residents and individuals (**Appendices III-1 to III-6**), of which eight comments were largely based on three sets of standard templates (extracted examples at **Appendices III-4 to III-6**). The salient concerns of the objections and adverse comments were mainly on the potential adverse environmental (including noise and air), traffic and environmental hygiene impacts and fire safety risks of the proposal on the surrounding area; incompatibility with the surrounding tranquil residential environment; departure from the planning intention of the “O” zone; and allegations that the previous operator had repeatedly contravene the terms of the approval conditions of the previous planning permission.
- 10.3 The remaining individual opined that the proposed use should make way for the intended open space use at the Site (**Appendix III-7**).

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 “O” on the OZP. The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general

public. Although the proposed use is not entirely in line with the planning intention of the “O” zone, it could serve the need for shop and services in the area. While the Site also falls within YLS Development, CE/CID, PlanD does not raise objection to the application and PW(W), CEDD and DLCS have no objection to the application. As such, approval of the application on a temporary basis of three years would not jeopardise the long-term development of the area.

- 11.2 The surrounding area is mixed in nature with various residential developments/ structures intermixed with open storage/storage yards and agricultural land, etc. (**Plan A-2**). Although there are residential structures in the vicinity (with the nearest ones to its immediate north and south), the proposed use is not considered incompatible with the surrounding area.
- 11.3 There is no adverse comment from concerned government departments, including C for T, DEP, CE/MN, DSD and D of FS. Adverse traffic, environmental, drainage and fire safety impacts on the surrounding area are not envisaged. 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 be advised to follow the relevant measures in the latest Code of Practice in order to minimise any potential environmental impact on the surrounding areas.
- 11.4 Given that two previous approvals for shop and services uses have been granted to the Site, approval of the current application is generally in line with the Committee’s previous decision. While there is one previous application rejected by the Committee, it was for a different use (i.e. open storage use) and not relevant to the current application for shop and services use. There is no similar application for shop and services within the subject “O” zone.
- 11.5 There were 13 public comments received during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.4 above are relevant. Regarding the allegations on repeated contravention of the terms of the approval conditions of the previous operator, it should be noted that the current application is submitted by a different applicant and the Site is currently vacant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments 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 23.7.2024. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 7:00 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 tractors/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (c) no 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 during the planning approval period;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a condition record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 23.10.2021;
- (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 23.1.2022;
- (h) if any of the above planning conditions (a), (b), (c), (d) or (e) 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 (f) 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 IV**.

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

the proposed use is not in line with the planning intention of the "O" zone which is primarily for provision of outdoor open-air public space for active and/or passive recreational 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 with annex and plans received on 31.5.2021
Appendix Ia	Supplementary Information dated 7.6.2021
Appendix Ib	FI received on 15.7.2021
Appendix II	Previous Applications covering the Site
Appendices III-1 to III-7	Public Comments received during the Statutory Publication Period (extracted)
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Tree Preservation Proposal
Drawing A-4	As-built Drainage Proposal
Drawing A-5	FSIs Proposal
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
JULY 2021**