

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1113

- Applicant** : Mr. CHEUNG Wai Kwong represented by Metro Planning and Development Company Limited
- Site** : Lot 1628 (Part) in D.D. 121, Shan Ha Tsuen, Yuen Long, New Territories
- Site Area** : 500 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/14
- Zoning** : “Village Type Development” (“V”)
[Restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : 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 “V” zone, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by open storage of construction machinery without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is involved in two previous applications for different uses in 2000 and 2005. They are set out in paragraph 5 below.
- 1.3 According to the applicant, the proposal is for a real estate agency mainly to serve the nearby residents and villagers. Only private cars will be allowed to access the Site. Plans showing the vehicular access leading to the Site, site layout 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	500 m ² (about)
Total Floor Area	Not exceeding 180 m ²
No. and Height of Structures	2 • for real estate agency and toilet (3-6.5m, 1-2 storey(s))
No. of Loading/ Unloading Space	--
No. of Parking Spaces	3 (for private car) (2.5m x 5m each)
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:

- (a) Application Form with annexes and plans received on 10.8.2021 (**Appendix I**)
- (b) Further Information (FI) received on 14.9.2021 (**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 mainly detailed in the Application Form and FI (**Appendices I and Ia**). They can be summarised as follows:

- (a) The temporary proposal would not jeopardise the long-term planning intention of the “V” zone. It could benefit the nearby residents by meeting their demand for real estate agency.
- (b) The proposed use is not incompatible with the surrounding environment. The Site has been occupied by a site office for about three decades, which is similar in nature to the current proposal. Moreover, similar applications for shop and services have been approved by the Board. There will be minimal traffic, environmental 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 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 Applications**

The Site involves two previous applications (No. A/YL-TYSTT/86 and 291) for different uses not relevant to the current application (i.e. public car/lorry park and temporary open storage of recycled materials with ancillary workshop respectively) which were approved with conditions in 2000 and rejected in 2005 respectively. Details of the applications are summarised in **Appendix II** and the boundaries of the sites are shown on **Plan A-1**.

6. **Similar Applications**

There are five similar applications (No. A/YL-TYST/855, 912, 974, 998 and 1043) for various temporary shop and services uses with/without public vehicle park straddling/within the subject “V” zone. All five applications were approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board between 2017 and 2020 each for a period of 3 years, mainly on similar considerations that the proposals would not jeopardise the long-term planning intention of the “V” zone; they were not incompatible with the surrounding land uses; and the concerns of relevant departments could be addressed by imposing approval conditions. Details of the applications are summarised in **Appendix III** and the locations of the sites are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) accessible via a local track leading from Shan Ha Road to its northwest;
- (b) partly paved and fenced off; and
- (c) currently occupied by open storage of construction machinery 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 with scattered open storage/storage yards, a warehouse, parking of vehicles/carparks, a vehicle repair workshop, a construction site, plant nurseries, a green house, shrubland and vacant land/structures;
- (b) there are residential structures in the vicinity with the nearest ones located to its immediate north and south, while the main cluster of village houses of Shan Ha Tsuen is about 90m to its southwest; and
- (c) except for a vehicle repair workshop to the southwest of the Site and a carpark covered by valid planning permission (No. A/YL-TYST/1043), the other open storage/storage yards, warehouse and parking of vehicles/carparks 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 this 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 received, 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 subject planning 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. 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 application under processing/approved 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 Shan Ha Road shall be checked with the lands authority.

- (b) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) Adequate drainage measures shall be provided to prevent surface water running from the Site to the nearby public roads and drains.
- (b) The access road connecting the Site with Shan Ha Road is not and will not be maintained by his office. His office should not be responsible for the maintenance of any access connecting the Site with Shan Ha 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 Use” (Code of Practice) to minimise any potential environmental nuisances on the surrounding areas.

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) He has no adverse comment on the submitted drainage proposal (**Drawing A-3**). 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

9.1.6 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. In addition, the applicant should be reminded of 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 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 V**.

District Officer's Comments

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

His office has not received any feedback from the locals.

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

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

10. Public Comment Received During the Statutory Publication Period

On 17.8.2021, 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**) objecting to the application mainly on the grounds that the proposal will induce environmental nuisance and fire safety risk, and affect the safety and living quality of the villagers.

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 proposal is intended to serve the neighbourhood and could meet any such demand for shop and services in the area. According to DLO/YL, LandsD, there is currently no Small House application under processing/approved at the Site. As such, approval of the

application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the “V” zone.

- 11.2 The surrounding area comprises predominantly village houses intermixed with open storage/storage yards and carparks/parking of vehicles (**Plan A-2**). The proposed use 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, D of FS and CE/MN, DSD. Adverse traffic, environmental, fire safety and drainage impacts on the surrounding areas are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 12.2 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 currently existing at the Site (i.e. open storage of construction machinery) but not covered by the application.
- 11.4 Although there was one previous application rejected by the Committee, it was for a different use (i.e. temporary open storage of recycled materials with ancillary workshop) not relevant to the current application. Given that five similar applications straddling/within the subject “V” zone have been approved, approval of the current application is generally in line with the Committee’s previous decisions.
- 11.5 There was one public comment received objecting to the application during the statutory publication period as summarised in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.4 above 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 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 24.9.2024. 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) only private cars, 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) 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 24.3.2022;
- (d) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (e) 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 24.3.2022;
- (f) in relation to (e) 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 24.6.2022;
- (g) if any of the above planning conditions (a), (b) or (d) 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
- (h) if any of the above planning conditions (c), (e) or (f) 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 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 annexes and plans received on 10.8.2021
Appendix Ia	FI received on 14.9.2021
Appendix II	Previous Applications covering the Site
Appendix III	Similar Applications straddling/within the Subject “V” Zone on the OZP
Appendix IV	Public Comment received during the Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Drainage Proposal
Plan A-1	Location Plan with Similar and Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
SEPTEMBER 2021**