

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1116

- Applicant** : Mr. LAW Chun Chung represented by Metro Planning and Development Company Limited
- Site** : Lots 1169 (Part), 1170, 1171, 1175 (Part), 1176, 1177, 1178 and 1179 in D.D. 121 and Adjoining Government Land (GL), Tong Yan San Tsuen, Yuen Long, New Territories
- Site Area** : 2,320 m² (about) (including GL of about 241 m² or 10.4%)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/14
- Zoning** : “Residential (Group D)” (“R(D)”)
[restricted to a maximum plot ratio of 0.2 and maximum building height of 2 storeys (6m)]
- 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 “R(D)” 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 (**Plans A-2, A-4a and A-4b**).
- 1.2 According to the applicant, the proposal is for a shop selling building materials (including sanitary ware and hand tools). 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.
- 1.3 The major development parameters of the application are summarised as follows:

Site Area	2,320 m ² (about)
Total Floor Area (non-domestic)	516 m ² (about)
No. and Height of Structures	4 • for retail shops, toilet and site office (3-4m, 1 storey)

No. of Loading/ Unloading (L/UL) Space	1 (for light goods vehicle) (7m x 3.5m)
No. of Parking Spaces	2 (for private car) (5m x 2.5m each)
Operation Hours	9:00 a.m. to 7:00 p.m. daily

- 1.4 In support of the application, the applicant has submitted an Application Form with annexes and plans received on 2.9.2021 (**Appendix I**).

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 proposal could meet the local demand for building materials for home fitting purpose. Approval of the current application on a temporary basis will not frustrate the long-term planning intention.
- (b) The proposed use is not incompatible with the surrounding environment. The Site is currently occupied by open storage use, approval of the current application would help curb the proliferation of open storage use in the area. 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. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The Site is subject to an enforcement action against unauthorised development (UD) involving storage use. Enforcement Notice (EN) No. E/YL-TYST/861 was served on 21.6.2021 (**Plan A-2**). Prosecution action would be taken against the notice recipient if the requirement of the EN is not complied with upon expiry of the EN.

5. Previous Application

The Site is not involved in any previous application.

6. Similar Applications

- 6.1 There are five similar applications, including three rejected applications (No. A/YL-TYST/546, 1047 and 1064) and two approved applications (No. A/YL-

TYST/820 and 998) for various temporary shop and services uses with/without ancillary use straddling/within the subject “R(D)” zone. Details of the applications are summarised in **Appendix II** and the locations of the sites are shown on **Plan A-1**.

Rejected Applications (3 Cases)

- 6.2 Applications No. A/YL-TYST/546, 1047 and 1064 were rejected by the Committee or the Board on review between 2012 and 2021, mainly on the grounds that the proposals were not in line with the Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (for the former application, as the Board considered the use was more akin to an open storage yard than a retail shop serving the surrounding residential neighbourhood) and the planning intention of the “R(D)” zone; the scale of the proposed shops were considered excessive; there were potential adverse environmental and drainage impacts; and approval of the applications would set an undesirable precedent.

Approved Applications (2 Cases)

- 6.3 Applications No. A/YL-TYST/820 (straddling the adjoining “Residential (Group B)1” (“R(B)1”) zone and in close proximity to the residential cluster near Sha Tseng Road) and 998 (straddling the adjoining “Village Type Development” (“V”) zone and located in proximity to the residential clusters off Shan Ha Road) were both approved with conditions each for a period of 3 years by the Committee in 2016 and 2020 respectively. The applications were approved mainly on the considerations that the proposals would not jeopardise the long-term planning intention(s) or frustrate the long-term development of the area; the proposals were not incompatible with the surrounding land uses; and the concerns of relevant departments could be addressed through the implementation of approval conditions.

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

- 7.1 The Site is:

- (a) accessible via an adjoining open storage yard (**Plan A-2**) and a substandard unlit local track leading from Tong Yan San Tsuen West Road about 220m to its northwest (**Plan A-3**);
- (b) paved and largely fenced off; and
- (c) currently vacant (**Plans A-2 to A-4b**).

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

- (a) mixed in nature with mainly residential developments (including The Parkhill and Recours La Serre) and residential structures, as well as two open storage/storage yards and a parking of vehicles in the adjacent “R(B)1” zone;
- (b) mainly open storage/storage yards, with scattered residential structures, vacant/unused land and a parking of vehicles in the subject “R(D)” zone;

- (c) there are residential structures nearby with the nearest one located to its immediate east; and
- (d) the open storage/storage yards and parking of vehicles in the vicinity are suspected UD subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from 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 comments 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 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 241 m² 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 subject planning application, the lot(s) 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 the 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.

Traffic

- 9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) The land status of the access road/path/track/run-in/out leading to the Site from Tong Yan San Tsuen West 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 Tong Yan San Tsuen 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 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 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 IV**.
- (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 IV**.

Building Matters

9.1.7 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 IV**.

Long-Term Development

9.1.8 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 of YLS promulgated in May 2020, the Site falls within an area partly zoned “Residential - Zone 5” and partly shown as ‘Road’.
- (b) The objective of YLS is to transform the degraded rural land predominantly occupied by brownfield operations including open storage yards, warehouses and rural industrial uses into housing and other uses with supporting infrastructure and community facilities, and to improve the existing environment. It is noted that the application is for temporary use for a period of 3 years. In considering the application for temporary uses, due consideration should be given on the possible implication on land clearance which would affect the future implementation of YLS.

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

- (a) He has no objection to the application.
- (b) However, based on the preliminary project boundary of the proposed YLS Development, the Site falls within the boundary of the proposed YLS Development – Stage 4. The YLS Development would provide land to meet the medium to long term housing needs of Hong Kong and the detailed implementation programme with phasing and packaging of works for YLS Development – Stage 4 is being formulated.

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) 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 Comments Received During the Statutory Publication Period

On 10.9.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two comments were received from individuals. One individual objected to the application on the grounds that the proposal will induce environmental nuisance and fire safety risk, and affect the safety and living quality of the villagers (**Appendix III-1**). Another individual suggested that the proposal would eventually be used as a storage yard for construction materials, which would be incompatible with the nearby residences (**Appendix III-2**).

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 "R(D)" on the OZP. The proposed development is generally not in line with the planning intention of the "R(D)" zone, which is primarily for improvement and upgrading of existing temporary structures within the rural areas into permanent buildings and for low-rise, low-density residential developments. The applicant claimed that the proposal could meet the local demand for building materials. However, the Site is situated off the main local roads and accessible via an adjoining open storage yard and a substandard unlit local track (**Plans A-2 to A-4a**). Given the inconspicuous location of the Site, the proposal does not appear to serve a local clientele. In this regard, no strong planning justification has been given in the submission to justify a departure from the aforesaid planning intention, even on a temporary basis. Moreover, no justifications have been given to suggest why the proposed use must be located at the subject location instead of other more accessible, prominent and suitable sites in the wider area.
- 11.2 Although the proposal is considered not incompatible with the surrounding areas which mainly comprises residential developments/structures and open storage/storage yards (**Plan A-2**), all the existing open storage/storage yards in the area are suspected UD subject to enforcement action taken by the Planning Authority. Despite the applicant's claim that the proposal is to serve the nearby residents, the proposed site area (about 2,320m²) is considered excessive. Furthermore, the proposed retail shop structures would only occupy some 19.7% of the site area and are considered not in proportion to the main proposed use of the Site. Setting aside parking, L/UL and circulation space, there is also no justification on the need for the remaining large open areas of the Site.

- 11.3 Relevant Government departments have no objection to/no comment on the proposal.
- 11.4 There is no previous application concerning the Site. Although the Committee had approved two similar applications (No. A/YL-TYST/820 and 998) for shop and services uses straddling the subject “R(D)” zone, both application sites were smaller and more in keeping with the surrounding area (with site areas of 892m² and 730m² respectively, **Appendix II**) and located in close proximity to established access roads and residential clusters in the adjoining “R(B)1” or “V” zones where there were local clientele (**Plan A-1**). Moreover, there were three similar applications concerning two sites (No. A/YL-TYST/546, 1047 and 1064) rejected by the Committee or the Board on review mainly on grounds of not in line with the planning intention of the “R(D)” zone and excessive scale of the proposed developments (for the latter two applications only, with site areas of 1,600m²), amongst others. In this regard, rejection of the current application, which has a site area of about 2,320m², is generally in line with the Committee’s previous decisions.
- 11.5 There were two public comments objecting to/questioning the application 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 comments as mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:
- (a) the proposed use is not in line with the planning intention of the “R(D)” zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas into permanent buildings and for low-rise, low-density residential development. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
 - (b) the scale of the proposed development is considered excessive and the applicant also fails to justify the need for the large open areas of the Site.
- 12.2 Alternatively, 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 29.10.2024. 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) 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 29.4.2022;

- (c) in relation to (b) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) 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 29.4.2022;
- (e) in relation to (d) 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 29.7.2022;
- (f) if any of the above planning conditions (a) or (c) 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
- (g) if any of the above planning conditions (b), (d) or (e) 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**.

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 reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, 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.

14. Attachments

Appendix I	Application Form with annexes and plans received on 2.9.2021
Appendix II	Similar Applications straddling/within the Subject “R(D)” Zone on the OZP
Appendices III-1 and III-2	Public Comments received during the Statutory Publication Period
Appendix IV	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 Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2021**