

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1134

- Applicant** : Mr. NG Chung Yin represented by Metro Planning and Development Company Limited
- Site** : Lot 1562 RP (Part) in D.D. 121, Shan Ha Tsuen, Yuen Long, New Territories
- Site Area** : 466 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 requiring planning permission from the Town Planning Board (the Board). The Site is currently occupied by a petrol filling station (PFS) without valid planning permission (**Plans A-2 to A-4b**).
- 1.2 The Site involves one previous application (No. A/TL-TYST/974) 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 16.8.2019. However, the planning permission was revoked in 2021 due to non-compliance with time-limited approval conditions. Compared with the last application (No. A/YL-TYST/974), the current application is submitted by the same applicant for the same use on the same site with the same layout and similar development parameters.
- 1.3 According to the applicant, the proposal is to provide a convenience store to serve the nearby residents. No medium or heavy goods vehicles, including container tractors/trailers, will be allowed to access the Site. All the proposed drainage

facilities will be provided and maintained at the applicant's own expense. Plans showing the vehicular access leading to the Site, site layout, drainage proposal and fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.

1.4 The major development parameters of the application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/974 (a)	Current Application No. A/YL-TYST/1134 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Shop and Services for a Period of 3 Years		---
Site Area	466 m ² (about)		---
Total Floor Area (Non-domestic)	42 m ² (about)		---
No. and Height of Structures	3 • for convenience store and toilet (3-3.5m, 1 storey)	3 • for convenience store and toilet (3.5m, 1 storey)	--- (slight change in height)
No. of Parking Spaces	2 (for private cars) (5m x 2.5m each)		---
No. of Loading/Unloading Space	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:

- (a) Application Form with annexes and plans received on **(Appendix I)** 30.11.2021
- (b) Further Information (FI) received on 6.1.2022 **(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 (**Appendix I**). They can be summarised as follows:

- (a) The Site is subject to a previously approved application for the same use as the current application. The proposed shop and service use is temporary in nature and would not jeopardise the long-term planning intention of the "V" zone. The proposed shop is small in scale and is considered compatible with the surrounding environment.
- (b) Similar application for shop and services has been approved by the Board. There will be insignificant drainage, environmental and noise 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 Ping Shan Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Background**

The Site is subject to planning enforcement action against unauthorised development (UD) involving fuel filling station, storage use (including deposit of container) and use for place for parking of vehicles. Enforcement Notice (EN) was issued on 11.6.2021 requiring discontinuance of the UD. The EN expired on 11.7.2021. The use of the Site is being monitored. Further enforcement action will be considered if the UD on the Site has not been discontinued.

5. **Previous Application**

The Site involves one previous application (No. A/YL-TYST/974) submitted by the same applicant for the same use on the same site with the same site layout and similar development parameters, which was approved with conditions for a period of 3 years by the Committee on 16.8.2019, mainly on the considerations that the proposal was not incompatible with the surrounding uses; the proposal would not frustrate the long-term development of the area; and the concerns of relevant government departments could be addressed by imposing approval conditions. However, the planning permission was revoked on 16.11.2021 due to non-compliance with time-limited approval conditions on implementation of revised drainage proposal and FSIs proposal. Details of the application are summarised in **Appendix II** and the boundary of the site is shown on **Plan A-1**.

6. **Similar Applications**

There are six similar applications (No. A/YL-TYST/855, 912, 998, 1043, 1113 and 1115) for shop and services uses with/without other uses within/straddling the subject “V” zone. All six applications were approved mainly on similar considerations that the proposed developments were not incompatible with the surrounding environment; the proposed developments would not jeopardise the long-term planning intention of the “V” zone and concerned government departments had no adverse comments on the applications. Details of the applications are at **Appendix III** and their locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) accessible via a local track leading from Shan Ha Road to its north (**Drawing A-1** and **Plan A-3**);
- (b) paved and party fenced-off; and

- (c) currently occupied by a PFS without valid planning permission (**Plans A-2 to A-4b**).

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

- (a) comprise predominantly village houses and residential structures intermixed with open storage/storage yards, warehouses, site office, workshop, parking of vehicles, car services, PFS, latrine, refuse collection point, shrine, construction site and some vacant/unused land;
- (b) there are residential structures in the vicinity of the Site with the nearest one located about 40m to the south. The main village clusters of Shan Ha Tsuen and Lam Hau Tsuen are located at about 70m to the east of the Site and about 230m to the northeast of the Site respectively; and
- (c) except for the open storage yard and warehouse in the adjoining “Open Storage” zone, and the temporary shop and services operating with valid planning permission under application No. A/YL-TYST/998, the other open storage/storage yards, warehouses, site office, PFS, workshop, parking of vehicles and car services in the vicinity are suspected 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 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 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):

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

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

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

Environment

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

- (a) No environmental complaint pertaining to the Site has been received in the past three years.
- (b) Should the 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 and no adverse comment on the submitted drainage proposal (**Drawing A-3**). Nevertheless, the applicant should be reminded of the detailed comments at **Appendix V**.
- (b) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring implementation and maintenance of the accepted 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):

He has no objection in principle to the proposal and the submitted FSIs proposal is also considered acceptable. 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 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 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) 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 Comments Received During the Statutory Publication Period

10.1 On 7.12.2021, the application was published for public inspection. During the first three weeks of the statutory public inspection period, 107 comments were received, including 106 objections/adverse comments and one comment providing views on the application. A full set of public comments are deposited at the meeting for Members' inspection.

10.2 Objections/adverse comments were received from the village representative of Shan Ha Tsuen (**Appendix IV-1**) and 105 individuals (extracted comments of a similar nature are at **Appendices IV-2 to IV-8**). The objection reasons/adverse comments are mainly on the grounds that the applicant did not consult the nearby villagers on the proposal; the proposed development may affect the *feng shui* of Shan Ha Tsuen; the proposed use is to conceal the existing PFS at the Site which

is unhygienic, polluting and illegal; and the proposal may cause adverse fire safety and traffic impacts to the surrounding.

- 10.3 The remaining public comment from an individual mainly raises concerns on the revocation history of the Site (**Appendix IV-9**).

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 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 3 years would not frustrate the long-term planning intention of the “V” zone.
- 11.2 The surrounding area comprises predominantly village houses and residential structures intermixed with open storage/storage yards and warehouses (**Plan A-2**). Although there are residential structures nearby, 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.
- 11.4 The Site involves one previous application (No. A/YL-TYST/974) for shop and services use which was approved with conditions for a period of 3 years by the Committee on 16.8.2019. Subsequently, the planning permission was revoked on 16.11.2021 due to non-compliance with time-limited approval conditions on implementation of revised drainage proposal and FSIs proposal. The current application is submitted by the same applicant with the same layout. Nevertheless, the applicant has submitted drainage and FSIs proposals which have been accepted by CE/MN, DSD and D of FS respectively. As such, sympathetic consideration may be given to the current application. However, should the application be approved, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. The applicant will be advised that should he fail to comply with any of the approval conditions resulting in revocation of the planning permission, sympathetic consideration would unlikely be given to any further application.
- 11.5 Given that one previous approval for the same applied use and six similar applications have been approved within/straddling the subject “V” zone, approval of the current application is generally in line with the Committee’s previous decisions.

- 11.6 There are 107 objecting/adverse/general comments received during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 above are relevant. Regarding the concern on the existing PFS at the Site, the applicant would be advised that the planning permission does not condone any other uses not covered by the application but currently existing on the Site.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments 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 28.1.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) 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;
- (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 28.7.2022;
- (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 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 28.7.2022;
- (e) if any of the above planning condition (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
- (f) if any of the above planning condition (b) or (d) 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 30.11.2021
Appendix Ia	FI received on 6.1.2022
Appendix II	Previous Application covering the Site
Appendix III	Similar Applications within/straddling the Subject “V” Zone on the OZP
Appendices IV-1 to IV-9	Public Comments received during the Statutory Publication Period (extracted)
Appendix V	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Drainage Proposal
Drawing A-4	FSIs Proposal
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
JANUARY 2022**