

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/507

- Applicant** : Mr. KWOK Wai Shing represented by Metro Planning and Development Company Limited
- Site** : Lots 1005 S.B (Part) and 1019 (Part) in D.D. 118, Tai Tong, Yuen Long, New Territories
- Site Area** : 820 m² (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/17
- Zoning** : “Other Specified Uses” annotated “Rural Use” (“OU(RU)”)
[Restricted to maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]
- 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, ‘Shop and Services’ is a Column 2 use for the “OU(RU)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a warehouse structure for storage of tyres without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site was the subject of a previous application (No. A/YL-TT/414) covering a slightly larger site for the same proposed temporary shop and services use for a period of 3 years which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 8.12.2017 (**Plan A-1**). However, the approval was subsequently revoked on 8.9.2019 due to non-compliance with approval conditions on the implementation of tree preservation and landscape proposal and drainage proposal. Detailed information of the previous application is at **Appendix III** and the location of the site is shown on **Plan A-1**.
- 1.3 According to the applicant, the Site is intended for a grocery store. Only light goods vehicle not exceeding 5.5 tonnes will be allowed to enter/park at the Site for the convenience of staff and client. The proposed grocery store will sell items, such as potato chips, cup noodles, canned drinks and biscuits, etc. Plans showing

the vehicular access leading to the Site, site layout, landscape and tree preservation proposal, as-built drainage proposal and fire service installations (FSIs) proposal submitted by the applicant are at **Drawings A-1 to A-5** respectively.

1.4 The major development parameters of the previously approved application (No. A/YL-TT/414) and the current application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TT/414 (a)	Current Application No. A/YL-TT/507 (b)	Difference (b)-(a)
Applied Use	Proposed Temporary Shop and Services for a Period of 3 Years		--
Site Area	About 960 m ²	About 820 m ²	-140 m ² (-14.6%)
Total Floor Area (Non-domestic)	Not exceeding 243 m ²		--
No. and Height of Structures	2 • 1 for grocery store (Not more than 4.5m, 1 storey) • 1 for toilet (Not more than 3m, 1 storey)		--
Parking Spaces	2 (5m x 2.5m) (for private car)		--
Loading/Unloading Bays	1 (7m x 3.5m) (for light goods vehicles)		--
Operation Hours	9:00 a.m. to 9:00 p.m. daily		--

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

- (a) Application Form with annex and plans received on **(Appendix I)** 25.9.2020
- (b) Supplementary Information (SI) dated 29.9.2020 **(Appendix Ia)** providing replacement pages of the submission
- (c) Further Information (FI) dated 4.11.2020 providing **(Appendix Ib)** reasons for non-compliance with approval conditions of the previous application
- (d) FI dated 9.11.2020 providing a FSIs proposal **(Appendix Ic)**
[(c) and (d) exempted from publication and recounting requirement]

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**) and the FI at **Appendix Ib**. They can be summarised as follows:

- (a) The proposed development is temporary in nature and would not jeopardise the long-term planning intention of the “OU(RU)” zone. The nature, scale and form of the proposal is compatible with the surrounding environment. The anticipated impacts to the surrounding environment are not significant.

- (b) A number of open storage yards and warehouse were found within the same “OU(RU)” zone. Approval of the current application would curb the situation. Similar planning application for retail shop (No. A/YL-TT/470) has been approved in the proximity of the Site.
- (c) The last tenant terminated the tenancy in June 2019 and did not implement the landscape and drainage proposals in time. Later, the applicant planted trees at 4m intervals along the site periphery except a small portion of site boundary near the ingress/egress of the Site and provided surface U-channel at the site periphery at his own cost albeit after the deadline for compliance with approval conditions of application No. A/YL-TT/414.

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.

4. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Designation of “OU(RU)” Zone and Application for Development within “OU(RU)” Zone’ (TPB PG-No. 38) are relevant to the application. The relevant extract of the Guidelines is attached at **Appendix II** and the assessment criteria are summarised as follows:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

5. Background

The Site is currently not subject to planning enforcement action.

6. Previous Application

The Site was the subject of a previous application (No. A/YL-TT/414) for the same use as the current application which was approved with conditions for a period of 3 years by the Committee on 8.12.2017 on the grounds that the proposal could serve any such needs in the surrounding areas; approval of the application on a temporary basis would not jeopardise the long-term planning intention; the proposed development was not incompatible with the surrounding area; and the application was generally in line with TPB PG-No. 38. However, the planning permission was subsequently revoked on

8.9.2019 due to non-compliance with approval conditions on the implementation of tree preservation/landscape proposal and drainage proposal. Details of the application are summarised in **Appendix III** and the site boundary is shown on **Plan A-1**. Compared with the previous application, the current application is submitted by the same applicant for the same proposed use with the same site layout covering a slightly smaller site.

7. Similar Applications

There are seven similar applications for various temporary shop and services uses within the subject “OU(RU)” zone. Applications No. A/YL-TT/362 and 470 (both for grocery store), 400, 408, 494 and 495 (all for retail shop for pet food) and 466 (for motor-vehicle showroom with ancillary office) were approved with conditions by the Committee each for a period of 3 years between 2015 and 2020 mainly on similar considerations as stated in paragraph 6 above. However, the planning permissions of applications No. A/YL-TT/362 and 408 were subsequently revoked in 2017 and 2019 respectively due to non-compliance with approval conditions. Detailed information of the applications is at **Appendix IV** and the locations of the sites are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) accessible via a local track connecting to Tai Shu Ha Road East to its north (**Plans A-2 and A-3**);
- (b) paved and fenced off; and
- (c) currently occupied by a warehouse structure for storage of tyres without valid planning permission (**Plans A-2, A-4a and A-4b**).

8.2 The surrounding areas have the following characteristics (**Plans A-2**):

- (a) mixed in character with predominately residential structures intermixed with warehouses, open storage/storage yards, metal workshop, parking of vehicles, plant nurseries, a restaurant, an office and vacant land/structure;
- (b) there are residential structures in the vicinity of the Site with the nearest one located to its immediate southeast; and
- (c) the warehouses, open storage/storage yards, metal workshop, an office and parking of vehicles in the vicinity of the Site are suspected unauthorised development (UD) subject to enforcement action taken by the Planning Authority.

9. Planning Intention

The planning intention of the “OU(RU)” zone is for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities.

10. Comments from Relevant Government Departments

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

Land Administration

10.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):

- (a) The Site comprises 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) Lot Nos. 1005 S.B and 1019 in D.D. 118 within the Site are covered by Short Term Waiver (STW) No. 4914 to permit structures erected thereon for the purpose of 'Temporary Shop and Services (Grocery Store)'.
- (c) Should planning approval be given to the 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

10.1.2 Comments of the Commissioner for Transport (C for T):

- (a) The land status of the access road/path/track leading to the Site from Tai Shu Ha Road East 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.

10.1.3 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 Tai Shu Ha Road East.

Environment

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

- (a) There was no environmental complaint concerning the Site received in the past 3 years.
- (b) 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 Sites” (Code of Practice) issued by the Environmental Protection Department to minimise any potential environmental nuisances on the surrounding area.

Landscape

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

- (a) According to the aerial photo of 2019 (**Plan A-3**), the Site is hard paved with the southern portion occupied by temporary structures. Existing trees are observed generally along the site boundary. The Site is located in an area of miscellaneous rural fringe landscape character predominated by tree clutters and temporary structures. Significant change to the landscape character arising from the proposed development is not anticipated.
- (b) Should the Board approve the application, conditions requiring submission and implementation of a revised landscape proposal to the satisfaction of the Director of Planning or of the Board should be stipulated.
- (c) The applicant should be reminded of the detailed comments at **Appendix VI**.

Drainage

10.1.6 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-4**).

- (b) The applicant should note the detailed comments at **Appendix VI**.
- (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the 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

10.1.7 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. The applicant should note his detailed comments and comments on the submitted FSIs proposal (**Drawing A-5**) at **Appendix VI**.

Building Matters

10.1.8 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 VI**.

District Officer's Comments

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

His office has not received any comment from the village representatives in the vicinity.

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

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

11. Public Comment Received During the Statutory Publication Period

On 6.10.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one comment was received from a member of the public (**Appendix V**) questioning the non-compliance of approval conditions in the previous application.

12. Planning Considerations and Assessments

- 12.1 The application is for proposed temporary shop and services for a period of 3 years at a site zoned “OU(RU)” on the OZP. Although the proposed use is not entirely in line with the planning intention of the “OU(RU)” zone, which is primarily for the preservation of the character of the rural area, where uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, the proposed grocery store could serve any such demand in the area. There is no known programme for the long-term development of the Site. As such, approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.
- 12.2 The applied use is considered not incompatible with the surrounding uses which are mixed in nature with predominately residential structures intermixed with warehouses and open storage/ storage yards (**Plan A-2**).
- 12.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. The application is generally in line with TPB PG-No.38 in that the proposal would not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings, nor would it overstrain the capacity of existing and planned infrastructure. Furthermore, relevant approval conditions are recommended in paragraph 13.2 to minimise any potential environmental nuisances or 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.
- 12.4 The Site is the subject of a previously approved application, submitted by the same applicant for the same proposed shop and services use with the same site layout covering a slightly larger site. Most of the approval conditions under the previous application had been complied with except for the implementation of the tree preservation and landscape proposal and drainage proposal resulting in revocation of the previous planning approval. According to the applicant, the last tenant was supposed to implement the landscape and drainage proposals, yet, the tenancy was terminated in June 2019. Later, the applicant planted trees and provided surface U-channel at the site periphery at his own cost albeit after the deadline for compliance period with approval conditions of application No. A/YL-TT/414. A landscape and tree preservation plan and as-built drainage plan have already been submitted in this application in support of the current application. CTP/UD&L, PlanD and CE/MN, DSD have no adverse comment on/no objection in principle

to the application from landscape planning perspective and drainage perspective. In view of the above, sympathetic consideration may be given to this application. Should the application be approved, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. Furthermore, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration might not be given to any further application. Given that there is one previous approval on the Site and seven similar approvals within the subject "OU(RU)" zone for temporary shop and services uses, approval of this application is generally in line with the Committee's previous decisions.

- 12.5 There is one public comment received on the application during the statutory publication period as summarised in paragraph 11. The planning considerations and assessments in paragraph 12.1 to 12.4 above are relevant.

13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12, and having taken into account the public comment as summarised in paragraph 11 above, the Planning Department has no objection to the application.
- 13.2 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 20.11.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 9:00 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 exceeding 5.5 tonnes, 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 submission of a revised landscape proposal within **3** months from the date of the planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 20.2.2021;
- (e) in relation to (d) above, the implementation of the revised landscape proposal within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 20.5.2021;
- (f) the implementation of the accepted drainage proposal within **6** months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.5.2021;

- (g) the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) the submission of a fire service installations proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 20.2.2021;
- (i) in relation to (h) above, the implementation of the 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 20.5.2021;
- (j) if any of the above planning conditions (a), (b), (c) or (g) 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
- (k) if any of the above planning conditions (d), (e), (f), (h) or (i) 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 VI**.

- 13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "OU(RU)" zone which is primarily for the preservation of the character of the rural area. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

15. Attachments

Appendix I	Application Form with annex and plans received on 25.9.2020
Appendix Ia	SI dated 29.9.2020
Appendix Ib	FI dated 5.11.2020

Appendix Ic	FI dated 9.11.2020
Appendix II	Relevant extract of TPB PG-No. 38
Appendix III	Previous application covering the Site
Appendix IV	Similar applications within the same “OU(RU)” zone on the OZP
Appendix V	Public comment received during the statutory publication period
Appendix VI	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation Plan
Drawing A-4	As-built Drainage Plan
Drawing A-5	FSIs Proposal
Plan A-1	Location Plan with Previous and Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
NOVEMBER 2020**