

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

Application No. A/YL-ST/548

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| <u>Applicant</u> | : | Mr. LAM Kuen represented by Metro Planning and Development Company Limited |
| <u>Site</u> | : | Lots 46 and 47 (Part) in D.D. 105 and Adjoining Government Land (GL), San Tin, Yuen Long |
| <u>Site Area</u> | : | About 1,258 m ² (including about 16 m ² of GL) |
| <u>Lease</u> | : | Block Government Lease (demised for agricultural use) (no structures are allowed to be erected without prior approval of the Government) |
| <u>Plan</u> | : | Approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8 |
| <u>Zoning</u> | : | “Residential (Group D)” (“R(D)”) |
| <u>Application</u> | : | Proposed Temporary Shop and Services (Retail of Construction Material) 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 (retail of construction material) for a period of 3 years. According to the Notes of the OZP, ‘Shop and Services’ use is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently with construction works in progress.
- 1.2 The Site (in part) is the subject of 6 previous applications (Nos. A/YL-ST/10, 107, 221, 303, 369 and 511) mainly for temporary retail shop for sale of vehicle parts. The last application No. A/YL-ST/511 on a smaller site submitted by different applicant for open storage and retail shop of vehicle part and accessories was approved by the Rural and New Town Planning Committee (the Committee) of the Town Planning Board (the Board) on 8.12.2017 for a period of 3 years, and the permission is valid until 8.12.2020 (**Plan A-1b**).

- 1.3 As shown on the layout plan at **Plan A-2**, the Site is accessible at the east via an ingress/egress abutting a local track off Shek Wu Wai Road leading to Castle Peak Road - San Tin. The major development parameters are summarized as follows:

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| Applied use | Proposed temporary shop and services (retail of construction material) for a period of 3 years |
| Site area | About 1,258 m ² (including 16m ² of GL) |
| Total floor area | Not exceeding 524 m ² |
| No. of structures | 3 (1 enclosed structure for retail of construction material, 1 electricity meter room, 1 toilet) |
| Height of structure | 1 storey (Not exceeding 3.5m-8.5m) |
| No. of loading/unloading space | 1 (light goods vehicle) |
| Operation hours | 9:00a.m. to 8:00p.m. daily |

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

- (a) Application Form received on 6.5.2019 **(Appendix I)**
- (b) Planning Statement including drainage assessment **(Appendix Ia)**
- (c) Further Information (FI) dated 24.6.2019 clarifying that the proposed retail structure is an enclosed structure **(Appendix Ib)**
- (d) FI dated 27.6.2019 providing further clarification on the application **(Appendix Ic)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in Section 3 of the Planning Statement at **Appendix Ia**. They can be summarized as follows:

- (a) The proposed development would not jeopardize the long term planning intention of the “R(D)” zone. The proposed development is a temporary development and could be easily converted for residential purpose if necessary. In addition, ‘shop and services’ is a Column 2 use in “R(D)” zone on the OZP and can be considered as a supplementary use of the zone.

- (b) The proposed development targets to serve landlords and tenants in the vicinity and the applied use is clean, tidy and non-polluting. The scale, nature, layout and form of the proposed development is compatible with the surrounding environment, including a similar shop selling vehicle parts and accessories north of the Site.
- (c) The proposed shop and services use is for the retail sale of construction materials, including cement, sanitary wares, tiles and pipes. The construction materials would be housed within an enclosed structure.
- (d) The applicant would provide delivery service to the client, therefore one loading/unloading bay would be adequate. The Site will be fenced off by 2.5m high boundary fencing. No sewage treatment will be carried out at the Site. No adverse visual, traffic, environmental and drainage impacts are envisaged.
- (e) Portion of the Site has encroached upon the boundary of another application No. A/YL-ST/511. The applicant stated that he was the agent of application No. A/YL-ST/511 and indicated that application No. A/YL-ST/511 would not be pursued further.

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 notice to San Tin Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection. For GL, the “owner’s consent/notification” requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The Site is not the subject of any enforcement action.

5. Previous Applications

- 5.1 The Site is subject of 6 approved previous applications (Nos. A/YL-ST/10, 107, 221, 303, 396 and 511) covering part of the Site.
- 5.2 Applications Nos. A/YL-ST/10 (on larger site of about 2,674m² for retail shop use), 107, 221, 303 and 369 (on similar sites) for temporary retail shop for sale of vehicle parts and accessories were approved by the Committee between 1996 and 2009 for periods of 3 years respectively mainly on the consideration that the proposed developments were considered not incompatible with the surrounding land uses, and no adverse comment from relevant departments and/or technical concerns could be addressed by imposing approval conditions.

However, applications Nos. A/YL-ST/303 and 369 were subsequently revoked on 28.1.2009 and 10.5.2012 respectively due to non-compliance with approval conditions on the implementation of run-in proposal and the provision of a run-in.

- 5.3 The last Application No. A/YL-ST/511 on smaller site submitted by different applicant for temporary open storage and retail shop of vehicle parts and accessories was approved by the Committee on 8.12.2017 for a period of 3 years mainly for the same considerations as mentioned in paragraph 5.2. The planning permission is valid until 8.12.2020. Approval condition on the provision of fire extinguisher(s) has been complied with on 12.2.2018.
- 5.4 Details of these applications are summarized at **Appendix II**. Their locations are shown on **Plan A-1b**.

6. Similar Applications

- 6.1 There are 4 similar applications for retail shop of building materials on the same site within the same “R(D)” zone on the OZP, and all were approved by the Committee mainly on the consideration that the proposed developments were considered not incompatible with the surrounding land uses and would not frustrate the long-term planning intention of the “R(D)” zone.
- 6.2 Details of these applications are summarized at **Appendix III**. Their locations are shown on **Plan A-1a**.

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

- 7.1 The Site is accessible via an ingress/egress abutting a local track off Shek Wu Wai Road leading to Castle Peak Road - San Tin.
- 7.2 The surrounding areas mainly comprise open storage yards, vehicle parks, workshops and residential dwellings. Some of the open storage yards, vehicle parks and vehicle repair workshop are suspected unauthorized developments subject to enforcement action by the Planning Authority:
- (a) to the immediate east are refuse collection point and toilet; to the further east across Shek Wu Wai Road is container and goods vehicle park and tyre repair area with ancillary facilities under Application No. A/YL-ST/527;
 - (b) to the immediate south are residential dwellings, vegetable cooperative societies, container vehicle park, and open storage yard for motor vehicles and covered works area under application No. A/YL-ST/528;
 - (c) to the immediate north and northwest are shop for vehicle parts and accessories with ancillary facilities under Application No. A/YL-ST/524, open storage and retail sale of construction machinery

under Application No. A/YL-ST/493; to its further north, northwest and northeast across Castle Peak Road – San Tin are a mixture of open storage yards, container vehicle (and trailers) parks (with workshop), logistics centre, vehicle repair workshops, scattered residential dwellings and unused land; and

- (d) to the west and southwest are the proposed temporary storage under Application No. A/YL-ST/508, residential dwellings of Mai Po Lung, scattered vehicle parks, storage yards, and unused land.

8. Planning Intention

The “R(D)” zone is intended 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 are summarized as follows:

Land Administration

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

- (a) The Site comprises Old Schedule Agricultural Lots held under 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 of about 16m² in area included in the Site. He notes that the act of occupation of GL without Government’s prior approval is not allowed.
- (c) The Site is accessible from Shek Wu Wai Road through GL. His Office provides no maintenance work for the GL involved and does not guarantee any right-of-way.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should the planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. 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. Besides, given the applied use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Applications for any of the above will be considered by LandsD 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 applications are approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by LandsD.

Traffic

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

- (a) The Site is connected to the public road network via a section of a local access which is not managed by Transport Department (TD). The land status of the local access road should be clarified with LandsD by the applicant. The management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.
- (b) Should the application be approved, the following condition should be incorporated:

No vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period.

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

- (a) The access arrangement should be commented by TD.
- (b) If the proposed run-in is agreed by TD, the applicant should provide the run in/out at Shek Wu Wai Road in accordance with the latest version of Highways Standard Drawing No. H1113 and H1114, or H5133, H5134 and H5135, whichever set is appropriate to match with the existing adjacent pavement.
- (c) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to the nearby public roads/drains.
- (d) HyD shall not be responsible for the maintenance of any access connecting the Site and Shek Wu Wai Road. The relevant departments will provide comments, if any.

- 9.1.4 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

He has no comments on the application from railway development viewpoint as the Site neither falls within any administrative route protection boundary, gazetted railway scheme boundary, nor railway protection boundary of heavy rail systems.

- 9.1.5 Comments of the Commissioner of Police (C of P):

- (a) He has no comment on the application.
- (b) The applicant is reminded to adopt sufficient security measures at the Site and obstruction to the vicinity would not be tolerated.

Environment

- 9.1.6 Comments of the Director of Environmental Protection (DEP):

In accordance with the revised “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”, he has no objection to the application.

Nature Conservation

- 9.1.7 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) The Site is a piece of paved land partly occupied by temporary structures. Nevertheless, landscape trees planted in close vicinity of the Site are found nested by breeding egrets and herons in recent years. He notes that the proposed development would not involve any tree felling or cause damage to the existing trees. In this regard, he has no strong view on the application from the nature conservation point of view.
- (b) Should the application be approved, the applicant should be advised to preserve and properly maintain the existing landscape planting along the site boundary and in close vicinity of the Site, and avoid disturbing the breeding birds including their nests and eggs which are protected under the Wild Animals Protection Ordinance, Cap. 170. Besides, lighting facilities installed onsite should also avoid direct shining on the concerned landscape trees as well as the nearby wooded area to the east and north of the Site in order to minimize glare impact on the breeding birds.

Fire Safety

9.1.8 Comments of the Director of Fire Services (D of FS):

- (a) He has no objection in principle to the application 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. The applicant should also be advised on the following points:
 - (i) the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and
 - (ii) the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

9.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) There is no record of approval by the Building Authority (BA) for the existing structures at the Site and BD is not in a position to offer comments on their suitability for the use applied in the application.
- (b) If the existing structures (not being a New Territories Exempted Houses) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any applied use under the application.
- (c) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO.
- (d) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the

Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (e) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations (B(P)R) respectively.
- (f) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Drainage

9.1.10 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no in principle objection to the application from drainage operation and maintenance point of view.
- (b) He notes that the application is the subject of 6 previous applications with the last application no. A/YL-ST/511. However, the site coverage of the last application is different from that of the captioned application. In addition, the drainage information mentioned in the Planning Statement is considered insufficient. In this respect, the applicant shall submit a drainage submission to demonstrate how he will collect, convey and discharge rain water falling onto or flowing to his site. A clear drainage plan showing full details of the existing drains and the proposed drains (e.g. cover and invert levels of pipes/catchpits/outfalls and ground levels justifying waterflow etc.) with supporting design calculations and charts should be included. (Guideline on preparation of the drainage proposal is available in DSD homepage at http://www.dsd.gov.hk/EN/Files/Technical_Manual/dsd_guideline/Drainage_Submission.pdf). Should additional drainage works be required, the applicant is reminded that approval of the drainage proposal must be sought prior to the implementation of drainage works on the Site.
- (c) After completion of the required drainage works, the applicant shall provide DSD a set of record photographs showing the completed drainage works with corresponding photograph locations marked clearly on the approved drainage plan for reference. DSD will inspect the completed drainage works jointly with the applicant with

reference to the set of photographs.

- (d) The applicant shall ascertain that all existing flow paths would be properly intercepted and maintained without increasing the flooding risk of the adjacent areas.
- (e) No public sewerage maintained by CE/MN, DSD is currently available for connection. For sewage disposal and treatment, agreement from DEP shall be obtained.
- (f) The applicant is reminded that the proposed drainage proposal/works as well as the site boundary should not cause encroachment upon areas outside his jurisdiction.
- (g) The applicant should consult DLO/YL, LandsD regarding all the proposed drainage works outside the site boundary in order to ensure the unobstructed discharge from the Site in future.
- (h) All the drainage facilities should be constructed and maintained by the applicant at his own cost. The applicant should ensure and keep all drainage facilities on site under proper maintenance during occupancy of the Site.

Landscape

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

In view that there is no prominent public frontage along the Site, he does not recommend any landscape condition, should the application be approved by the Board, as its effect on enhancing the quality of public realm is not apparent.

Others

- 9.1.12 Comments of the Director of Food and Environmental Hygiene (DFEH):

If the proposal involves any commercial/trading activities, its state should not be a nuisance or injurious or dangerous to health and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.

District Officer's Comments

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

His office has no comment on the application and the local comments shall be submitted to the Board direct, if any.

9.2 The following Government department has no comment on the application:

- (a) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (b) Project Manager (West) (PM(W)), CEDD;
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

10. **Public Comments Received During Statutory Publication Period**

On 14.5.2019, the application was published for public inspection. During the first 3 weeks of the statutory public inspection period which ended on 4.6.2019, one objecting public comment was received from a member of the public (**Appendix IV**) raising concern that the proposed use is not in line with the planning intention of the zone and brownfield use should be eliminated in the area.

11. **Planning Considerations and Assessments**

- 11.1 The application is for proposed temporary shop and services (retail of construction material) for a period of 3 years. The Site falls within “R(D)” zone which 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. Approval of the application on a temporary basis for a period of 3 years would not frustrate the long-term planning intention of the “R(D)” zone as there is no immediate development proposal for the Site.
- 11.2 The surrounding areas are predominated by open storage yards, vehicle parks, vehicle repair workshop and domestic structures (**Plan A-2**). To its immediate north is another shop for sale of vehicle parts approved under application No. A/YL-ST/524. The proposed use is not incompatible with the surrounding land uses and may provide service to nearby areas and community.
- 11.3 Government departments consulted including C for T, DEP, D of FS, CE/MN of DSD and CTP/UD&L of PlanD have no objection to or adverse comment on traffic, environment, fire safety, drainage and landscape aspects respectively. Adverse impacts on these aspects are not envisaged. To mitigate potential environmental impacts on the surrounding area and to address concerned departments’ comments, approval conditions restricting operation hours and technical requirements are recommended in paragraphs

13.2 (a) to (h) below. Non-compliance with any of the approval conditions would result in revocation of the planning permission and unauthorized developments on site would be subject to enforcement action by the Planning Authority. Besides, the applicant will be advised to follow the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.

- 11.4 The Site is subject of 6 previous applications approved by the Committee for vehicle parts and accessories retail shop. There are 4 similar applications involving retail shops for sale of building materials within the same “R(D)” zone approved by the Committee between 2009 and 2019. Approval of the current application is in line with the previous decisions of the Committee for similar uses in the area.
- 11.5 There is one objecting public comment raising concern that the proposed use is not in line with the planning intention of the “R(D)” zone. The planning assessments and departmental comments above are of relevance.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 12 and having taken into account the public comments in paragraph 11, 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 5.7.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8 p.m. to 9 a.m. daily, as proposed by the applicant, at any time during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from the Site at any time during the planning approval period;
- (c) the provision of boundary fencing within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 5.1.2020;
- (d) the submission of drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 5.1.2020;
- (e) in relation to (d) above, the implementation of drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 5.4.2020;

- (f) in relation to (e) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (g) the submission of 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 5.1.2020;
- (h) in relation to (g) above, the implementation of 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 5.4.2020;
- (i) if any of the above planning conditions (a), (b) or (f) 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
- (j) if any of the above planning conditions (c), (d), (e), (g) or (h) 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 attached 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 temporary shop and services (retail of construction material) is not in line with the planning intention of the "R(D)" zone which is intended primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. 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

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| Appendix I | Application Form received on 6.5.2019 |
| Appendix Ia | Planning Statement |
| Appendix Ib | Further Information dated on 24.6.2019 |
| Appendix Ic | Further Information dated on 27.6.2019 |
| Appendix II | Previous s.16 Applications covering the Application Site |
| Appendix III | Similar Applications within the “R(D)” zone on the Approved San Tin Outline Zoning Plan No. S/YL-ST/8 |
| Appendix IV | Public comments received during the first 3 weeks of statutory publication period |
| Appendix V | Recommended Advisory Clauses |
| Drawing A-1 | Layout Plan |
| Drawing A-2 | Landscape Plan |
| Drawing A-3 | Drainage Plan |
| Plan A-1a | Location Plan with Similar Applications |
| Plan A-1b | Previous Application Plan |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plans A-4a to A-4b | Site Photos |

**PLANNING DEPARTMENT
JULY 2019**