

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-SK/248**

<b><u>Applicant</u></b>	Cheung Chi Yuen Danny represented by Metro Planning and Development Company Limited
<b><u>Site</u></b>	Lot 878 (Part) in D.D. 114 and adjoining Government land, Pat Heung, Yuen Long, New Territories
<b><u>Site Area</u></b>	About 460m <sup>2</sup> (including 110m <sup>2</sup> of Government land)
<b><u>Lease/ Land Status</u></b>	Block Government Lease (demised for agricultural use) (about 76.1% of the Site); and Government Land (GL) (about 23.9% of the Site)
<b><u>Plan</u></b>	Approved Shek Kong Outline Zoning Plan (OZP) No. S/YL-SK/9
<b><u>Zoning</u></b>	“Residential (Group D)” (“R(D)”)
<b><u>Application</u></b>	Temporary Shop and Services (Retail Shop for Hardware Groceries) for a Period of 3 Years

**1. The Proposal**

- 1.1 The applicant seeks planning permission for temporary shop and services (retail shop for hardware groceries) at the application site (the Site) for a period of 3 years. The Site falls within an area zoned “R(D)” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use within “R(D)” zone, which requires planning permission from the Town Planning Board (the Board). Part of the Site is currently used as shop and services (retail shop for hardware groceries), as claimed by the applicant, without valid planning permission.
- 1.2 According to the applicant’s submission, the Site has an area of 460m<sup>2</sup>. Two existing 1-2 storey structures (not exceeding 4-6 m) with a total non-domestic floor area of about 316 m<sup>2</sup> are for 2-storey retail shop for hardware groceries (Structure 2) and 1-storey site office, cashier and toilet (Structure 1) (**Drawing A-1**). According to the applicant, the applied development is intended to serve the neighbourhood for purchasing hardware groceries such as screw, nut, screw drivers and hand tools, instead of storage use.

- 1.3 The Site is directly accessible from Kam Sheung Road (**Plan A-2**). One light goods vehicle loading/unloading space is provided at the Site. Manoeuvring space will be provided on site to avoid reversing of vehicle to the public road. The opening time is 9:00 a.m. to 7:00 p.m. from Mondays to Saturdays and no operation on Sundays and public holidays. To support the application, the applicant has submitted the layout plan, landscape plan and drainage proposal (**Appendix I**). The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 The application was originally scheduled for consideration by the Committee on 22.2.2019. On 22.2.2019, the Committee decided to defer the consideration of the application upon the requests of the applicant in order to allow time for the applicant to prepare further information (FI) to address comments of Transport Department (TD). On 19.3.2019 and 4.4.2019, the applicant submitted FIs to address comments of TD. The application is scheduled for the Committee's consideration at this meeting.
- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form with attachments received on 31.12.2018 (**Appendix I**)
  - (b) Further Information (FI) dated 29.1.2019 (**Appendix Ia**)
  - (c) Email requesting for deferment dated 12.2.2019 (**Appendix Ib**)
  - (d) FI dated 19.3.2019 (**Appendix Ic**)
  - (e) FI dated 4.4.2019 (**Appendix Id**)
  - (f) FI dated 8.5.2019 (**Appendix Ie**)

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in **Appendices I and Ie**. They are summarized as follows:

- (a) The applied development is generally in line with the planning intention of "R(D)" zone. The applied development is on a temporary basis for a period of 3 years and therefore will not jeopardize the opportunity for utilizing the Site for upgrading/redeveloping the existing temporary structures into permanent buildings.
- (b) The applied development is not incompatible with the surrounding rural environment which is predominately occupied by some temporary structures and an eating place. It is insignificant in size and scale, and is considered as a non-polluting use. Similar applications for 'Shop and Services' within "R(D)" zone in the rural areas in Tuen Mun and Yuen Long have been approved by the Board.
- (c) The Site only occupies about 460m<sup>2</sup> including the manoeuvring space and loading/unloading bay for light goods vehicle which is about the same as other shop and services approved by the Board such as applications No. A/YL-SK/252 for real estate agency (about 310 m<sup>2</sup>), No. A/YL-TYST/820 for sale of metal and home appliances (about 892 m<sup>2</sup>) and No. A/TM-LTYT/317 for sale of pet food and potted plants (about 850 m<sup>2</sup>). The proposed shop and services at the Site only occupies about 206 m<sup>2</sup> in terms of covered area. The applicant claimed that the applied development is intended for shop and services instead of storage use.

- (d) The Site is directly accessible from Kam Sheung Road. One light goods vehicle loading/unloading space is provided at the Site. The estimated traffic generation by the applied development (i.e. 0.3 pcu/hr on average and 1.5 pcu/hr during peak hours) is considered insignificant. Besides, adequate space for manoeuvring of vehicle will be provided at the Site to avoid queuing of vehicles onto public road. As such, there will be no significant adverse traffic impact to the surrounding areas.
- (e) The applicant would follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by Environmental Protection Department (including restricting the operation hours from 7:00pm to 9:00am and hard paving of the Site and its frontage) in order to minimise any possible environmental nuisances to the surrounding areas. Besides, with the implementation of proposed drainage facilities, it is anticipated that no adverse drainage impact will be generated by the applied development.

### **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is not the current land owner but has complied with the requirements as set out in the Town Planning Board (TPB) 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 at the Site and sending notice to Pat Heung Rural Committee by local registered post. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land, the “Owner’s Consent/Notification” Requirements as set out in TPB PG-No.31A are not applicable.

### **4. Background**

The Site is not subject of any active planning enforcement case.

### **5. Previous Application**

There is no previous application at the Site.

### **6. Similar Application**

There is no similar application for ‘Shop and Services’ use within the same “R(D)” zone.

### **7. The Site and Its Surrounding Areas (Plans A-1, A-2 and photos on Plans A-3 and A-4)**

7.1 The Site is:

- (a) paved, gently flat and fenced off. Part of the Site (Structure 1) is currently used as shop and services (retail shop for hardware groceries), as claimed by the applicant; and

- (b) directly accessible from Kam Sheung Road.

7.2 The surrounding areas have the following characteristics:

- (a) to its north is Kam Sheung Road, and to its further north are some domestic structures intermixed with fallow farmland;
- (b) to its east are some domestic structures, vacant land, a restaurant and an open storage of vehicles;
- (c) to its south are some domestic structures and a nullah, and to its further south are a vehicle repair workshop, an open storage of scrap metal and a soy food products manufacturing plant;
- (d) to its west are some domestic structures and a restaurant; and
- (e) there are no similar retail shops for hardware groceries found in the vicinity of the Site.

## **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 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 Government Land (GL) and 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) no permission is given for occupation of GL (about 110m<sup>2</sup> subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed;
- (c) the Site is accessible from Kam Sheung Road via GL. His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site;

- (d) the Site falls within the Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the applied structures shall not exceed relevant airfield height limit within the SKAHRA; and
- (e) should planning approval be given to the planning 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. 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. Furthermore, the applicant has to either exclude the GL portion from the Site or apply for a direct grant Short Term Tenancy (STT) for use of the Site. Applications for any of the above will be considered by LandsD acting in the capacity as landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application is 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) he has no comment on the application from traffic engineering perspective;
- (b) should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included; and
- (c) the Site is connected to the public road network via a section of a local access road which is not managed by his department. The land status of the local access road should be checked with LandsD. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) his department does not and will not maintain the access connecting the Site and Kam Sheung Road; and
- (b) adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

### **Environment**

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

- (a) 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 Environmental Aspects of Temporary Uses and Open Storage Sites'; and
- (b) there is no environmental complaint case related to the Site in the past three years.

### **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 applied development from the public drainage point of view. His detailed comments on the submitted drainage proposal are at **Appendix III**; and
- (b) should the application be approved, the conditions requiring the submission of a revised drainage proposal and implementation and maintenance of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.

### **Building Matters**

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

- (a) if the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of Buildings Department (BD), they are unauthorized building works (UBW) under the Buildings Ordinance (BO) and should not be designated for any applied use under the application;
- (b) 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;
- (c) before any new building works (including containers/open sheds as temporary buildings and land filling) 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 (AP) should be appointed as the coordinator for the proposed building works in accordance with the BO;
- (d) 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 respectively; and

- (e) 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 Building (Planning) Regulations at the building plan submission stage.

### **Fire Safety**

#### 9.1.7 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 being provided to his satisfaction;
- (b) in consideration of the design/nature of the proposal, fire service installations are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed fire service installations to his department for approval. The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location of where the proposed fire service installations to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

### **District Officer's Comments**

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

he has not received any comments from locals upon close of consultation and he has no particular comments on the application.

#### 9.2 The following Government departments have no objection to/adverse comment on the application.

- (a) Chief Town Planner/Urban Design & Landscape, PlanD (CTP/UD&L, PlanD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager/West, Civil Engineering and Development Department (PM/W, CEDD);
- (d) Commissioner of Police (C of P); and
- (e) Director of Electrical and Mechanical Service (DEMS).

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

On 8.1.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 29.1.2019, one comment from a member of general public was received (**Appendix II**). The commenter considers that the Site should be used for the intended use of “R(D)” zone. Approval of other uses would delay the long overdue transformation of New Territories to a well-planned community.

## **11. Planning Considerations and Assessments**

- 11.1 The application is for temporary shop and services (retail shop for hardware groceries) at the Site for a period of 3 years. The applied development will utilize the two existing structures of 1-2 storey (not exceeding 4-6 m) at the Site to serve the neighbouring residential community for purchasing hardware groceries. The Site falls within an area zoned “R(D)” on the approved Shek Kong OZP No. S/YL-SK/9 (**Plan A-1**). The shop and services use is not entirely in line with the planning intention of “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. Nevertheless, ‘Shop and Services’ is a Column 2 use within “R(D)” zone which may be permitted upon application to 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.
- 11.2 The applied development with low-rise structures is not incompatible with the surrounding land uses which are predominated by some domestic structures intermixed with restaurants, open storage and workshop uses (**Plan A-2**). According to the applicant, the applied development is small in scale and intended to serve the surrounding local community. One light goods vehicle loading/unloading space is provided at the Site, and the estimated traffic generation by the applied development is considered insignificant. C for T, DEP, CE/MN, DSD and CTP/UD&L, PlanD have no objection to/no comment on the application from traffic, environmental, drainage and landscape aspects. It is anticipated that the applied development would not have significant adverse traffic, environmental, drainage and landscape impact. To mitigate potential environmental impacts on the surrounding areas, approval conditions restricting the operation hours and day are recommended in paragraphs 12.2 (a) and (b) below. Any non-compliance with the approval conditions will result in revocation of the planning permission. Besides, the applicant would be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” issued by the DEP. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (e) to (j).
- 11.3 One public comment was received during the statutory publication period mainly on the ground that the Site should be used for the intended use of “R(D)” zone. Relevant Government departments’ comments and planning considerations set out in paragraphs 11.1 to 11.3 above are relevant.



## 12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment in paragraph 10, 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 17.5.2022. 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) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit the Site at any time during the planning approval period;
- (d) no dismantling, maintenance, repairing, cleansing, paint spraying or other workshop activities are allowed on the Site at any time during the planning approval period;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the submission of proposal for fire service installations and water supplies for fire-fighting 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 17.11.2019;
- (g) in relation to (f) above, the implementation of proposal for fire service installations and water supplies for fire-fighting 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 17.2.2020;
- (h) the submission of revised 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 17.11.2019;
- (i) in relation to (h) above, the implementation of revised drainage proposal with 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 17.2.2020;
- (j) in relation to (i) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (k) if any of the above planning conditions (a), (b), (c), (d), (e) or (j) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked without further notice; and
- (l) if any of the above planning conditions (f), (g), (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 attached at **Appendix III**.

12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Members' reference:

- (a) the applied development 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 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; and
- (b) approval of the application would set an undesirable precedent for other similar applications in the area. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

**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**

<b>Appendix I</b>	Application form received on 31.12.2018
<b>Appendix Ia</b>	Further Information (FI) dated 29.1.2019
<b>Appendix Ib</b>	Email requesting for deferment dated 12.2.2019
<b>Appendix Ic</b>	FI dated 19.3.2019
<b>Appendix Id</b>	FI dated 4.4.2019
<b>Appendix Ie</b>	FI dated 8.5.2019
<b>Appendix II</b>	Public Comment
<b>Appendix III</b>	Advisory Clauses
<b>Drawing A-1</b>	Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo
<b>Plan A-4</b>	Site Photos

**PLANNING DEPARTMENT  
MAY 2019**