

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/1047

- Applicant** : Exact Win Limited represented by Metro Planning and Development Company Limited
- Site** : Lots 641 (Part), 701 (Part) and 702 RP (Part) in D.D. 121 and Adjoining Government Land (GL), Tong Yan San Tsuen, Yuen Long, New Territories
- Site Area** : 1,600 m² (about) (including about 28 m² of GL (about 1.8%))
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/13
- Zoning** : “Residential (Group D)” (“R(D)”)
[restricted to maximum plot ratio of 0.2 and maximum building height of 2 storeys (6m)]
- Application** : Proposed Temporary Shop and Services for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services for a period of 3 years (**Plan A-1a**). According to the Notes of the OZP for the “R(D)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently vacant and occupied by some temporary structures (**Plans A-2 and A-4**).
- 1.2 The Site involves 5 previous applications for various temporary open storage or recycling facility uses (**Plan A-1b**). The last application (No. A/YL-TYST/262) for temporary recycling facility for plastic waste for a period of 3 years was rejected by the Rural and New Town Planning Committee (the Committee) of the Board in 2004. Details of the previous applications are summarised in paragraph 5 below and **Appendix II**. Compared with the last application, the current application is submitted by a different applicant for a different use (i.e. shop and services) with different site layout and development parameters on a smaller site.
- 1.3 According to the applicant, the proposal is for retailing of plants (such as trees and shrubs) and provision of gardening services. No medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, will be allowed to

enter/park at the Site. Besides, the applicant undertakes that the proposed drainage facilities at the Site will be constructed and maintained at its own expense. Plans showing the vehicular access leading to the Site, site layout, tree preservation proposal and drainage proposal submitted by the applicant are at **Drawings A-1** to **A-4** respectively.

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

Site Area	About 1,600 m ² (including about 28 m ² of GL)
Total Floor Area (Non-domestic)	280 m ²
No. and Height of Structures	4 <ul style="list-style-type: none"> • one for shop and services (9m, 1 storey) • one for electricity meter room (3m, 1 storey) • one for toilet (3m, 1 storey) • one for site office (3m, 1 storey)
No. of Parking Spaces	3 (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 document:

- (a) Application Form with annexes and plans received on **(Appendix I)** 12.8.2020

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 proposal could meet the local demand for gardening services. The high headroom (i.e. 9m) of the proposed shop would enable internal storage of trees.
- (b) Approval of the current application on a temporary basis will not frustrate the long-term planning intention. Similar shop and services have been approved in the area. The proposal is not incompatible with the surrounding uses including residential developments.
- (c) There will be insignificant environmental, drainage and traffic impacts on the surrounding environment. Sufficient maneuvering space will be provided within the Site and no queuing of vehicles outside the Site is expected.

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 the Ping Shan Rural Committee by registered post. Detailed information would be deposited at the meeting for Members’ inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Applications

5.1 The Site involves 5 previous applications, including two approved applications (No. A/YL-TYST/3 and 44) and three rejected applications (No. A/YL-TYST/119, 144 and 262), for various temporary open storage or recycling facility uses all covering a much larger site. Details of the previous applications are summarised in **Appendix II** and the boundaries of the sites are shown on **Plan A-1b**.

Approved Applications (2 Cases)

5.2 Application No. A/YL-TYST/3 for temporary open storage of marble and application No. A/YL-TYST/44 for temporary open storage of construction machinery and materials were approved with conditions by the Committee or the Board on review each for a period ranging from 6 months to one year in 1997 and 1998 respectively. The first application was approved mainly on the considerations that sympathetic consideration may be given as the application was an interim measure for finding other suitable site for relocation of the operation; and the scale of the operation had been reduced. The second application was approved mainly on the considerations that approval of the application on a temporary basis would not jeopardise the long-term planning intention; no adverse departmental comments and the potential environmental nuisances could be addressed by imposing approval conditions.

Rejected Applications (3 Cases)

5.3 Application No. A/YL-TYST/119 for temporary open storage of construction machinery and materials, application No. A/YL-TYST/144 for temporary open storage of construction materials and application No. A/YL-TYST/262 for temporary recycling facility for plastic waste each for a period of 3 years were rejected by the Committee or the Board on review between 2001 and 2004, mainly on the grounds of not in line with the planning intention of the “R(D)” zone (for the former two applications only); there was no information to demonstrate why suitable sites within the “Undetermined” zone cannot be made available for the development (for the first application only); potential adverse landscape/drainage/environmental impacts; approval of the application would result in a further degradation of the environmental and traffic conditions of the area; and incompatibility with the surrounding rural uses.

- 5.4 Compared with the last application (No. A/YL-TYST/262), the current application is submitted by a different applicant for a different use (i.e. shop and services) with different site layout and development parameters on a smaller site.

6. Similar Applications

- 6.1 There are 3 similar applications, including one rejected application (No. A/YL-TYST/546) and two approved applications (No. A/YL-TYST/820 and 998), for various temporary shop and services uses within/straddling the same “R(D)” zone. Details of the applications are summarised in **Appendix III** and the boundaries of the sites are shown on **Plan A-1a**.

Rejected Application (1 Case)

- 6.2 Application No. A/YL-TYST/546 for temporary shop and services (traffic engineering highway sub-station and sale office of traffic engineering equipment with ancillary display area) for a period of 3 years was rejected by the Board on review in 2012, mainly on the grounds that the proposal was not in line with both the then Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (as the Board considered the use was more akin to an open storage yard than a retail shop serving the surrounding residential neighbourhood), and the planning intention of the “R(D)” zone; there were potential adverse environmental and drainage impacts; and approval of the application would set an undesirable precedent.

Approved Applications (2 Cases)

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

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

- 7.1 The Site is:

- (a) accessible via a local track leading from Long Hon Road to its northeast (**Drawing A-1, Plans A-2 and A-3**);
- (b) paved and fenced off; and

- (c) currently vacant and occupied by some temporary structures.

7.2 The surrounding areas have the following characteristics (**Plans A-2 and A-3**):

- (a) comprise predominately open storage/storage yards and warehouses with a grave, some agricultural land, unused land and vacant land/structures;
- (b) to the southeast of the Site is an area zoned “Green Belt” on the OZP;
- (c) the nearest main residential cluster is along Sha Tseng Road some 700m walking distance to the north of the Site; and
- (d) except for one open storage yard to the immediate southeast of the Site, the other open storage/storage yards and warehouses in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

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

9. Comments from Relevant Government Departments

9.1 The following government departments have been consulted and their views on the application and public comment, where relevant, are summarised as follows:

Land Administration

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

- (a) The Site comprises GL and Old Schedule Agricultural Lots held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) No permission is given for occupation of GL (about 28 m² subject to verification) included in the Site. Any occupation of GL without Government’s prior approval is not allowed.
- (c) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or to regularise any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. Furthermore, the applicant has to either exclude the GL from the

Site or apply for a formal approval prior to the actual occupation of the GL. Applications for any of the above will be considered by her department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by her department.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Long Hon Road shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) Adequate drainage measures 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 Tong Yan San Tsuen Interchange.

Environment

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

- (a) There was no substantiated environmental complaint concerning the Site received in the past three 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 Use" to minimise any potential environmental nuisances on the surrounding areas.

Drainage

9.1.5 Comments of the Chief Engineer/Mainland North, Drainage Services

Department (CE/MN, DSD):

- (a) He has no objection in principle to the proposed development from the public drainage point of view.
- (b) He has no adverse comment on the submitted drainage proposal (**Drawing A-4**). Nevertheless, the applicant should be reminded of the detailed comments at **Appendix V**.
- (c) Should the Board consider the application acceptable from the planning point of view, approval conditions requiring the implementation and maintenance of the agreed drainage proposal to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to fire service installations (FSIs) being provided to his satisfaction.
- (b) In consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to his department for approval. In addition, the applicant should be reminded of the detailed comments at **Appendix 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 granted 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**.

Long-Term Development

9.1.8 Comments of the Chief Engineer/Cross-Boundary Infrastructure and Development, Planning Department (CE/CID, PlanD):

- (a) The Civil Engineering and Development Department (CEDD) and PlanD jointly commissioned the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation”. According to the Revised Recommended Outline Development Plan (RODP) of YLS promulgated in May 2020, the Site falls within an area partly zoned “Green Belt (1)”, “Residential - Zone 5” and “Amenity” and partly shown as ‘Road’.

- (b) The objective of YLS is to transform the degraded rural land predominantly occupied by brownfield operations including open storage yards, warehouses and rural industrial uses into housing and other uses with supporting infrastructure and community facilities, and to improve the existing environment. It is noted that the application is for temporary use for a period of 3 years. In considering the application for temporary uses, due consideration should be given on the possible implication on land clearance which would affect the future implementation of YLS.

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

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

District Officer's Comments

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

His office has not received any feedback from the locals.

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

- (a) Director of Electrical and Mechanical Services (DEMS);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 21.8.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one public comment was received from an individual objecting to the application on the grounds that the proposal will affect the environment and the surrounding rural character (**Appendix IV**).

11. Planning Considerations and Assessments

11.1 The application is for proposed temporary shop and services for a period of 3 years at a site zoned “R(D)” on the OZP. The proposed development is generally not in line with the planning intention of the “R(D)” zone, which is primarily for

improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings and for low-rise, low-density residential developments. The applicant claimed that the proposal could meet the local demand for plants and gardening services. However, apart from a few isolated residences in the vicinity, the main residential cluster is located at some distance to the north of the Site at Sha Tseng Road. Given the inconspicuous location of the Site, the proposal does not appear to serve a local clientele. In this regard, no strong planning justification has been given in the submission to justify a departure from the aforesaid planning intention, even on a temporary basis. Moreover, no justifications have been given to suggest why the proposed use must be located at the subject location instead of other more accessible, prominent and suitable sites in the wider area.

- 11.2 Although the proposal is considered not incompatible with the surrounding areas which mainly comprises open storage/storage yards and warehouses (**Plan A-2**), most of the existing storage yards and warehouses in the area are suspected UD subject to enforcement action taken by the Planning Authority. Despite the applicant's claim that the high floor height of the proposed structure is to accommodate trees indoor, given that some 1,320 m² of the site (about 83%) would remain uncovered, no strong justification has been given in the submission to suggest why the trees for sale could not be placed outdoors. The height of the proposed 9m-high shop, with 220 m² floor area, exceeds the prevailing building height (BH) restriction of 6m of the "R(D)" zone and is considered excessive. Besides, the proposed retail shop structure only occupies some 13.8% of the site area and is considered not in proportion to the main proposed use of the Site.
- 11.3 Although the Committee had approved two similar applications (No. A/YL-TYST/820 and 998) for shop and services uses in the subject "R(D)" zone, both application sites were located in close proximity to established residential clusters in the adjoining "R(B)1" or "V" zones where there were local clientele (**Plan A-1a**). The proposed scale of the two approved shops (with site area of 892 m² and 730 m² respectively, **Appendix III**) were also considerably smaller than the current proposal (1,600 m²) and more in keeping with the surrounding area. Besides, the maximum BHs of the proposed structures in both approved applications were in compliance with the BH restriction of the "R(D)" zone (i.e. at or below 6m) and not considered excessive. While there were two previous approved applications at the Site, they were for a different use (temporary open storage uses) approved in 1997 and 1998, and the considerations thereof are no longer relevant to the current application for proposed temporary shop and services use.
- 11.4 There were three previous and one similar applications rejected by the Committee or the Board on review mainly on the grounds of not in line with the planning intention of the "R(D)" zone. This consideration is generally relevant and applicable to the current application.
- 11.5 There is one objecting public comment received on the application during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.4 above are relevant.

12. Planning Department's Views

12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment as mentioned in paragraph 10 above, the Planning Department does not support the application for the following reasons:

- (a) the 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 and for low-rise, low-density residential development. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
- (b) the scale of the proposed shop is considered excessive and the applicant also fails to justify the height of the proposed structure.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 9.10.2023. 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 medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailer, 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 existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (e) the existing trees within the Site shall be maintained at all times during the planning approval period;
- (f) 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 9.4.2021;
- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the submission of a fire service installations proposal within **6** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 9.4.2021;

- (i) in relation to (h) above, the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 9.7.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d), (e) 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 (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 V**.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

14. Attachments

Appendix I	Application Form with annexes and plans received on 12.8.2020
Appendix II	Previous Applications covering the Site
Appendix III	Similar Applications within/straddling the subject “R(D)” zone
Appendix IV	Public Comment received during Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Vehicular Access Plan
Drawing A-2	Site Layout Plan
Drawing A-3	Tree Preservation Proposal
Drawing A-4	Drainage Proposal
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Previous Applications Plan

Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
OCTOBER 2020**