

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/998

- Applicant** : Mr. CHEUNG Tsz Lung represented by Metro Planning and Development Company Limited
- Site** : Lot 1553 (Part) and 1554 RP (Part) in D.D. 121 and Adjoining Government Land (GL), Shan Ha Road, Yuen Long, New Territories
- Site Area** : 730 m² (about) (including about 50 m² of GL)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
- Zonings** : “Residential (Group D)” (“R(D)”) (about 74.35%)
[Restricted to maximum plot ratio of 0.2 and maximum building height of 2 storeys (6m)]
- “Village Type Development” (“V”) (about 25.65%)
[Restricted to a maximum building height of 3 storeys (8.23m)]
- Application** : 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 temporary shop and services for a period of 3 years (**Plan A-1**). According to the Notes of the OZP, ‘Shop and Services’ use within the “R(D)” zone and other than on the ground floor of a New Territories Exempted House (NTEH) within the “V” zone is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is not involved in any previous application and is currently occupied by the applied use without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 According to the applicant, the proposal will provide by-appointment car beauty services for private cars and light goods vehicles (LGVs) to serve the needs of nearby residents. Except general car beauty services, no spraying and other workshop activities will be carried out at the Site. The applicant also undertakes that all proposed drainage facilities within the Site will be provided and maintained at his own expense. Furthermore, no medium or heavy goods vehicles will be

allowed to be parked or enter the Site. Plans showing the site layout, landscape proposal and drainage proposal submitted by the applicant are at **Drawings A-1** to **A-3** respectively.

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

Site Area	730 m ² (about) (including about 50 m ² of GL)
Total Floor Area (Non-domestic)	174 m ² (about)
No. and Height of Structures	3 <ul style="list-style-type: none">• one for car beauty services (4.5m, 1 storey)• one for site office and store room (3m, 1 storey)• one for electricity meter room (3m, 1 storey)
No. of Service Bays	3 (for private cars and LGVs) (7m x 3.5m)
No. of Parking Space	Nil
No. of Loading/ Unloading Space	Nil
Operation Hours	10:00 a.m. to 5:00 p.m. daily

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

- (a) Application Form with drainage proposal, estimated traffic generation data, a license under the Water Pollution Control Ordinance and plans received on 27.11.2019 **(Appendix I)**
- (b) Supplementary Information received on 27.11.2019 providing revised plans and replacement pages of the Application Form **(Appendix Ia)**
- (c) Further Information (FI) received on 7.1.2020 providing responses to departmental comments and clarification on the proposed operation **(Appendix Ib)**
- (d) FI received on 7.1.2020 providing responses to departmental comments and clarification on the proposed operation **(Appendix Ic)**
- (e) FI received on 20.2.2020 providing revised site plan and layout plan with relocated ingress/egress in response to departmental comments **(Appendix Id)**
- (f) FI received on 6.3.2020 providing revised landscape proposal **(Appendix Ie)**
[(c), (d) and (f) accepted and exempted from publication and recounting requirements; (e) accepted but not exempted from publication and recounting requirements]

1.5 On 17.1.2020, the Rural and New Town Planning Committee (the Committee) of the Board agreed to defer a decision on the application for a period of two months, as requested by the applicant's representative. After the deferral, the applicant submitted FI (**Appendix Id**) on 20.2.2020. In light of the special work arrangement for government departments due to the novel coronavirus infection, the meeting originally scheduled for 3.4.2020 for consideration of the application has been rescheduled, and the Board has agreed to defer consideration of the application. The application is now scheduled for consideration by the Committee at this meeting.

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are mainly detailed in Section 7 of the Application Form (**Appendix I**) and the FI at **Appendices Ib to Ie**. They can be summarised as follows:

- (a) The proposal is in line with the planning intention of the "V" zone. The proposed use could offer car beauty services to nearby residents and bring benefits to the local community.
- (b) The development is limited in scale and is compatible with the surrounding environment. Relevant proposals and estimations on traffic generation have been submitted to demonstrate that significant impacts arising from the proposal are not expected. Car beauty services will only be provided to vehicles with appointment. The proposal is operated with a licence granted under the Water Pollution Control Ordinance for the discharge of commercial trade effluent.
- (c) The Board has approved a similar shop and services use for car beauty services within Yuen Long.

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 Ping Shan Rural Committee through 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 subject to planning enforcement action against unauthorised development (UD) involving 'shop and services' use. Enforcement Notice (E/YL-TYST/841) was issued on 14.10.2019 requiring discontinuation of the UD. Since the UD has not been discontinued upon expiry of the notice, prosecution action may be taken by the Planning Authority.

5. Previous Application

There is no previous planning application concerning the Site.

6. Similar Applications

- 6.1 There are a total of 5 similar applications (No. A/YL-TYST/546, 820, 855, 912 and 974) for various temporary shop and services uses in the subject “R(D)” and “V” zones with or without straddling other zones. Details of the applications are summarised in **Appendix II** and the locations of the sites are shown on **Plan A-1**.
- 6.2 Application No. A/YL-TYST/820 for proposed temporary shop and services (retail shop for metal and home appliance), application No. A/YL-TYST/855 for temporary public vehicle park for private car and LGV and shop and services (real estate agency), application No. A/YL-TYST/912 for proposed temporary shop and services (motor-vehicle showroom) and application No. A/YL-TYST/974 for proposed temporary shop and services (convenience stores) were approved with conditions by the Committee each for a period of 3 years between 2016 and 2019, mainly on the grounds that the proposals would not jeopardise the long-term planning intention(s) of the area; the proposals were not incompatible with the surrounding land uses; similar applications within the concerned zone(s) had been approved; and the concerns of relevant departments could be addressed through the implementation of approval conditions.
- 6.3 The remaining 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 proposed development was not in line with the then Town Planning Board Guidelines for “Application for Open Storage and Port Back-up Uses” (TPB PG-No.13E, as the Board considered the use 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 was insufficient information to demonstrate that the development would not generate adverse environmental and drainage impacts on the surrounding areas; and approval of the application would set an undesirable precedent.

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

- 7.1 The Site is:
- (a) accessible via a local track leading from Shan Ha Road to its east (**Plans A-2 and A-3**);
 - (b) paved and partly fenced off; and
 - (c) currently occupied by the applied use without valid planning permission.
- 7.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) comprises predominantly warehouses and open storage/storage yards, with scattered residences, parking of vehicles, a construction site, a vehicle repair workshop, a refuse collection point, a nullah and some vacant land/structures;
- (b) there are residential structures in the vicinity of the Site with the nearest one located about 50m to its southwest;
- (c) to its north is an area zoned “Open Storage” (“OS”) on the OZP; and
- (d) except for the open storage/storage yards within the adjacent “OS” zone and an open storage yard to the further northwest of the Site, the other open storage/storage yards, warehouses, vehicle repair workshop and parking of vehicles in the vicinity are suspected UD subject to enforcement action taken by the Planning Authority.

8. Planning Intentions

- 8.1 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.
- 8.2 The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within the zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

9. Comments from Relevant Government Departments

- 9.1 The following government departments have been consulted and their views on the application and public comment received, 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 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 50m² subject to verification) included in the Site. The applicant’s attention is

drawn to the fact that any occupation of GL without Government's prior approval is not allowed. With the implementation of the tightened arrangements for handling regularisation applications, her department will no longer accept application for regularisation of new or extension of unlawful occupation of GL or erection of new structures which is found commenced on or after 28.3.2017.

- (c) The Site is accessible from Shan Ha Road via GL and private land. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) There is no Small House application approved/under processing within the Site.
- (f) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office for permitting the structures to be erected or 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. No construction of New Territories Exempted Building(s) will be considered or allowed. 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 premium 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 Shan Ha 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 Shan Ha Road.

Environment

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

- (a) One substantiated complaint concerning the Site was received in the past 3 years concerning soil/muddy water discharge from construction works at the Site in March 2019. However, the complaint was not related to the current applied use.
- (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) and the Professional Persons Environmental Consultative Committee Practice Note No. 5/93 (ProPECC PN 5/93) – “Drainage Plans Subject to Comment by the Environmental Protection Department” to minimise any potential environmental nuisance. Moreover, it is the obligation of the applicant to comply with all relevant ordinances in Hong Kong.

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 development from the public drainage point of view and no adverse comment on the submitted drainage proposal (**Drawing A-3**). Nevertheless, the applicant should be reminded to note the following:
 - (i) The applicant should implement the drainage facilities on site in accordance with the agreed drainage proposal.
 - (ii) The applicant is required to rectify the drainage system if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by a failure of the drainage system.
 - (iii) The development would neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.

- (iv) The applicant should consult DLO/YL, LandsD and seek consent from relevant lot owners for any works to be carried out outside his lot boundary before commencement of the drainage works.
- (b) 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. The applicant should be advised on the following points:
 - (i) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy.
 - (ii) The location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (c) However, 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

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

The applicant's attention is drawn to the following points:

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling) are to be carried out on the Site, prior approval and consent of the Building Authority should be obtained, otherwise they are unauthorised building works (UBW) under the BO. An Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with the

prevailing 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) 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.
- (d) The Site does not abut on a specified street of not less than 4.5m wide and its permitted development intensity shall be determined under Regulation 19(3) of the B(P)R at the building plan submission stage.

Others

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 Recommended Outline Development Plan (RODP) of YLS promulgated on 8.8.2017, the Site mainly falls within an area zoned as “Residential - Zone 5” (“R5”) and partly falls within an area shown as ‘Road’, whereas the remaining part of the Site falls outside the development area of YLS.
- (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 Project Manager (West), CEDD (PM(W), CEDD):

- (a) He has no objection to the application.
- (b) However, part of the Site falls within the boundary of YLS development - Stage 2. The land resumption and clearance programme of the project is subject to Executive Council’s authorisation on land resumption and Finance Committee’s funding approval. Land clearance operation is tentatively targeted to commence in 2024. Thus, the applicant shall be reminded that extension of the planning permission may not be supported in future and shall be advised not to carry out any substantial works in view of the planned YLS development – Stage 2.

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 locals.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Project Management, DSD (CE/PM, DSD);
- (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).

10. Public Comment Received During the Statutory Publication Period

On 6.12.2019 and 3.3.2020, the application and the subsequent FI (**Appendix Id**) were published for public inspection. During the respective three weeks of the statutory public inspection periods, one public comment made by an individual was received raising concerns that the development may cause land contamination on a site planned for residential purpose (**Appendix III**).

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services for a period of 3 years at a site mostly zoned "R(D)" (74.35%) and partly zoned "V" (23.65%) on the OZP. Although the proposal is not entirely in line with the planning intentions of the "R(D)" and "V" zone, which are primarily for low-rise and low-density residential development and for development of Small Houses by indigenous villagers respectively, the proposal could satisfy any such demand for car beauty services in the area. Whilst the Site mainly falls within an area zoned "R5" and partly falls within an area shown as 'Road' on the RODP of YLS promulgated on 8.8.2017, CE/CID, PlanD does not raise objection to the application and PM(W), CEDD has no objection to the proposed temporary use for 3 years. According to DLO/YL, LandsD, there is currently no Small House application approved/under processing at the Site. Approval of the application on a temporary basis of 3 years would not jeopardise the long-term development of the area.

11.2 The surrounding area comprises mainly warehouses and open storage/storage yards (**Plan A-2**). Although there are residential structures nearby, the proposal is generally not incompatible with the surrounding uses in the subject "R(D)" and "V" zones.

11.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. Whilst there had been one substantiated environmental complaint concerning soil/muddy water discharge from construction works at the Site in March 2019, it was not related to the current applied use. Furthermore, relevant approval conditions are

recommended in paragraph 12.2 to minimise any potential environmental nuisances and address the public concern and 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 reminded to comply with all relevant ordinances and to follow the latest Code of Practice and relevant Practice Note to minimise any potential environmental impact on the surrounding areas.

- 11.4 Given that four similar applications have been approved in the same “R(D)” and “V” zones, approval of the current application is generally in line with the Committee’s previous decisions. There was one similar application for temporary shop and services (temporary traffic engineering highway sub-station and sale office of traffic engineering equipment with ancillary display area) rejected by the Board on review in 2012, mainly on the grounds of non-compliance with the then TPB PG-No.13E and potential adverse environmental and drainage impacts on the surrounding areas. However, these considerations are not applicable to the current application which is for a car beauty service intended to serve the neighbourhood and there was no adverse departmental comments as mentioned in paragraph 11.3 above.
- 11.5 There is one public comment (**Appendix III**) received on the application during the statutory publication periods 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 mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 26.5.2023. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 5:00 p.m. and 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no spraying and other workshop activities except general car beauty services, as proposed by the applicant, are allowed on the Site at any time during the planning approval period;
- (c) 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;

- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) 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 26.11.2020;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 26.11.2020;
- (h) in relation to (g) 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 26.2.2021;
- (i) if any of the above planning conditions (a), (b), (c), (d) 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 (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 at **Appendix IV**.

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

the development is not in line with the planning intentions of the "R(D)" and "V" zones, which are primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment into permanent buildings and for development of Small Houses by indigenous villagers respectively. No strong planning justification has been given in the submission to justify a departure from the planning intentions, even on a temporary basis.

13. Decision Sought

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

13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form with drainage proposal, estimated traffic generation data, a license under the Water Pollution Control Ordinance and plans received on 27.11.2019
Appendix Ia	Supplementary Information received on 27.11.2019
Appendix Ib	FI received on 7.1.2020
Appendix Ic	FI received on 7.1.2020
Appendix Id	FI received on 20.2.2020
Appendix Ie	FI received on 6.3.2020
Appendix II	Similar Applications straddling/within the the same “R(D)” and “V” Zones on the OZP
Appendix III	Public Comment received during the Statutory Publication Periods
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Landscape Proposal
Drawing A-3	Drainage Proposal
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
MAY 2020**