

RNTPC Paper No. A/TM-LTY Y/345
For Consideration by
the Rural and New Town
Planning Committee
on 16.3.2018

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/TM-LTY Y/345

- Applicant** : Senior Plan Development Limited represented by Metro Planning and Development Company Limited
- Site** : Lot 3040 (Part) in D.D. 124 and Adjoining Government Land, Chung Uk Tsuen, Tuen Mun, New Territories
- Site Area** : About 320 m² (including about 250m² of Government Land)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Lam Tei and Yick Yuen Outline Zoning Plan (OZP) No. S/TM-LTY Y/9
and
Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11
- Zoning** : “Village Type Development” (“V”) (85%) on Lam Tei and Yick Yuen OZP [Restricted to a maximum building height of 3 storeys (8.23m)]
and
“Residential (Group D)” (“R(D)”) (15%) on Tong Yan San Tsuen OZP [Restricted to a maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m)]
- Application** : Proposed Temporary Shop and Services (Real Estate Agency) 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 (real estate agency) for a period of 3 years (**Plan A-1**). The Site is currently occupied by a vacant single-storey structure.
- 1.2 According to the Notes for “V” and “R(D)” zones on both OZP, ‘Shop and Services’ is a Column 2 use which requires permission from the Town Planning Board (the Board). The applicant currently seeks temporary permission for a period of 3 years.

- 1.3 According to the information submitted by the applicant, the major development parameters of the proposed development are as follows:

Site area	320 m ²
Total floor area	103 m ²
No. of structures	1 (for real estate agency with toilet)
Height of structures	Not exceeding 4.5 m (1 storey)
Operation hours	9:00 a.m. to 8:00 p.m. daily (including Sundays and public holidays)

- 1.4 The proposed layout plan, proposed landscape plan and proposed drainage plan are at **Drawings A-1 to A-3**.

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

- (a) Application form received on 31.1.2018 (Appendix I)
- (b) Supplementary Planning Statement attached to the application form (Appendix Ia)
- (c) Letter of 2.3.2018 clarifying the inclusion of Government Land for better usage (Appendix Ib)
- (d) Letter of 8.3.2018 clarifying the proposed use of the uncovered area at the frontage of the proposed real estate agency (Appendix Ic)

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the justification at **Appendix Ia**. They can be summarized as follow:

- (a) The proposed development is in line with the planning intention of the “V” and “R(D)” zones. The Site is not subject to impending Small House application and land application for future development.
- (b) The scale, nature, form and layout of the proposed development are compatible with the surrounding environment and would not affect the character of the indigenous village.
- (c) The proposed development is a commercial use serving villagers’ demand and aim to enhancing the land transaction and amalgamation within the “R(D)” zone.
- (d) The proposed development is temporary in nature and would not jeopardize the planning intention of both zones. A number of similar applications for temporary shops and services (real estate agencies) in “V” and “R(D)” zones in Yuen Long and Tuen Mun.
- (e) ‘Shop and Services’ is a Column 2 use in “V” zone and is always permitted at the ground floor of a New Territories Exempted House. The nature of the proposed development is clean, tidy and free from nuisance.
- (f) Being a shop to provide real estate service to the nearby residents, the proposed development would generate neither environmental nor noise disturbance.

- (g) No vehicular ingress/egress is proposed. There would be no adverse traffic impact.
- (h) The proposed development will have insignificant drainage impact and all proposed drainage facilities will be provided and maintained by the applicant's own expenses.
- (i) As the STT 823 granted by DLO us in irregular shape, the applicant proposed to extend to the adjoining Government land for better usage. The extended land will be occupied by four trees to enhance the visual environment and use for exhibits for sale and rent on open days.

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 sending notice to the Tuen Mun Rural Committee by registered post and posting notice on the Site. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to planning enforcement action.

5. Previous Application

There is no previous application covering the Site.

6. Similar Applications

There are six similar applications (Applications No. A/TM-LTYT/210, 245, 264, 268, 296 and 321) within the same “V” zone and two similar applications (A/YL-TYST/713 and 819) within the same “R(D)” zone, which were all approved. Three of them were revoked on due to non-compliance with approval conditions. Details of the similar applications are summarized at **Appendix II** for Members’ reference. The locations are shown on **Plan A-1**.

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

7.1 The Site is:

- (a) currently paved with a single-storey vacant structure; and
- (b) accessible from Tin Tei Yan Road connecting Castle Peak Road – Hung Shui Kiu.

- 7.2 The surrounding areas have the following characteristics:
- (a) to the immediate east are an open storage of vehicles, which is a suspected unauthorised development(UD), a warehouse and a nullah. To the further east are mainly village type developments/residential dwellings with a logistics warehouse;
 - (b) to the south are unused land and residential dwellings;
 - (c) to the immediate west and north are warehouses, open storage yards, which are suspected UD and village type developments/residential dwellings.

8. Planning Intentions

- 8.1 The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. 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 this 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.
- 8.2 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 and the public comment received are summarized as follows:

Land Administration

- 9.1.1 Comments of the District Lands Officer/Tuen Mun, Lands Department (DLO/TM, LandsD):
- (a) The Site comprises on Lot 3040 in D.D.124 (“the Lot”) and adjoining Government land. The Lot is an Old Schedule Lot (demised for agricultural use) held under the Block Government Lease (“BGL”) containing the restriction that no structures are allowed to be erected without the prior approval of the Government. Short Term Waiver (STW) 486 was issued to permit erection of structures with total site coverage not exceeding 40.47m² and a height not exceeding 4.27m for purpose of a foundry on the Lot. A

portion of the Government land fall within Short Term Tenancy (STT) 823 which was issued for the purpose of a foundry with permitted built-over area not exceeding 131.92m² and a height not exceeding 4.27m. The rest of the Government land is not covered by any land documents. There is an existing structure on site. However, his site inspection has revealed that the dimensions and configurations of the existing structures, which are currently vacant, are not in compliance with the said STW and STT and have encroached onto adjoining unleased Government land.

- (b) It is note that the applicant proposes to erect a structure for a real estate agency purpose with a toilet on the site. There is no detailed information regarding the land affected. Apparently, the structure will fall within the Lot, portion of STT 823 and unleased Government land. Such proposal is not allowed under the existing lease, STW and STT approval has been given to permit erection on Government land.
- (c) The Site is accessible via a strip of Government land leading from Tin Tei Yan Road. His office does not carry out maintenance works for the access road nor guarantee any right-of-way will be given to the Site.
- (d) As per the proposed drainage plan, the intercepted stormwater at the Site will be discharged to nullah via the proposed 200mm diameter uPVC down pipe, the existing 300mm surface U-channel and the existing 500mm diameter underground pipe to the east of the Site. Comments from DSD should be sought for the drainage proposal. If any drainage works is to be carried out on Government land, prior written permission from DLO/TM is required.
- (e) If planning permission is given by the Town Planning Board, the applicant (also the waivee and tenant of STW 486 and STT 823) may apply for cancellation of the STW and STT and demolition of the existing structures; and submit a formal application to his office to permit erection of the proposed structures on the Lot and the adjoining Government land. However, there is no guarantee that the application will be approved and he reserves his right to take any action as may be appropriate. The application will be considered by Lands Department acting in the capacity as the landlord at its sole discretion. In the event that the application is approved, it would be subject to such terms and conditions as the Government shall deem fit to do so, including charging of waiver fee, rent, deposit and administration fee etc.
- (f) Notwithstanding the above, his office reserves the right to take enforcement actions as considered appropriate against any unauthorized erection/extensions/alterations of the structures affected irrespective of whether planning permission will be given or not. Enforcement action will also be taken should any

structures are found erected without any prior approval given by this office or any unauthorized occupation of Government land.

- (g) According to land status plan, there is no permanent development proposal on the application site.
- (h) There are two outstanding small house applications in the vicinity of the Site.

Building Matters

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

- (a) He has no in-principle objection under the Buildings Ordinance (BO) to the proposed use on the Site.
- (b) There is no record of approval by the Building Authority for the structures existing at the Site and BD is not in a position to offer comments on their suitability for the use related to the application.
- (c) If the existing structure is New Territories Exempted House (NTEH) under the BO (Application to the New Territories) Ordinance (Cap 121 or the previous Cap 322), DLO/TM should be in a better position to comment on the application.
- (d) If the existing structures are erected on leased land without the approval of the BD (not being a New Territories Exempted House), they are unauthorized under the BO and should not be designated for any proposed use under the application.
- (e) Before any new building works (including shelters, toilet, containers as temporary buildings and connection of drains) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (f) 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.
- (g) If the proposed use under application is subject to the issue of a licence, please be reminded that any existing structures on the Site intended to be used for such purposes are required to comply with

the building safety and other relevant requirements as may be imposed by the licensing authority.

- (h) 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.
- (i) 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.
- (j) Detailed comments will be made at the building plan submission stage.

Environment

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

- (a) The proposed use for real estate agency within an area zoned “V” is not anticipated to have adverse environmental impact
- (b) He has no objection to the application.

Traffic

9.1.4 Comments of the Assistant Commissioner for Transport/New Territories, Transport Department (AC for T/NT, TD):

Since the scale of the Site is small (i.e. GFA not exceeding 103m²) and the nature of the shop (Real Estate Agency) does not have high demand of car parking spaces and loading/unloading area, he has no comment on the application from traffic engineering viewpoints.

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

- (a) Tin Tei Yan Road is being maintained by HyD.
- (b) On the understanding that the Site is abutting Tin Tei Yan Road and no vehicular access nor run-in/out is proposed by the applicant, he has no comment on the application from highways maintenance point of view.

Drainage

9.1.6 Comments of the Chief Engineer/Mainland North (CE/MN), DSD:

- (a) He has no objection in principle to the application from public drainage point of view.
- (b) Should the application be approved, a condition should be included to request the applicant to submit, implement and maintain a drainage proposal for the Site to ensure that it will not cause adverse drainage impact to the adjacent area. The applicant should be reminded to incorporate the following comments when submitting the drainage proposal.
 - i. The applicant should refer to the guidelines as specified in “Technical Note to prepare a Drainage Submission” which is available at DSD’s website (http://www.dsd.gov.hk/EN/Technical_Manuals/DSD_Guidelines/index.html).
 - ii. Details of the proposed drainage works, e.g. u-channels, catchpits etc should be clarified.
 - iii. It is noted that the applicant proposed to make a drainage connection to an existing u-channel as the eastern side of the proposed site. According to his record, the existing u-channel is not maintained by DSD. The applicant should be reminded to consult the relevant authorities/lot owner(s) prior to the drainage works.
 - iv. The proposed drainage works, whether within or outside the lot boundary, should be constructed and maintained by the lot owner at the lot owner at their own expense. For any works to be carried out outside his lot boundary, the applicant should consult DLO/TM and seek consent from relevant lot owners before commencement of the drainage works.
 - v. The applicant should implement the drainage facilities on Site in accordance with the drainage proposal.
 - vi. 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.
 - vii. The proposed development should neither obstruct overland flow nor adversely affect any existing natural streams, village drains, ditches and the adjacent areas.
 - viii. According to his record, there is no public sewer available for connection in the vicinity of the Site. EPD should be

consulted regarding to sewerage aspects of the proposed development.

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 (FSIs) being provided to the satisfaction of the D of FS.
- (b) In consideration of the design/nature of the structures, 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.
- (c) The layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and the location of where the proposed FSIs to be installed should be clearly marked on the layout plans.
- (d) However, the applicant is reminded that if the proposed structure(s) is required to comply with the BO (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscape

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

- (a) The proposal is for a temporary shop and services (real estate agency) comprising one structure of 4.5m with floor area of about 103m².
- (b) The Site is situated amongst warehouses, open storage sites and village houses. The proposed use is not incompatible in terms of the low-rise context and significant adverse visual impact on the surrounding is not anticipated.
- (c) It is observed that the Site is hard paved with a temporary structure occupying the majority of the Site, while the southern portion of the Site is vegetated with trees and shrubs. The Site is situated in an area of rural landscape character. Significant change to the landscape character arising from the application is not anticipated.

District Officer's Comments

9.1.9 Comments of the District Officer (Tuen Mun), Home Affairs Department (DO(TM), HAD):

He has distributed consultation letters to the locals concerned and understand that they would provide their comments (if any) to the Board direct. He has no further comment.

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

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Director of Electrical and Mechanical Services (DEMS);
- (c) Director of Leisure and Cultural Services (DLCS);
- (d) Director of Food and Environmental Hygiene (DFEH);
- (e) Antiquities and Monuments Office, Leisure and Cultural Services Department (AMO, LCSD);
- (f) Project Manager (New Territories North and West), Civil Engineering and Development Department (PM(NTN&W), CEDD);
- (g) Chief Engineer/Project Management Division, Drainage Services Department (CE/PM, DSD);
- (h) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (i) Chief Town Planner/Housing and Office Land Supply, Planning Department (CTP/HOLS, PlanD); and
- (j) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 10.1.2017, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 1.2.2017, one public comment from a member of the Tuen Mun District Council (TMDC) was received stating his support to the application without giving reason (**Appendix III**).

11. Planning Considerations and Assessments

11.1 Land within "V" zone is primarily intended for development of Small Houses by indigenous villagers. Commercial, community and recreational uses may be permitted on application to the Board. 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. Whilst the proposed development is not entirely in line with the planning intentions of the "V" and "R(D)" zone. The development could also provide real estate services to serve any such demand in the area. There is currently no Small House application or any known development proposal to implement the zoned use at the Site. Approval of the application on a temporary basis would not jeopardize the long-term planning intention of the zone.

- 11.2 The Site is at the fringe of the “V” zone of Chung Uk Tsuen and in an area predominantly occupied by residential dwellings intermixed with warehouses and open storage yards (**Plan A-2**). The proposed development is considered not incompatible with the surrounding land uses.
- 11.3 Relevant Government departments, including AC for T/NT of TD, CE/MN of DSD, CHE/NTW of HyD, CTP/UD&L of PlanD and DEP have no objection to or no adverse comment on the application. No major adverse impact on environment, traffic, landscape and drainage are expected. To minimize any potential environmental nuisances and to address the technical requirements of the concerned departments, appropriate approval conditions are recommended in 12.2 below. Non-compliance with any of the approval conditions will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority.
- 11.4 Six similar applications (Applications No. A/TM-LTYY/210, 245, 264, 268, 296 and 321) within the same “V” zone and two similar applications (A/YL-TYST/713 and 819) within the same “R(D)” zone were approved by the Board/Committee between 2011 and 2016. Approval of the current application is in line with the previous decisions of the Committee.
- 11.5 There is one public comment received supporting the application without giving any reason as summarised in paragraph 10 above.

12. Planning Department’s Views

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, the Planning Department considers that the proposed temporary shop and services (real estate agency) could be tolerated for a period of 3 years.
- 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 16.3.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to enter or be parked/stored on the site, as proposed by the applicant, at any time during the planning approval period.
- (c) the submission of a drainage proposal within **6 months** from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **16.9.2018**;

- (d) in relation to (c) above, the implementation of the drainage proposal within **9 months** from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **16.12.2018**;
- (e) the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the submission of a fire service installations proposal within **6 months** from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **16.9.2018**;
- (g) in relation to (f) above, the implementation of the fire service installations proposal within **9 months** from the date of the planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by **16.12.2018**;
- (h) the submission of a landscape proposal within **6 months** from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **16.9.2018**;
- (i) in relation to (h) above, the implementation of the landscape proposal within **9 months** from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by **16.12.2018**;
- (j) 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 **16.9.2018**;
- (k) if any of the above planning conditions (a), (b) or (e) 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;
- (l) if any of the above planning conditions (c), (d), (f), (g), (h), (i) or (j) 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; and
- (m) upon the expiry of the planning permission, the reinstatement of the application Site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached 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 planning intention of "V" zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. 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. The proposed development is not in line with the planning intention of the "V" and "R(D)" zone. No strong planning justification has been given in the submission for 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

Appendix I	Application form received on 31.1.2018
Appendix Ia	Supplementary Planning Statement attached to the application form
Appendix Ib	Letter of 2.3.2018 clarifying the inclusion of Government Land for better usage
Appendix Ic	Letter of 8.3.2018 clarifying the proposed use of the uncovered area at the frontage of the proposed real estate agency
Appendix II	Similar s.16 Applications within the same "V" Zone on the Draft Lam Tei and Yick Yuen OZP No. S/TM-LTY/9 and "R(D)" Zone on the Draft Tong Yan San Tsuen OZP No. S/YL-TYST/11
Appendix III	Public Comment received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Proposed Layout Plan
Drawing A-2	Proposed Landscape Plan
Drawing A-3	Proposed Drainage Plan
Plan A-1	Location Plan

Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2018**