

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TT/425

- Applicant** : Ms. Huang Ting
- Site** : Lot 1438 in D.D. 118 and Adjoining Government Land, Tai Tong, Yuen Long, New Territories
- Site Area** : 460 m² (about) (including Government Land of about 10 m²)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed Religious Institution (Taoist Temple)

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed religious institution (Taoist temple) at the application site (the Site) (**Plan A-1**). According to the Notes of the OZP for “AGR” zone, ‘Religious Institution (not elsewhere specified)’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is not the subject of any previous application and is currently occupied by 7 structures for storage use without valid planning permission, as well as a small portion of the Site is used as plant nursery (**Plans A-2, A-4a to A-4d**).
- 1.2 The major development parameters of the application are summarized as follows:

Site Area	About 460 m ²
Total Floor Area (Non-domestic)	About 222.2 m ²
Total Plot Ratio (Non-domestic)	About 0.48
Site Coverage	About 48.3%
No. of Structure	7 (for halls, storage and guardhouse uses)
Height of Structures	2.44 to 3 m (1 storey)

- 1.3 The Site is accessible from Tai Shu Ha Road West to its west (**Plans A-2, A-3 and Drawing A-2**). According to the applicant, the proposed development is not for columbarium use, and ancestral tablets will only be temporarily placed at a hall named 報恩殿 during religious ritual two to three times per year and will be removed afterwards. The proposed development will be for members only and will not be open to the general public. No vehicles would enter the Site and hence no parking spaces are proposed within the Site. The existing 7 structures will be used for the proposed use. Plans showing the access leading to the Site, site layout, layouts of the main hall and 報恩殿, submitted by the applicant are at **Drawings A-1 to A-3** respectively.
- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 16.1.2018 **(Appendix I)**
 - (b) Further information received on 2.2.2018 providing clarification on the religion of the shrine; it is not open to public; it is not a columbarium and there will be no ancestral tablets **(Appendix Ia)**
 - (c) Further information received on 15.2.2018 providing responses to the Transport Department's comments **(Appendix Ib)**
 - (d) Further information received on 1.3.2018 providing information regarding the existing structures, detailed use of the Site, revised site layout, new floor layouts and pedestrian access to the Site **(Appendix Ic)**
 - (e) Further information received on 5.3.2018 providing revised floor layouts, replacement page of the application form and responses to the Chief Town Planning/Urban Design and Landscape, Planning Department **(Appendix Id)**

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the Section 9 of the Application Form (**Appendix I**) and the further information at **Appendices Ia, Ib, Ic** and **Id**. They can be summarized as follows:

- (a) The Site was bought in 2014 and donated to a religious institution (道德宮) for charitable purposes, which worships Gods of Taoism and Buddhism (道教三清道祖, 道教神祇, 佛教西方三聖 and 佛教菩薩).
- (b) The proposed development is not for columbarium use, and ancestral tablets will only be temporarily placed at 報恩殿 during religious ritual two to three times per year and will be removed afterwards.
- (c) The proposed religious institution will be for members only and will not be open to the general public. Hence, opening hours are not proposed.

- (d) No vehicles would enter the Site and no parking spaces are proposed within the Site.
- (e) The storerooms are for storing related religious materials, such as joss sticks and joss paper, and the guardhouses will be used to store video recorder and monitoring system, as well as related religious materials and equipment for maintenance.
- (f) Landscaping will be provided within the Site to enhance the environment.

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

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

- 4.1 The use in the Site is subject to investigation. Should a material change of use be identified and confirmed in the Site, which constitutes an unauthorized development under the Town Planning Ordinance, enforcement action would be instigated.
- 4.2 There was previous enforcement action taken against unauthorized development (UD) involving use for religious institution (non-ancestral hall) and office use at the Site. Enforcement Notice was issued to the concerned parties on 16.12.2015 requiring discontinuance of the UD. Subsequent to the discontinuance of the UD, Compliance Notice was issued to the concerned parties on 20.9.2016.

5. Previous Application

The Site is not the subject of any previous application.

6. Similar Application

There is no similar application within the subject “AGR” zone on the OZP.

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

- 7.1 The Site is:
 - (a) accessible from Tai Shu Ha Road West to its west; and
 - (b) occupied by 7 structures for storage use without valid planning permission and a plant nursery.
- 7.2 The surrounding areas have the following characteristics:
 - (a) open storage/storage yards, workshops, a garden, graves, burial urns, fallow and cultivated agricultural land, as well as unused and vacant land/structures;

- (b) there are scattered residential structures in its vicinity with the nearest one located about 43m to its west (**Plan A-2**); and
- (c) the open storage/storage yards and workshops are suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

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:

Policy Aspect

9.1.1 Comments of the Secretary for Home Affairs (S for HA):

- (a) He has no objection to the subject planning application for developing a place of worship. He defers to relevant bureau/departments’ comments on the suitability of the location given that it falls within the “AGR” zone.
- (b) Should the applicant wish to apply for concessionary land premium for the development at the later stage, the Home Affairs Bureau (HAB) would need the applicant to provide a detailed proposal about the facilities to be set up, their mode of operation and usage etc. for further consideration. Under the prevailing policy, HAB would only consider giving policy support for concessionary premium to land grant cases relating to religious facilities by bona fide religious and charitable organisations under section 88 of the Inland Revenue Ordinance.

Land Administration

9.1.2 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 Government Land (GL) (about 10m² subject to verification) included in the Site. Attention is drawn to the fact that any occupation of GL without Government’s prior approval is not allowed.

- (c) The Site is accessible to Tai Shu Ha Road West via GL and private land. Her office does not provide maintenance work for GL involved and does not guarantee any right-of-way to the Site.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should planning approval be given to the planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularize any irregularities on site. Such application(s) will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) 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

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

- (a) The land status of the access road/path/track leading to the Site from Tai Shu Ha Road West shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.

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

- (a) Since the applicant has clarified that no vehicular access is proposed under the subject application, he has no comment from highways maintenance point of view.
- (b) If the application is approved, it is approved on the understanding that there is or will be no vehicular access to/from the Site.

Agriculture

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

Our recent site inspection found that the Site was occupied by temporary structures. Nevertheless, it possesses a high potential for agricultural rehabilitation. As such, the application is not supported from agriculture point of view.

Environment

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

- (a) The application relates to a religious institution at the Site which falls within an area zoned “AGR” on the approved Tai Tong OZP. The proposed uses mainly consist of 7 one-storey structures with a total area of about 222m² for halls, storage areas and guardhouses. In view of the site location and the proposed uses, he has no objection to the application.
- (b) If there is any burning of joss paper at the Site, the operator of the religious institution should implement suitable measures as recommended in the “Guidelines on Air Pollution Control for Joss Paper Burning at Chinese Temples, Crematoria and Similar Places” to minimize nuisance.
- (c) There was no environmental complaint concerning the Site received in the past 3 years.

Landscape

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

- (a) The Site, to the east of Tai Shu Ha Road West lies in an area of “AGR” zone. The Site is not subject to any previous planning application. The current application seeks planning permission for a religious institution.
- (b) With reference to the site photos (**Plans A-4a to A-4d**) and aerial photo of 2016, it is observed that the majority of the Site is occupied by a large temporary structure. A tensile green house is observed at the eastern portion of the Site. The Site is situated in an area of rural landscape character disturbed by open storage yards and temporary structures.
- (c) When comparing the aerial photos of 2012 and 2016, it is observed that the Site was originally completely vegetated but the majority of the Site is now hard paved and occupied by a large temporary structure. Landscape impact has taken place.
- (d) There is inadequate information to demonstrate the function of the uncovered area and whether the landscape edge treatment would be harmonious with the surrounding environment. As no landscape proposal was submitted, there is inadequate information to ascertain whether the landscape impact could be mitigated.
- (e) Approval of the application may set an undesirable precedent and encourage other applications to modify the Site (including filling of land, and blanket clearing the vegetation) prior to obtaining planning approval. The cumulative impact of which would be the

general degradation of the rural landscape character and loss of good quality agricultural land/fish ponds. Any filling or hard paving would be in conflict with the planning intent of the “AGR” which is to retain fallow arable land for cultivation and other agricultural purposes.

- (f) Based on the above, she has reservations on the application from the landscape planning perspective.
- (g) Should the Board approve this application, she would recommend the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Board.

Drainage

9.1.8 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) Should the Board consider the application is acceptable from the planning point of view, approval conditions requiring the submission of a drainage proposal, and the implementation of the drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.
- (c) Please also remind the applicant to maintain all the drainage facilities on site in good condition and ensure that the proposed development would neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.

Fire Safety

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

- (a) He has no objection in principle to the proposal subject to water supplies for firefighting and fire service installations (FSIs) being provided to his satisfaction.
- (b) Detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans.
- (c) Furthermore, the EVA provision in the Site shall comply with the standard as stipulated in Section 6, part D of the Code of Practice for Fire Safety in Buildings 2011 under the Building (Planning) Regulation 41D which is administered by the Buildings Department.

Water Supply

9.1.10 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) He has no objection to the application subject to the following comments.
- (b) For provision of water supply to the development, the applicant may need to extend his/her inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with the provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services within the private lots to his department's standards.

Building Matters

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

- (a) As there is no record of approval 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's attention is drawn to the following points:
 - (i) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the captioned application.
 - (ii) 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.
 - (iii) 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 co-ordinator for the proposed building works in accordance with the BO.
 - (iv) 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.

- (v) 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) Regulation at the building plan submission stage.
- (c) Detailed checking of plans will be carried out during building plan submission stage.

Others

9.1.12 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) He has no particular comment on the application from electricity supply safety aspect.
- (b) In the interest of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the Site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

District Officer’s Comments

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

Please be informed that the Site does not fall within any Indigenous/ Composite indigenous Villages in Shap Pat Heung. His office is unable to consult village representatives in the vicinity.

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

- (a) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (b) Commissioner of Police (C of P); and
- (c) Chief Engineer/Cross-boundary and Infrastructure Development .

10. Public Comments Received During the Statutory Publication Period

On 26.1.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 20.2.2018, 2 public comments were received from a member of the Yuen Long District Council and a member of the public respectively (**Appendices II-1 and II-2**) objecting to the application mainly on the grounds of no local demand for shrines; land use incompatibility; not in line with the planning intention of the “AGR” zone; no technical assessments and proposals; no benefits to the locals; and insufficient information on the nature of the religious organization or of the shrine.

11. Planning Considerations and Assessments

- 11.1 The application is for a proposed religious institution (Taoist temple), which involves 7 one-storey structures with a total gross floor area of 222.2m², at the Site zoned “AGR” on the OZP (**Plan A-1**). The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. The proposed development is not in line with such planning intention. There is no information given by the applicant about the details of the operation of the proposed religious institution (such as number of visitors). Hence, the impacts of the proposed development cannot be ascertained. DAFC does not support the application from agricultural point of view as the Site possesses a high potential for agricultural rehabilitation. There is no strong planning justification given in the submission for a departure from the planning intention.
- 11.2 The proposed development is considered not incompatible with the surrounding land uses which are mixed with open storage/storage yards, workshops, a garden, graves, burial urns, fallow and cultivated agricultural land, unused and vacant land/structures and scattered residential structures (the nearest one located about 43m to its west) (**Plan A-2**).
- 11.3 CTP/UD&L, PlanD has reservations on the application as landscape impact has taken place and there is inadequate information to demonstrate the function of the uncovered area and whether the landscape edge treatment would be harmonious with the surrounding environment, as well as to ascertain whether the landscape impact could be mitigated. She is also of the view that approval of the application may set an undesirable precedent and encourage other applications to modify the Site (including filling of land, and blanket clearing the vegetation) prior to obtaining planning approval. The cumulative impact of which would be the general degradation of the rural landscape character and loss of good quality agricultural land/fish ponds.
- 11.4 There is no similar application approved by the Committee within the same “AGR” zone on the OZP. As mentioned in paragraph 11.1, there is no strong planning justification to support the proposed development. Approval of the application would set an undesirable precedent for other similar uses to proliferate into the “AGR” zone on the OZP. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

11.5 There are 2 public comments (**Appendices II-1 and II-2**) received during the statutory publication period raising objection to the application on the grounds mentioned in paragraph 10 above . The planning considerations and assessments in paragraph 11.1 to 11.4 are relevant.

12. **Planning Department's Views**

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

- (a) the development is not in line with the planning intention of “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification has been given in the submission to justify a departure from the planning intention;
- (b) the applicant fails to demonstrate that the proposed development would not create adverse landscape impacts on the surrounding areas; and
- (c) approval of the application would set an undesirable precedent for other similar uses to proliferate within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid until 16.3.2022, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (c) the provision of water supplies for firefighting and fire service installations to the satisfaction of the Director of Fire Services or of the Town Planning Board;

Advisory clauses

The recommended advisory clauses are at **Appendix III**.

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 date when the validity of the permission should expire.
- 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 16.1.2018
Appendix Ia	Further information received on 2.2.2018 providing clarification on the religion of the shrine; it is not open to public; it is not a columbarium and there will be no ancestral tablets
Appendix Ib	Further information received on 15.2.2018 providing responses to the Transport Department's comments
Appendix Ic	Further information received on 1.3.2018 providing information regarding the existing structures, detailed use of the Site, revised site layout, new floor layouts and pedestrian access to the Site
Appendix Id	Further information received on 5.3.2018 providing revised floor layouts, replacement page of the application form and responses to the Chief Town Planning/Urban Design and Landscape, Planning Department
Appendices II-1 and II-2	Public Comments
Appendix III	Recommended Advisory Clauses
Drawing A-1	Access Plan
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Layout of the main hall
Drawing A-4	Proposed Layout of a hall named 報恩殿
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4d	Site Photos