

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

**APPLICATION NO. A/YL-TT/495**

<b><u>Applicant</u></b>	: Mr. KWOK Wai Shing represented by Metro Planning and Development Company Limited
<b><u>Site</u></b>	: Lot 1005 S.B (Part) in D.D. 118, Tai Tong, Yuen Long, New Territories
<b><u>Site Area</u></b>	: 872 m <sup>2</sup> (about)
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Approved Tai Tong Outline Zoning Plan (OZP) No. S/YL-TT/16
<b><u>Zoning</u></b>	: “Other Specified Uses” annotated “Rural Use” (“OU(RU)”) <i>[restricted to maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)]</i>
<b><u>Application</u></b>	: 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-1**). According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use for the “OU(RU)” zone, which requires planning permission from the Town Planning Board (the Board). The Site is currently largely vacant with a warehouse structure for storage of vehicles without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site was the subject of a previous application (No. A/YL-TT/408) covering a slightly larger site for the same proposed temporary shop and services use for a period of 3 years which was approved with conditions by the Rural and New Town Planning Committee (the Committee) of the Board on 11.8.2017 (**Plan A-1**). However, the approval was subsequently revoked on 11.11.2019 due to non-compliance with approval condition on the implementation of tree preservation and landscape proposal. Detailed information of the previous application is at **Appendix III** and the location of the site is shown on **Plan A-1**.
- 1.3 According to the applicant, the Site is intended for a retail shop for pet food. The applicant will offer delivery services, thus large volume of visiting customers are not expected. Furthermore, no medium or heavy goods vehicles will be allowed

to be parked or enter the Site. Plans showing the vehicular access leading to the Site, site layout, landscape and tree preservation proposal and as-built drainage submitted by the applicant are at **Drawings A-1 to A-4** respectively.

1.4 The major development parameters of the relevant previous approved application (No. A/YL-TT/408) and the current application are summarised as follows:

Major Development Parameters	Previous Approved Application No. A/YL-TT/408 (a)	Current Application No. A/YL-TT/495 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services for a Period of 3 Years		--
Site Area	About 960 m <sup>2</sup>	About 872 m <sup>2</sup>	-88 m <sup>2</sup> (-9.2%)
Total Floor Area (Non-domestic)	Not exceeding 230 m <sup>2</sup>		--
No. and Height of Structures	2 • 1 for retail shop for pet food (Not more than 4m, 1 storey in A/YL-TT/408) (Not more than 5m, 1 storey in A/YL-TT/495) • 1 for toilet (3m, 1 storey)		-- (The proposed shop is 1m higher)
Parking Space	1 (5m x 2.5m) (for private car)		--
Loading/Unloading Bay	1 (7m x 3.5m) (for light goods vehicles)		--
Operation Hours	9:00 a.m. to 9:00 p.m. daily		--

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

- (a) Application Form with annex and plans received on **(Appendix I)** 17.3.2020
- (b) Further Information (FI) dated 4.5.2020 providing **(Appendix Ia)** reasons for the revocation of the previous application No. A/YL-TT/408  
*[accepted and exempted from publication and recounting requirements]*

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

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

- (a) The proposed development is temporary in nature and would not jeopardise the long term planning intention of the “OU(RU)” zone.
- (b) The nature, form, scale and layout of the proposal is compatible with the surrounding environment. The anticipated impacts to the surrounding environment are minimal.
- (c) A number of open storage yards and warehouse were found within the same

“OU(RU)” zone. The approval of the current application would curb the situation.

- (d) Similar planning application for retail shop (No. A/YL-TT/470) has been approved in the proximity of the Site.
- (e) The applicant has planted trees at 4m intervals along the site periphery except a small portion of site boundary where there are overhead electric line. The applicant had attempted his best to plant the shrubs but the shrubs failed to grow healthily, hence revocation of the previous planning approval (No. A/YL-TT/408). The applicant will plant shrubs at that small portion of site boundary if the application is approved. Sympathetic consideration may be granted by the Board.

### **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 Shap Pat Heung Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

### **4. Town Planning Board Guidelines**

The Town Planning Board Guidelines for ‘Designation of “OU(RU)” Zone and Application for Development within “OU(RU)” Zone’ (TPB PG-No. 38) are relevant to the application. The relevant extract of the Guidelines is attached at **Appendix II** and the assessment criteria are summarised as follows:

Application for development within “OU(RU)” zone would need to demonstrate that the proposed development is in line with the planning intention of the zone and will not adversely affect the rural environment, the conservation of the rural landscape and the maintenance of the rural character of the area and its surroundings and will not overstrain the capacity of existing and planned infrastructure such as transport, drainage, sewerage and water supply in the area. Each development proposal will be assessed on its individual merits, with particular reference to its sustainability in ecological, environmental and infrastructural terms.

### **5. Background**

The Site is currently not subject to planning enforcement action.

### **6. Previous Application**

The Site was the subject of a previous application (No. A/YL-TT/408) for the same use as the current application which was approved with conditions for a period of 3 years by the Committee on 11.8.2017 on the grounds that the proposal could serve any such needs in the surrounding areas; approval of the application on a temporary basis would not jeopardise the long-term planning intention; the proposed development was not incompatible with the surrounding area; and the application was generally in line with

TPB PG-No. 38. However, the approval was subsequently revoked on 11.11.2019 due to non-compliance with approval condition on the implementation of tree preservation and landscape proposal. Details of the application are summarised in **Appendix III** and the site boundary is shown on **Plan A-1**. Compared with the previous application, the current application is submitted by the same applicant for the same proposed use with similar site layout covering a slightly smaller site.

## **7. Similar Applications**

There are five similar applications for various temporary shop and services uses within the subject “OU(RU)” zone. Applications No. A/YL-TT/362, 414 and 470 (all for grocery store), 400 (for retail shop for pet food) and 466 (for motor-vehicle showroom) were approved with conditions by the Committee each for a period of 3 years between 2015 and 2019 mainly on similar considerations as stated in paragraph 6 above. However, the approvals of applications No. A/YL-TT/362 and 414 were subsequently revoked on 6.12.2017 and 8.9.2019 respectively due to non-compliance with approval conditions. Detailed information of the applications is at **Appendix IV** and the locations of the sites are shown on **Plan A-1**.

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

8.1 The Site is:

- (a) accessible via a local track connecting to Tai Shu Ha Road East to its northeast (**Plans A-2 and A-3**);
- (b) paved and fenced off; and
- (c) currently largely vacant with a warehouse structure for storage of vehicles without valid planning permission.

8.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) mixed in character with predominately residential structures intermixed with warehouses, open storage/storage yards, parking of vehicles and vacant/unused land, as well as an office, orchard, workshop and real estate agency;
- (b) there are residential structures in the vicinity of the Site with the nearest one located to its immediate southwest; and
- (c) except for three warehouses to its further east and southeast, the other warehouses, open storage/storage yards, workshop and office in the vicinity of the Site are mostly suspected unauthorised development (UD) subject to enforcement action taken by the Planning Authority.

## **9. Planning Intention**

The planning intention of the “OU(RU)” zone is for the preservation of the character of the rural area. Uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the

Board, with a view to upgrading or improving the area or providing support to the local communities.

## **10. Comments from Relevant Government Departments**

10.1 The following government departments have been consulted and their views on the application are summarised as follows:

### **Land Administration**

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

- (a) The Site comprises an Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) Lot No. 1005 S.B in D.D. 118 is covered by Short Term Waiver (STW) No. 4914 to permit structures erected thereon for the purpose of 'Temporary Shop and Services (Grocery Store)'.
- (c) Should planning approval be given to the application, the STW holder(s) will need to apply to her office for modification of the STW conditions where appropriate. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. 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**

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

- (a) The land status of the access road/path/track leading to the Site from Tai Shu Ha Road East 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.
- (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.

10.1.3 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 Tai Shu Ha Road East.

**Environment**

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

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) issued by the Environmental Protection Department to minimise any potential environmental nuisances on the surrounding area.

**Landscape**

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

- (a) She has no objection to the application from landscape planning perspective.
- (b) According to the aerial photo of 2019 (**Plan A-3**), the Site is hard paved with an existing temporary structures occupying the western portion of the Site and some existing trees along the site boundary. The Site is located in an area of miscellaneous rural fringe landscape character predominated by warehouses, open storage yards and tree clusters. The proposed development is considered not incompatible with the landscape character of the surrounding area. No significant adverse landscape impact is envisaged.
- (c) According to the FI dated dated 4.5.2019 (**Appendix Ia**) and the site photos taken by her office on 11.7.2017 and 27.4.2020, it is noted that 5 nos. of *Ficus microcarpa* were replaced by 1 no. of *Carica papaya* and some *Duranta repens*. In view that the trees removed were small trees of common species, significant adverse landscape impact due to the proposed use was not observed.
- (d) Should the application be approved, the applicant is advised that approval of the section 16 application by the Board does not imply approval of the tree works such as pruning, transplanting and/or felling under lease. The applicant is reminded to approach relevant authority/ government department(s) direct to obtain necessary approval on tree works.

### **Drainage**

10.1.6 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) He has no objection in principle to the proposed development.
- (b) Based on the as-built drainage plan (**Drawing A-4**) enclosed in the application, apparently the applicant would maintain the same drainage facilities as those implemented under previous application No. A/YL-TT/408.
- (c) Should the Board consider that the application is acceptable from the planning point of view, conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-TT/408 and submission of records of the existing drainage facilities on site to the satisfaction of the Director of Drainage Services or of the Board should be stipulated.

### **Fire Safety**

10.1.7 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 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**

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

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

- (i) 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.

- (ii) For UBW erected on leased land, enforcement action may be taken by 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.
- (iii) 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.
- (iv) 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.

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

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

His office has not received any comment from the village representatives in the vicinity.

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

- (a) Project Manager (New Territories West), Civil Engineering and Development Department (PM(NTW), CEDD);
- (b) Director of Agriculture, Fisheries and Conservation (DAFC);
- (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).

#### **11. Public Comment Received During the Statutory Publication Period**

On 24.3.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, one comment was received from a member of the public (**Appendix V**) questioning the real intention of the applicant as there are few potential customers in the area.

#### **12. Planning Considerations and Assessments**

12.1 The application is for proposed temporary shop and services for a period of 3 years at a site zoned "OU(RU)" on the OZP. Although the proposed use is not entirely in line with the planning intention of the "OU(RU)" zone, which is primarily



intended for the preservation of the character of the rural area, uses or developments compatible with the rural landscape, such as passive recreation uses and a selected range of rural uses, may be allowed on application to the Board, with a view to upgrading or improving the area or providing support to the local communities. In this regard, the proposed retail shop for pet food could serve any such demand in the area. There is no known programme for the long-term development of the Site. As such, approval of the application on a temporary basis for three years would not frustrate the long-term planning intention of the area.

- 12.2 The applied use is considered not incompatible with the surrounding uses which are mixed in nature with predominately residential structures intermixed with warehouses and storage yards (**Plan A-2**).
- 12.3 There is no adverse comment on the application from concerned government departments, including C for T, DEP and CE/MN, DSD. Furthermore, relevant approval conditions are recommended in paragraph 13.2 to minimise any potential environmental nuisances or to address the 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 advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.
- 12.4 The Site is the subject of a previous approved application, submitted by the same applicant for the same proposed shop and services use (for retail shop for pet food) for a period of 3 years with similar site layout covering a slightly larger site. Most of the approval conditions under the previous application had been complied with except for the implementation of the tree preservation and landscape proposal resulting in revocation of the planning approval on 11.11.2019. According to the applicant, he has planted trees at 4m intervals along the site periphery except the part where there is overhead electric line. The applicant had attempted his best to plant the shrubs but the shrubs failed to grow healthily. The applicant pledged to plant shrubs at that small portion of site boundary if the current application is approved. A landscape and tree preservation plan has already been submitted in this application in support of the current application. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective. In view of the above, sympathetic consideration may be given to this application. Should the application be approved, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. Furthermore, the applicant will be advised that should he fail to comply with any of the approval conditions resulting in revocation of the planning permission, sympathetic consideration might not be given to any further application. Given that there is one previous approval on the Site and five similar approvals within the subject "OU(RU)" zone for temporary shop and services uses, approval of this application is generally in line with the Committee's previous decision.
- 12.5 There is one public comment received on the application during the statutory publication period as summarised in paragraph 11. The planning considerations and assessments in paragraph 12.1 to 12.4 above are relevant.

### 13. Planning Department's Views

- 13.1 Based on the assessments made in paragraph 12, and having taken into account the public comment summarised in paragraph 11 above, the Planning Department has no objection to the application.
- 13.2 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 15.5.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

#### Approval conditions

- (a) no operation between 9:00 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/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;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) all existing trees within the Site shall be maintained at all times during the planning approval period;
- (e) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (f) the submission of a condition record of the existing drainage facilities on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 15.8.2020;
- (g) the submission of a fire service installations proposal within **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 15.8.2020;
- (h) in relation to (g) above, the implementation of the 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 15.11.2020;
- (i) if any of the above planning conditions (a), (b), (c), (d) 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; and
- (j) if any of the above planning conditions (f), (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 VI**.

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

the proposed development is not in line with the planning intention of the "OU(RU)" zone which is primarily intended for the preservation of the character of the rural area. No strong planning justification has been given in the submission for a departure from the planning intention, even on a temporary basis.

**14. Decision Sought**

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

**15. Attachments**

<b>Appendix I</b>	Application Form with annex and plans received on 17.3.2020
<b>Appendix Ia</b>	FI dated 4.5.2020
<b>Appendix II</b>	Relevant extract of TPB PG-No. 38
<b>Appendix III</b>	Previous application covering the Site
<b>Appendix IV</b>	Similar applications within the same "OU(RU)" zone on the OZP
<b>Appendix V</b>	Public comment received during the statutory publication period
<b>Appendix VI</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Vehicular Access Plan
<b>Drawing A-2</b>	Site Layout Plan
<b>Drawing A-3</b>	Landscape and Tree Preservation Plan
<b>Drawing A-4</b>	As-built Drainage Plan
<b>Plan A-1</b>	Location Plan with Previous and Similar Applications
<b>Plan A-2</b>	Site Plan
<b>Plan A-3</b>	Aerial Photo

**Plans A-4a and A-4b** Site Photos

**PLANNING DEPARTMENT  
MAY 2020**