RNTPC Paper No. <u>A/YL-TYST/1055A</u> For Consideration by the Rural and New Town Planning Committee on 26.2.2021

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

# **APPLICATION NO. A/YL-TYST/1055**

**Applicant** : Luen Shun Property Company Limited represented by Metro Planning and

**Development Company Limited** 

Site : Lot 1495 (Part) in D.D. 119 and Adjoining Government Land (GL), Kung

Um Road, Yuen Long, New Territories

Site Area : 1,890 m<sup>2</sup> (about) (including GL of about 157m<sup>2</sup> (about 8.3%))

<u>Lease</u> : Block Government Lease (demised for agricultural use)

<u>Plan</u>: Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/13

**Zonings** : "Open Space" ("O") (about 96.3%)

"Residential (Group A)3" ("R(A)3") (about 3.7%)

[Restricted to a maximum plot ratio of 7 and building height of 160mPD]

**Application**: Temporary Warehouse for Storage of Exhibition Materials 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 warehouse for storage of exhibition materials for a period of 3 years (**Plan A-1a**). Although the applied use is neither a Column 1 or 2 use in the "O" zone, according to the Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of three years requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. The Site is currently occupied by the applied use without valid planning permission (**Plans A-2** and **A-4**).
- 1.2 The Site involves 8 previous applications for temporary open storage and/or warehouse with/without ancillary uses. The last application (No. A/YL-TYST/902) for the same use as the current application was approved with conditions for a period of 3 years by the Rural and New Town Planning Committee (the Committee) of the Board on 20.7.2018. However, the planning permission was revoked on 20.10.2020 due to non-compliance with time-limited approval conditions on submission and implementation of fire service installations (FSIs)

- proposal. Compared with the last application, the current application is submitted by the same applicant for the same use on the same site with similar site layout and development parameters.
- 1.3 According to the applicant, the applied use is for storage of exhibition materials such as boards, booths, desks, chairs and pamphlets. No storage of used electronic goods and recyclable materials and no workshop activities will be carried out at the Site. Furthermore, no heavy goods vehicles and container tractor/trailer will be allowed to enter the Site. Plans showing the site layout, landscape and tree preservation proposal, as-built drainage facilities and FSIs proposal submitted by the applicant are at **Drawings A-1** to **A-4** respectively.
- 1.4 The major development parameters of the current application and the previously approved application are summarised as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/902 (a)	Current Application No. A/YL-TYST/1055 (b)	Difference (b)-(a)
Applied Use	Temporary Warehouse for Storage of Exhibition		
	Materials for a Period of 3 Years		
Site Area	About 1,890 m <sup>2</sup> (includi	ng GL of about 157m²)	
Total Floor Area	About 1,184.5 m <sup>2</sup>	About 1,140 m <sup>2</sup>	-44.5m <sup>2</sup>
(Non-domestic)	About 1,184.3 III	About 1,140 III	(-3.8%)
No. and Height of Structures	<ul> <li>five for warehouse (10m, 1 storey)</li> <li>one for site office and meter room (3.5m, 1 storey)</li> <li>one for toilet (3.5m, 1 storey)</li> </ul>	<ul> <li>five for warehouse (10m, 1 storey)</li> <li>one for pump room and water tank (3.5m, 1 storey)</li> <li>one for toilet (3.5m, 1 storey)</li> </ul>	
No. of Parking and Loading/ Unloading Spaces	(for light/medium goods vehicle) (11m x 3.5m)		
Operation Hours	7:00 a.m. to 7:00 p.m., with no operation on Sundays and Public Holidays	9:00 a.m. to 5:00 p.m., with no operation on Sundays and Public Holidays	Shorter Operation Hours

- 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**) 5.10.2020
  - (b) Further Information (FI) received on 16.11.2020 (**Appendix Ia**) providing responses to departmental comments, a FSIs proposal and justifications for non-compliance with approval conditions of the last application
  - (c) FI received on 28.12.2020 providing responses to (**Appendix Ib**) departmental comments

[(b) and (c) exempted from publication and recounting requirements]

1.6 On 4.12.2020, the Committee decided to defer a decision on the application for 2 months, as requested by the applicant, to allow sufficient time for the preparation of FI to address comments from Transport Department. The applicant submitted FI on 28.12.2020 and the application is 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 detailed in the Application Form and the FIs (**Appendices I** to **Ib**). They can be summarised as follows:

- (a) The Site was the subject of seven planning permissions since 1996 and has been occupied by the applied use since 2015 with two planning permissions. Most of the approval conditions under the last application (No. A/YL-TYST/902) had been complied with, except for the submission and implementation of FSIs proposal, which the Director of Fire Services (D of FS) found unacceptable because the distances between the warehouse structures were not adequate.
- (b) The proposal is in line with the Town Planning Board Guidelines for "Application for Open Storage and Port Back-up Uses" (TPB PG-No.13F).
- (c) The temporary proposal would not jeopardise the long-term planning intention. A number of warehouse and port back-up uses have been approved by the Board in the vicinity of the Site and their planning circumstances are similar to that of the Site. The proposal is compatible with the surrounding environment. Besides, there is a shortage of land for port back-up purpose in Tong Yan San Tsuen.
- (d) There will be minimal traffic, environmental and drainage impacts arising from the proposal.

# 3. Compliance with the "Owner's Consent/Notification" Requirements

The applicant is not a "current land owner" but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the "Owner's Consent/Notification" Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending notice to the Shap Pat Heung Rural Committee by registered post. Detailed information would be deposited at the meeting for Members' inspection. For GL, the requirements as set out in TPB PG-No. 31A are not applicable.

# 4. Background

The Site would be subject to planning enforcement action.

# 5. Previous Applications

5.1 The Site involves 8 previous applications for various temporary storage uses covering slightly different extents of the Site. Details of the applications are summarised in **Appendix II** and the boundaries of the sites are shown on **Plan A-1b**.

## Rejected Applications (2 cases)

Applications No. A/YL-TYST/134 and 234 for various temporary open storage with/without ancillary workshop uses each for a period of 3 years were rejected by the Committee in 2001 and the Board on review in 2004 respectively, mainly on the grounds that there were potential adverse environmental and/or drainage impacts; and the proposal did not comply with the TPB PG-No. 13C (for the latter application only).

# Approved Applications (6 cases)

- 5.3 Applications No. A/YL-TYST/151, 179, 203, 655 and 747 for various temporary open storage and/or warehouse with/without ancillary office uses were all approved with conditions each for a period of 3 years by the Committee between 2001 and 2015, mainly on the considerations that the proposals were not incompatible with the surrounding uses; the proposals would not frustrate the long-term development of the area; and the concerns of relevant government departments could be addressed by imposing approval conditions. However, the planning permissions under applications No. A/YL-TYST/151, 179, 203 and 655 were revoked between 2002 and 2016 due to non-compliance with time-limited approval conditions.
- 5.4 The last application (No. A/YL-TYST/902) for the same use as the current application was approved with conditions for a period of 3 years by the Committee on 20.7.2018. However, the planning permission was revoked on 20.10.2020 due to non-compliance with time-limited approval conditions on submission and implementation of FSIs proposal.
- 5.5 Compared with the last application (No. A/YL-TYST/902), the current application is submitted by the same applicant for the same use on the same site with similar site layout and development parameters.

# 6. Similar Applications

There are 11 similar applications for various temporary warehouse with or without open storage uses within/straddling the subject "O" and "R(A)3" zones¹ since 2015. They were all approved with conditions each for a period of 3 years by the Committee between 2015 and 2021, mainly on similar considerations that the developments were generally not incompatible with the surrounding open storage/warehouse uses and the concerns of relevant departments could be addressed by imposing approval conditions. However, three of the planning permissions were subsequently revoked due to non-compliance with approval conditions. Details of the applications are summarised at **Appendix III** and their locations are shown on **Plan A-1a**.

<sup>&</sup>lt;sup>1</sup>9 of the 11 similar applications were approved prior to the rezoning of the sites to "O" and "R(A)3" on the subject OZP.

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

- 7.1 The Site is:
  - (a) abutting Kung Um Road to its east;
  - (b) paved and fenced off; and
  - (c) currently occupied by the applied use without valid planning permission (**Plan A-4**).
- 7.2 The surrounding areas have the following characteristics (**Plans A-2** and **A-3**):
  - (a) comprise predominately open storage/storage yards, warehouses and scattered residential structures, with a residential care home for persons with disabilities (RCHD), car workshop, a refuse collection point, a chicken shed, agricultural land, shrubland and vacant land/structures;
  - (b) there are residential structures in the vicinity of the Site with the nearest one to its immediate south;
  - (c) to the east of the Site across a nullah flanked by Kung Um Road and Kiu Hing Road is an area zoned "Village Type Development" on the draft Tai Tong OZP No. S/YL-TT/17; and
  - (d) except for the RCHD and five warehouses operating with valid planning permissions (No. A/YL-TYST/884, 967, 986, 988, 990 and 1040), the other warehouses, open storage/storage yards, car workshop and chicken shed in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

# 8. Planning Intention

The planning intention of the "O" zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

## 9. Comments from Relevant Government Departments

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

# **Land Administration**

- 9.1.1 Comments of the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD):
  - (a) The Site comprises GL and 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. 1495 in DD. 119 is covered by Short Term Waiver (STW) No. 4365 to permit structures erected thereon for the purpose of "Temporary Warehouse for Storage of Exhibition Materials". The GL within the Site is covered by Short Term Tenancy (STT) No. 2937 for the purpose of "Temporary Warehouse for Storage of Exhibition Materials".
- (c) Should planning approval be given to the application, the STW/STT holder(s) will need to apply to her office for modification of the STW/STT 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**

- 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 Kung Um Road 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.
- 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 Kung Um Road.

#### **Environment**

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

- (a) He does not support the application as there are residential uses in the vicinity (with the nearest one located to its immediate south) (**Plan A-2**) and the applied use will cause traffic of heavy vehicles; environmental nuisance is expected.
- (b) There was no substantiated environmental complaint concerning the Site received in the past three years.
- (c) Should the planning application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Use" (Code of Practice) to minimise any potential environmental nuisances.

## **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.
  - (b) Based on the planning statement enclosed in the application, apparently the applicant would maintain the same drainage facilities as those implemented under previous planning application No. A/YL-TYST/902.
  - (c) Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the maintenance of the drainage facilities implemented under application No. A/YL-TYST/902 and the 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**

- 9.1.6 Comments of the D of FS:
  - (a) The submitted FSIs proposal (**Drawing A-4**) is considered acceptable to his department.
  - (b) The applicant should be reminded of the detailed comments at **Appendix V**.

## **Building Matters**

- 9.1.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):
  - (a) As there is no record of approval granted by the Building Authority for the existing structures at the Site, he is not in a

- position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant should be reminded of the detailed comments at **Appendix V**.

## **Open Space**

- 9.1.8 Comments of the Director of Leisure and Cultural Services (DLCS):
  - (a) He has no objection in principle to the application for three years.
  - (b) The Site is zoned "O" and "R(A)3" on the OZP. It is not on the priority list for development agreed by the Yuen Long District Council. His department has no plan to develop the Site into public open space at present.

## **Long-Term Development**

- 9.1.9 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 "Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) Investigation". According to the Revised Recommended Outline Development Plan (RODP) of YLS promulgated in May 2020, the Site falls partly within an area zoned "District Open Space", partly within an area zoned "Residential -Zone 1 (Subsidised Sale Flats with Commercial)" and partly within an area shown as 'Road'.
  - (b) The objective of YLS is to transform the degraded rural land predominantly occupied by brownfield operations including open storage yards, warehouses and rural industrial uses into housing and other uses with supporting infrastructure and community facilities, and to improve the existing environment. It is noted that the application is for temporary use for a period of 3 years. In considering the application for temporary uses, due consideration should be given on the possible implication on land clearance which would affect the future implementation of YLS.
- 9.1.10 Comments of the Project Manager (West), CEDD (PM(W), CEDD):
  - (a) He has no objection to the application for temporary use for three years.
  - (b) The majority of the Site falls within the boundary of YLS Development Stage 2 Phase 2. The land resumption and clearance programme of the project is subject to Executive Council's (ExCo's) authorisation on land resumption and Finance Committee's (FC's) funding approval of the project. Land

clearance operation for the majority of the Site is tentatively targeted to commence in 2024.

- (c) A very small portion of the Site near Kung Um Road falls within the boundary of YLS Development Stage 2 Phase 1. Based on the latest programme of the project, the land clearance at the concerned part of the Site is planned to commence in mid-2022 subject to ExCo's authorisation on land resumption and FC's funding approval of the project by Q4 2021 and Q1 2022 respectively. The programme of land resumption would follow the project programme notwithstanding the validity period of the planning permission to be granted.
- (d) Should the application be approved by the Board, an advisory clause should be stipulated to remind the applicant that 'the Site might be subject to land resumption for the implementation of the YLS Development Stage 2 which might take place at any time before the expiry of the temporary planning permission and thus the applicant shall be advised not to carry out any substantial works on the concerned small portion of the Site in view of the planned YLS development Stage 2'. His department will give sufficient notice to relevant department(s) for early resumption of the Site if his department's works commence early.

## **District Officer's Comments**

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

Her office has not received any comment from the village representatives in the vicinity regarding the application.

- 9.2 The following government departments have no comment on the application:
  - (a) Director of Agriculture, Fisheries and Conservation (DAFC);
  - (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
  - (c) Commissioner of Police (C of P).

## 10. Public Comments Received During the Statutory Publication Period

On 13.10.2020, the application was published for public inspection. During the first three weeks of the statutory public inspection period, two public comments were received from two individuals. One individual questioned the long-term development plan of the area and suggested to expedite early clearance of the brownfield site (**Appendix IV-1**). The other individual objected to the application on the grounds that the proposal will attract additional traffic and undermine the safety and living quality of the villagers (**Appendix IV-2**).

# 11. Planning Considerations and Assessments

- 11.1 The application is for temporary warehouse for storage of exhibition materials for a period of 3 years at the Site mainly zoned "O" (about 96.3%) on the OZP, which is primarily intended for the provision of outdoor open air public space for active and/or passive recreational uses. Although the applied use is not in line with the planning intention of the "O" zone, DLCS and PM(W), CEDD have no objection to the application. As such, approval of the application on a temporary basis of three years would not jeopardise the long-term development of the Site. Nevertheless, should the application be approved, the applicant shall be advised that the Site might be subject to land resumption for the implementation of the YLS Development Stage 2 Phase 1 which might take place at any time before the expiry of the temporary planning permission and that no substantial works should be carried out at the Site in view of the planned project.
- 11.2 The surrounding area comprises predominantly warehouses and open storage/storage yards (**Plan A-2**). While there are residential structures in the vicinity, the development is generally not incompatible with the surrounding uses.
- 11.3 There is no adverse comment on the application from concerned government departments, except DEP. DEP does not support the application as there are sensitive receivers of residential use in the vicinity of the Site (with the nearest one located to its immediate south) (**Plan A-2**), and the applied use will cause traffic of heavy vehicles; environmental nuisance is expected. However, there has been no environmental complaint concerning the Site received in the past 3 years. Furthermore, relevant approval conditions are recommended in paragraph 12.2 below to minimise any potential environmental nuisances or to address the local concern and 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.
- 11.4 The Site involves 8 previous applications. The last application (No. A/YL-TYST/902) for the same use as the current application was approved with conditions for a period of 3 years by the Committee on 20.7.2018. Subsequently, the planning permission was revoked on 20.10.2020 due to non-compliance with time-limited approval conditions on submission and implementation of FSIs proposal. The current application is submitted by the same applicant with similar site layout and the Site is currently occupied by the applied use. Nevertheless, the applicant has submitted FSIs proposal for the current application (**Drawing A-4**), which D of FS considered acceptable. As such, sympathetic consideration may be given to the current application. Should the application be approved, shorter compliance periods are recommended in order to closely monitor the progress on compliance with associated approval conditions. The applicant will be advised that should it fail to comply with any of the approval conditions again resulting in revocation of the planning permission, sympathetic consideration would unlikely be given to any further application.
- 11.5 Given that six previous approvals for storage uses have been granted to the Site and 11 similar applications have been approved in the subject "O" and "R(A)3"

zones since 2015, approval of the current application is generally in line with the Committee's previous decisions. There were two previous applications rejected by the Committee and the Board on review, mainly on the grounds, amongst others, that there were potential adverse drainage and/or environmental impacts. In this regard, CE/MN, DSD has no in-principle objection to the current application and the potential environmental nuisance could be addressed by imposing approval conditions as stated in paragraph 11.3 above.

11.6 There were two public comments received during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.5 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 comments summarised in paragraph 10 above, the Planning Department considers that the temporary warehouse for storage of exhibition materials <u>could</u> <u>be tolerated</u> 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 26.2.2024. 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 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Sundays and public holidays, as proposed by the applicant, is allowed on the Site during the planning approval period;
- (c) no workshop activities, as proposed by the applicant, are allowed on the Site at any time during the planning approval period;
- (d) no heavy goods vehicles exceeding 24 tonnes, including container tractors/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;
- (e) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (f) the existing trees on the Site shall be maintained at all times during the planning approval period;
- (g) the existing boundary fencing on the Site shall be maintained at all times during the planning approval period;
- (h) the existing drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (i) 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 26.5.2021;
- (j) the implementation of the accepted 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 26.8.2021;
- (k) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g) or (h) 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
- (l) if any of the above planning conditions (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.

# Advisory clauses

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

- 12.3 Alternatively, should the Committee decide to reject the application, the following reasons for rejection are suggested for Member's reference:
  - (a) the applied use is not in line with the planning intention of the "O" zone which is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses. No strong planning justification has been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
  - (b) the applicant fails to demonstrate that the development would not generate adverse environmental impact on the surrounding areas.

## 13. <u>Decision Sought</u>

- 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 annex and plans received on 5.10.2020

**Appendix Ia** FI received on 16.11.2020 **Appendix Ib** FI received on 28.12.2020

**Appendix II** Previous Applications covering the Application Site

**Appendix III** Similar Applications within/straddling the subject "O" and "R(A)3"

zones on the TYST OZP since 2015

Appendices IV-1

and IV-2

Public Comments received during the Statutory Publication Period

**Appendix V** Recommended Advisory Clauses

**Drawing A-1** Site Layout Plan

**Drawing A-2** Landscape and Tree Preservation Proposal

**Drawing A-3** As-Built Drainage Plan

**Drawing A-4** FSIs Proposal

Plan A-1a Location Plan with Similar Applications

**Plan A-1b** Previous Applications Plan

Plan A-2 Site Plan

Plan A-3 Aerial Photo

Plan A-4 Site Photos

PLANNING DEPARTMENT FEBRUARY 2021