

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/887

<u>Applicant</u>	: Mr. LEE Kin Hoi represented by Metro Planning and Development Company Ltd.
<u>Site</u>	: Lot 2734 (Part) in D.D. 124, Tan Kwai Tsuen, Yuen Long, New Territories
<u>Site Area</u>	: 830 m ² (about)
<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/11
<u>Zoning</u>	: “Residential (Group D)” (“R(D)”) [Restricted to a maximum plot ratio of 0.2 and maximum building height of 2 storeys (6m)]
<u>Application</u>	: 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. According to the Notes of the OZP for the “R(D)” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The applicant currently seeks temporary approved for 3 years. The Site is partly vacant and partly occupied for site office use without valid planning permission (**Plans A-2, A-4a and A-4b**).
- 1.2 The Site is the subject of two previous applications (No. A/YL-TYST/713 and 819) for proposed temporary shop and services (real estate agency) approved by the Rural and New Town Planning Committee (the Committee) of the the Board for a period of 3 years on 6.2.2015 and 23.12.2016 respectively. However, the planning permissions were subsequently revoked on 6.5.2016 and 23.9.2017 respectively due to non-compliance with approval conditions. Details of the previous applications are at paragraph 5 below and **Appendix II**.

1.3 The Site is accessible via a local track leading from Tan Kwai Tsuen Road to its northeast (**Drawing A-1** and **Plan A-2**). According to the applicant, no light, medium or heavy goods vehicles, including container trailer/tractor, will access the Site. The applicant also undertakes to provide and maintain all the landscaping and drainage facilities at his own expenses. Plans showing the vehicular access leading to the Site, proposed site layout, landscape and tree preservation proposal, drainage proposal and fire service installations proposal submitted by the applicant are at **Drawings A-1** to **A-5** respectively.

1.4 The major development parameters of the current application are as follows:

Major Development Parameters	Previously Approved Application No. A/YL-TYST/819 (a)	Current Application No. A/YL-TYST/887 (b)	Difference (b)-(a)
Applied Use	Temporary Shop and Services (Real Estate Agency) for a Period of 3 Years		Nil
Site Area	About 556 m ²	About 830 m ²	+274 m ² (+49.28%)
Total Floor Area (Non-domestic)	80 m ²	84 m ²	+4 m ² (+5%)
No. of Structures	1 (for real estate agency use)	2 (for real estate agency and toilet uses)	+1
Height of Structures	3m (1 storey)		Nil
Parking Spaces	3 (for private car)	2 (for private car)	-1
Operation Hours	9:00 a.m. to 7:00 p.m. daily (including Sundays and Public Holidays)		Nil

1.4 Compared with the last application, the current application is submitted by a different applicant for the same shop and services use on a larger site with different site layout and development parameters.

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

- (a) Application Form received on 22.2.2018 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Supplementary Information received on 22.2.2018 to update Figure 2 of the Supplementary Planning Statement **(Appendix Ib)**
- (d) Supplementary Information received on 28.2.2018 to update Figure 5 of the Supplementary Planning Statement **(Appendix Ic)**
- (e) Further Information received on 6.4.2018 providing clarifications on the type of vehicles access to the Site and rectification on editorial errors in the Supplementary **(Appendix Id)**

Statement

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Section 3 of the Supplementary Planning Statement in **Appendix Ia**. They can be summarized as follows:

- (a) The proposed development is a Column 2 use in the “R(D)” zone. It aims to provide real estate agency service to the nearby residents and land owners and at enhancing the land transaction and amalgamation of land within the “R(D)” zone to facilitate the upgrading of existing temporary structures into permanent buildings through redevelopment. The Site is not subject to impending land application for house development and temporary use therefore could be considered in the interim. In this regard, the proposed development would not jeopardize the long-term planning intention of the “R(D)” zone.
- (b) The proposed development is a Column 2 use in “R(D)” zone which is regarded as a supplementary use of the zone. A number of similar applications in rural Tuen Mun and Yuen Long have been approved by the Board including Applications No. A/YL-NTM/285 and 290, A/YL-TT/360 and 364, as well as A/TM-LTYYY/317. The Board should therefore give favourable consideration to the application.
- (c) The proposed real estate agency is compatible with the surrounding environment. Residential structures are found to the north, east and southwest of the Site. It is clean, tidy and non-polluting and would not affect the character of the village.
- (d) Various assessments undertaken conclude that the proposed real estate agency would not generate significant adverse impact to the surroundings. The traffic generation would be insignificant to the surrounding road network and thus adverse traffic impact is not anticipated. The proposed development will generate neither environmental nor noise disturbance and the applicant will implement measures (e.g. restriction of operation hours and hard paving the site) to enhance compatibility with the surrounding uses. All accrued runoff would be intercepted by the proposed 375mm surface U-channel along the site periphery and all proposed drainage facilities will be provided and maintained by the applicant at his own expense. As such, adverse drainage impact is not envisaged.

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 notice of the application outside the Site and sending the notice to Ping Shan Rural Committee through registered post. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

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.

5. Previous Applications

5.1 The Site was involved in two previous applications (No. A/YL-TYST/713 and 819) for proposed temporary shop and services (real estate agency) which were approved with conditions by the Committee of the Board for a period of 3 years on 6.2.2015 and 23.12.2016. However, the planning permissions were subsequently revoked on 6.5.2016 and 23.9.2017 respectively due to non-compliance with approval conditions requiring the implementation of the accepted tree preservation and landscape proposals, implementation of the accepted drainage proposals and the submission and/or implementation of fire service installations proposals. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**. Both proposed development under application No. A/YL-TYST/713 and 819 have not been commenced.

5.2 Compared with the last application, the current application is submitted by a different applicant for the same shop and services use on a larger site with different site layout and development parameters.

6. Similar Applications

There is no similar application for shop and services (real estate agency) use within the same “R(D)” zone on the OZP.

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

7.1 The Site is:

- (a) located within Tan Kwai Tsuen at the fringe of the “R(D)” zone (**Plan A-1**); and
- (b) currently partly vacant and partly occupied for site office use without valid planning permission (**Plans A-2, A-4a and A-4b**).

7.2 The surrounding areas have the following characteristics (**Plan A-2**):

- (a) predominantly rural in character mixed with residential structures, open storage/storage yards, warehouse, workshops, parking of vehicles, site office, orchard, plant nursery and vacant/unused land (**Plan A-2**);
- (b) there are some residential structures in the vicinity of the Site with the nearest ones located at about 20m to its northeast;

- (c) except the steel workshop at the further north of the Site which is an 'existing use' tolerated under the Town Planning Ordinance, the other open storage/storage yards, warehouses, workshops and parking of vehicles in the vicinity are mostly suspected unauthorized developments subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the "R(D)" zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board.

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:

Land Administration

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

- (a) The Site comprises an Old Schedule Agricultural Lot held under Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.
- (b) The private land of Lot No. 2734 in D.D. 124 is currently covered by Short Term Waiver (STW) No. 4455 to permit structures for the purpose of "Temporary Shop and Services (Real Estate Agency)".
- (c) The Site is accessible to Tan Kwai Tsuen Road through a local road on both private lot and government land (GL). Her office provides no maintenance works for the GL involved and does not guarantee any right-of-way.
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should planning approval be given to the subject application, the STW holders will need to apply to her office for modification of the STW conditions if there are any irregularities on site. Such application will be considered by LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of premium or

fee, as may be imposed by LandsD.

Traffic

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

- (a) He has no adverse comment to the application from traffic engineering point of view.
- (b) Sufficient manoeuvring spaces shall be provided within the Site. No vehicle is allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under the Transport Department's purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

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

- (a) The access arrangement should be commented by the Transport Department.
- (b) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (c) His Department shall not be responsible for the maintenance of any access connecting the Site and Tan Kwai Tsuen Road.

Environment

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

The latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites" issued by the Environmental Protection Department should be observed by the applicant.

Landscape

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

- (a) The Site is located south of Tan Kwai Tsuen and falls within an area zoned "R(D)" on the draft Tong Yan San Tsuen OZP No. S/YL/TYST/11. The Site was subject to two previous planning applications (A/YL-TYST/713 and 819) on which she has no objection to the applications though the planning permissions were revoked subsequently.
- (b) Based on the submission and the site visit in 2016, the Site is

occupied by temporary structures, surrounded by open storage sites, warehouses and car parks. The proposed use is not incompatible with the surrounding environment. Existing trees are found along the perimeter of the Site which are proposed to be preserved on site. Adverse landscape impact is not anticipated. Therefore, she has no objection to the application from landscape planning point of view.

- (c) Should the application be approved, an approval condition requiring the implementation of the accepted tree preservation and landscape proposal to the satisfaction of the Board or of the Director of Planning is recommended.
- (d) The applicant should be reminded to conduct routine vegetation maintenance works, such as irrigating the trees and removing weeds regularly throughout the period. Fence and/or kerb or bollard should be constructed with a minimum distance of 1m around the planting areas to guard against damage to the trees and shrubs. The applicant should make reference to “Technical Note on the Submission and Implementation of Landscape Proposals for Compliance with Conditions for Approved Applications for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance”.
- (e) The applicant shall take reference to the following information/guideline published by the Greening, Landscape and Tree Management Section of the Development Bureau for tree maintenance:
 - Information About Tree Maintenance For Private Properties
(https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html)
 - Pictorial Guide for Tree Maintenance
(https://www.greening.gov.hk/filemanager/content/pdf/tree_care/Pictorial_Guide_for_Tree_Maintenance.pdf)

After implementation of tree preservation and landscape proposal, the applicant should submit a set of photo record showing every tree within the site clearly, and the whole tree should be covered as much as possible, including the trunk and canopy.

Drainage

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

- (a) He has no in-principle objection to the proposed development from the public drainage point of view.
- (b) His detailed comments on the revised drainage proposal (**Drawing A-4**) are in **Appendix III**.

- (c) Should the Board consider the application is acceptable from the planning point of view, approval conditions requiring the submission of a revised drainage proposal and implementation of the drainage proposal to the satisfactions of the Director of Drainage Services or of the Board should be stipulated.

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 his satisfaction.
- (b) The FSIs proposal submitted (**Drawing A-5**) is considered acceptable to his department. It is advised that the installation/maintenance/ modification/ repair work of FSIs shall be undertaken by a Registered Fire Service Installation Contractor (RFSIC). The RFSIC shall after completion of the installation/ maintenance/ modification/ repair work issue to the person on whose instruction the work was undertaken a certificate (FS 251) and forward a copy of the certificate to D of FS.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) The applicant's attention is drawn to the following points:
 - (i) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of BD should be obtained, otherwise they are unauthorized building works (UBW) under BO. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with BO.
 - (ii) For UBW erected on leased land, enforcement action may be taken by 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 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) 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.

Others

9.1.9 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) However, in the interests 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 mentioned 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 concerned 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.

9.1.10 Comments of the Chief Engineer/Cross-boundary Infrastructure and Development, Planning Department (CE/CID, PlanD):

The Site falls outside the “Study Area” of the “Planning and Engineering Study for Housing Sites in Yuen Long South (YLS) – Investigation”.

District Officer’s Comments

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

His office has not received any comments from the locals on the application.

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

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Agriculture, Fisheries and Conservation (DAFC); and

- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 2.3.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 23.3.2018, one public comment was received from a member of the public (**Appendix IV**) raising objection to the application for reason that approval of application with history of revocation would set undesirable precedent and encourage further abuse.

11. Planning Considerations and Assessments

- 11.1 The subject application is for proposed temporary shop and services (real estate agency) at the Site zoned “R(D)” on the OZP. The planning intention of the “R(D)” zone is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. It is also intended for low-rise, low-density residential developments subject to planning permission from the Board. Although the applied use is not entirely in line with the planning intention of the “R(D)” zone, it could provide real estate agency service to serve any such demand in the area. Since there is no known programme for long-term development of the Site, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “R(D)” zone.
- 11.2 The proposed development comprises 2 single-storey structure with a total floor area of about 84m². It is considered that the proposed use and the development scale is not incompatible with the surrounding uses which are predominantly rural residential uses intermixed with some open storage and warehouse/storage uses (**Plan A-2**).
- 11.3 Relevant government departments consulted, including DEP, C for T, CTP/UD&L and CE/MN, DSD, have no objection to or adverse comment on the application. Significant adverse environmental, traffic, landscape and drainage impacts on the surrounding area are not envisaged. Relevant approval conditions are also recommended in paragraphs 12.2 below to minimize any potential nuisance on the surrounding areas or to address the technical requirements of the concerned departments. Any non-compliance with the approval condition will result in revocation of the planning permission and unauthorized development on-site will be subject to enforcement action by the Planning Authority. Should the application be approved, the applicant will also be advised to follow the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” in order to minimize any potential environmental impact.
- 11.4 Two previous approvals for the same use had been granted to the Site under Applications No. A/YL-TYST/713 and 819. Approval of the subject application is in line with the Committee’s previous decision.
- 11.5 The two previous planning approvals (No. A/YL-TYST/713 and 819) for the same proposed use were revoked on 6.5.2016 and 23.9.2017 respectively due to

non-compliance with approval conditions. However, these approved developments had in fact not been commenced. Compared with the last application, the current application is submitted by a different applicant and he has submitted landscape and tree preservation proposal, drainage proposal and FSIs proposal (**Drawings A-3 to A-5**). CTP/UD&L of PlanD, CE/MN of DSD and D of FS have no adverse comment on the application subject to imposition of relevant approval conditions. In view of the above, sympathetic consideration may be given to this application.

- 11.6 There is one public comment (**Appendix III**) received raising objection to the application on setting undesirable precedent. The above planning considerations and assessment are relevant.

12. Planning Department's Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment as mentioned in paragraph 10 above, 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 20.4.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) no operation between 7:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no light, medium or heavy goods vehicles, including container tractor/trailer, as defined in the Road Traffic Ordinance, is 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) the provision of boundary fence on the Site within **6** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 20.10.2018;
- (e) the submission of a revised drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.10.2018;
- (f) in relation to (e) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 20.1.2019;

- (g) in relation to (f) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (h) the implementation of the accepted tree preservation and 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 20.10.2018;
- (i) the implementation of the accepted fire service installation 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 20.10.2018;
- (j) if any of the above planning conditions (a), (b), (c) or (g) 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;
- (k) if any of the above planning conditions (d), (e), (f), (h) or (i) 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
- (l) upon the expiry of the planning permission, the reinstatement of the 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 V**.

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

the development is not in line with the planning intention of the "R(D)" zone which is primarily for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings. No strong planning justification has been given in the submission to justify 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 reasons for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 22.2.2018
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Supplementary Information received on 22.2.2018 to update Figure 2 of the Supplementary Planning Statement
Appendix Ic	Supplementary Information received on 28.2.2018 to update Figure 5 of the Supplementary Planning Statement
Appendix Id	Further Information received on 6.4.2018 providing clarifications on the type of vehicles access to the Site and rectification on editorial errors in the Supplementary Statement
Appendix II	Previous Applications covering the Application Site
Appendix III	Detailed Comments of CE/MN, DSD
Appendix IV	Public Comment received during the Statutory Publication Period
Appendix V	Recommended Advisory Clauses
Drawing A-1	Plan showing the vehicular access leading to the Application Site
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape and Tree Preservation Plan
Drawing A-4	Proposed Drainage Plan
Drawing A-5	Proposed FSIs Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
APRIL 2018**