

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

**APPLICATION NO. A/YL-TYST/905**

- Applicant** : Mr. WAN Sheung Fai represented by Metro Planning and Development Company Limited
- Site** : Lots 1275 S.A, 1279 S.B ss.1 S.D, 1279 S.B ss.1 S.E (Part), 1279 S.B ss.1 RP (Part), 1279 S.B ss.2 and 1279 S.B RP (Part) in D.D. 119, Pak Sha Tsuen, Yuen Long, New Territories
- Site Area** : 4,400m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11 (at the time of submission)  
  
Approved Tong Yan San Tsuen OZP No. S/YL-TYST/12 (currently in force)
- Zoning** : “Residential (Group C)” (“R(C)”) (about 98.9%)  
[restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m)]  
  
“Undetermined” (“U”) (about 1.1%)  
  
(no change to the “R(C)” and “U” zones)
- Application** : Proposed Temporary Shop and Wholesale of Construction Material 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 wholesale of construction material for a period of 3 years (**Plan A-1**). The Site falls mainly within the “R(C)” zone on the OZP with a very minor portion (about 1%) falls within the “U” zone. According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of 3 years within the zones 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 some structures within which storage activities are found without valid planning permission (**Plans A-2, A-4a to A-4d**).

1.2 According to the applicant, the proposed development comprises six structures for retail and wholesale of construction material, cashier, site office, toilet, store room, and electricity meter room respectively. The operation hours are between 10:00 a.m. and 4:00 p.m., Mondays to Saturdays, with no operation on Sundays and public holidays. Plans showing vehicular access leading to the Site, the site layout, the tree preservation proposal and the drainage proposal submitted by the applicant are shown in **Drawings A-1 to A-4** respectively.

1.3 The major development parameters are summarized as follows:

Site Area	4,440m <sup>2</sup> (about)
Total GFA (Non-domestic)	3,808m <sup>2</sup>
No. of structure and height of structure	6 (each for retail and wholesale of construction material (6.5m, 1 storey), cashier (6.5m, 2 storeys), site office (6.5m, 2 storeys), toilet (3.5m, 1 storey), store room (3.5m, 1 storey), and electricity meter room (3.5m, 1 storey) uses respectively)
Loading/Unloading Spaces	1 for medium goods vehicle (11m x 3.5m)
Operation Hours	10:00 a.m. and 4:00 p.m., Mondays to Saturdays, with no operation on Sundays and public holidays

1.4 In support of the application, the applicant has submitted the following document:

- (a) Application form with plans and appendices received on 13.6.2018 **(Appendix I)**
- (b) Further Information dated 24.7.2018 responding to the Transport Department's comments **(Appendix Ia)**  
*[accepted and exempted from publication and recounting requirements]*
- (c) Further Information dated 6.9.2018 responding to the Transport Department's comments with revised vehicular access plan **(Appendix Ib)**  
*[accepted and exempted from publication and recounting requirements]*

1.5 On 3.8.2018, the Committee agreed to defer a decision on the application for 2 months, as requested by the applicant's representative. On 6.9.2018, further

information was received (**Appendix Ib**) and the application is submitted to the Committee for consideration at this meeting.

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

The justifications put forth by the applicant in support of the application are detailed in Part 9 of the Application Form at **Appendix I**. They can be summarised as follows:

- (a) The proposed retail shop and wholesale would serve the need of the residents and benefit the local community such as the open storage yards and warehouses in the proximity. ‘Shop and Services’ is a Column 2 use in the “R(C)” zone, within which the proposed development is situated. The proposed development is in line with the planning intention of the “R(C)” zone which is to serve the residential neighbourhood. Approval of the current application would encourage the phasing out of undesirable land uses existing within the “R(C)” zone.
- (b) Similar shop and services uses have been approved by the Board under Applications No. A/YL-TYST/577, 760, 805 and 873.
- (c) The nature, form, scale and layout of the proposed development is compatible with the surrounding environment. The retail and wholesale of construction material will be carried out within enclosed structures.
- (d) The proposed development would not generate adverse traffic, drainage, landscape and environmental impacts.

## **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 Shap Pat Heung 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 there be sufficient evidence to prove that the current use on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

## **5. Previous Application**

The Site was not involved in any previous application.

## 6. Similar Applications

- 6.1 A total of 12 similar applications (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 821, 873, 894 and 914) for various shop and services uses within the subject “R(C)” zone had been considered by the Committee. Details of the applications are summarized in **Appendix II** and the locations of the sites are shown on **Plan A-1**.
- 6.2 There were 11 applications (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 821, 873 and 894) approved by the Committee with conditions on a temporary basis mainly on the consideration that the developments were considered not incompatible with the surrounding environment; approving the development on a temporary basis would not jeopardize the long-term planning intention of the “R(C)” zone; and departmental concerns could be addressed by way of approval conditions. However, amongst these approved applications, 8 were revoked due to non-compliance with approval conditions.
- 6.3 An application (No. A/YL-TYST/914) for proposed temporary eating place and shop and services (grocery store) for a period of 3 years was rejected by the Committee on 21.9.2018 mainly for the reason that approval of the application involving previous revocation due to non-compliance with approval conditions would set an undesirable precedent for other similar applications, thus nullifying statutory planning control mechanisms.

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

- 7.1 The Site is:
- (a) accessible via a local track from Kung Um Road to its southwest (**Plans A-1 and A-3**);
  - (b) paved and fenced off; and
  - (c) currently occupied by a number of temporary structures for storage use without valid planning permission.
- 7.2 The surrounding areas have the following characteristics:
- (a) intermixed with warehouses, open storage/storage yards, scattered residential structures, unused land, and fallow agricultural land;
  - (b) there are scattered residential structures in its vicinity, with the nearest one located about 20m to its northwest (**Plan A-2**);
  - (c) about 120m to its further northeast within the subject “R(C)” zone is a low-density residential development known as One Hyde Park (**Plans A-1 and A-3**);

- (d) except the warehouses in the “U” zone which are operated with planning permission under Applications No. A/YL-TYST/773 and 856, the other warehouses and storage/open storage yards in its vicinity are mostly suspected unauthorised developments subject to enforcement action taken by the Planning Authority.

## **8. Planning Intentions**

- 8.1 The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.
- 8.2 The planning intention of the “U” zone is to cater for the continuing demand for open storage, which cannot be accommodated in conventional godown premises. However, Kung Um Road is insufficient to cater for the heavy goods vehicular traffic from the proposed development. The area is therefore zoned “U” pending further detailed studies on the infrastructural impacts and the preparation of detailed layout plan.

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

- 9.1 The following government departments have been consulted and their views on the application and/or the public comments received 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 Old Schedule Agricultural Lots 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 Site is accessible to Kung Um Road via Government land (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.
- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the 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 her department 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 required by her department.

### **Traffic**

#### 9.1.2 Commissioner for Transport (C for T):

- (a) The operation hour of the proposed development should be restricted from 10:00 a.m. to 4:00 p.m. from Mondays to Saturdays and no operation will be held on Sundays and public holidays as proposed by the applicant.
- (b) No heavy goods vehicle exceeding 24 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (c) The land status of the access road/path/track leading to the Site from Kung Um Road shall be checked with the lands authority.
- (d) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (e) 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) 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 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 sensitive receivers of residential use in the vicinity (with the nearest one located about 20m to its northwest) (**Plan A-2**), and environmental nuisance is expected.
- (b) There was no substantiated environmental complaint concerning the Site received in the past 3 years.
- (c) Should the planning application be approved, the applicant should also be advised to follow the relevant mitigation measures and requirements in the “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites”.

### **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 in Pak Sha Tsuen within an area zoned “R(C)” (98.9%) and “U” (1.1%) on the OZP. The current application is for shop and wholesale of construction material, with proposed covered area of approximately 3,683m<sup>2</sup> (about 80% of the Site), for a period of 3 years.
- (b) With reference to the information submitted, there are 3 nos. of existing trees along the south boundary and will be preserved on site that significant landscape impact arising from the proposed uses on the area is not anticipated. Therefore, she has no objection to the application from the landscape planning perspective.
- (c) Should the Board approve this application in view of the above, she would recommend the approval condition for maintenance of all existing trees and landscape plantings within the Site at all times be applied in the planning permission.
- (d) The applicant is 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 make reference to the following information/guideline published by the Greening, Landscape and Tree Management Section, Development Bureau for tree maintenance:
  - Information About Tree Maintenance For Private Properties
  - Pictorial Guide for Tree Maintenance

### **Drainage**

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

- (a) He has the following comments on the submitted drainage proposal (Annex 1 of **Appendix I** and **Drawing A-4**):
  - (i) The invert levels of the proposed catchpits should be shown on the drainage plan for reference.
  - (ii) The existing drainage facilities, to which the stormwater of the development from the Site would discharge, are not maintained by his office. The applicant should identify the owner of the existing drainage facilities to which the proposed connection will be made and obtain consent from the owner prior to commencement of the proposed works. In the case that it is a local village drain, DO/YL should be consulted.
  - (iii) The applicant should check and ensure the hydraulic capacity of the existing drainage facilities would not be adversely affected by the development.
  - (iv) The cross section of the proposed hoarding/peripheral wall should be shown on the proposed drainage plan.
  - (v) The development should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.
  - (vi) The applicant should consult DLO/YL and seek consent from the relevant owners for any drainage works to be carried out outside his lot boundary before commencement of the drainage works.
- (b) Despite the above, he has no objection in principle to the proposed development from the public drainage point of view. 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 and maintenance of the drainage proposal for



the development to the satisfaction 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 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) In addition, 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) As there is no record of approval by the Building Authority for the existing structures on 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 his department, they are unauthorized building works (UBW) under the BO and should not be designated for any proposed use under the application.
  - (ii) For UBW erected on leased land, enforcement action may be taken by his department to effect their removal in accordance with his department'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) 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 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 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 (B(P)R) 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 B(P)R at the building plan submission stage.

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

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

The local consultation has been completed and his office has not received any comments 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);
- (c) Project Manager (West), CEDD (PM(W), CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS); and
- (e) Commissioner of Police (C of P).

#### **10. Public Comment Received During Statutory Publication Period**

On 22.6.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 13.7.2018, one public comment (**Appendix III**) was received from a member of the public objecting to the application mainly on grounds of legitimizing unapproved brownfield use; not in line with the planning intention of the "R(C)" zone; and setting an undesirable precedent for similar applications.

## **11. Planning Considerations and Assessments**

- 11.1 The subject application is for proposed temporary shop and wholesale of construction material at the Site mainly zoned “R(C)” with a very small portion (about 1%) zoned “U” on the OZP. The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The proposed shop and wholesale of construction material which intends to serve not only the residential neighbourhood, but also the open storage yards and warehouses in the vicinity, is not entirely in line with the planning intention of the “R(C)” zone. There is no strong planning justification to support a departure from the planning intention, even on a temporary basis.
- 11.2 The proposed development, which is housed in six structures with GFA of 3,808 m<sup>2</sup> and building heights of 3.5 – 6.5 m, is relatively excessive in scale. Although the Site is situated in an area intermixed with warehouses, open storage/storage yards, scattered residential structures, unused land, and fallow agricultural land, the warehouses and open storage/storage yards in its vicinity within the subject “R(C)” zone are mostly suspected unauthorised developments subject to enforcement action taken by the Planning Authority.
- 11.3 DEP does not support the application as there are sensitive receivers of residential dwellings in the vicinity of the Site (with the nearest one located about 20m to its northwest) (**Plan A-2**). In view of the above, the applicant fails to demonstrate that the proposed development would not cause adverse environmental impact on the surrounding area.
- 11.4 Whilst 11 similar applications for various shop and services uses including eating place and/or grocery store (No. A/YL-TYST/577, 620, 714, 737, 738, 760, 774, 805, 873 and 894) and plant nursery and retail shop for plants (No. A/YL-TYST/821) were approved by the Committee with conditions on temporary basis, eight of them have been revoked due to non-compliance with approval conditions. The three similar applications for grocery store use covered by valid planning permission (No. A/YL-TYST/737, 873 and 894) are of relatively small scale (about 516m<sup>2</sup> to 760m<sup>2</sup>) compared with the current application (about 4,400m<sup>2</sup>). Besides, a similar application (No. A/YL-TYST/914) for proposed temporary eating place and shop and services (grocery store) at an adjacent site, which is currently occupied by a warehouse (**Plans A-1 and A-2**), was rejected by the Committee on 21.9.2018 for the reason that approval of the application involving previous revocation due to non-compliance with approval conditions would set an undesirable precedent for other similar applications, thus nullifying statutory planning control mechanisms. In this regard, approval of the application which involves retail and wholesale of construction materials with a relatively excessive scale, even on a temporary basis, would set an undesirable precedent for similar applications within the “R(C)” zone. The cumulative effect of approving such applications would result in a general degradation of the environment of the area.

- 11.5 There is one public comment received during the statutory publication period as summarised in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.4 above are also 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 does not support the application for the following reasons:
- (a) the proposed development is not in line with the planning intention of the "R(C)" zone, which is primarily for low-rise, low-density residential developments. There is no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;
  - (b) the applicant fails to demonstrate that the proposed development would not generate adverse environmental impact on the surrounding areas; and
  - (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the "R(C)" zone. The cumulative effect of approving such application would result in general degradation of the rural environment of the area.
- 12.2 Alternatively, 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 2.11.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

### Approval conditions

- (a) no operation between 4:00 p.m. and 10:00 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 heavy goods vehicles exceeding 24 tonnes, including container trailers/tractors, 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;
- (d) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (e) the existing trees and landscape planting on the Site shall be maintained at all times during the planning approval period;

- (f) 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 2.5.2019;
- (g) 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 2.5.2019;
- (h) in relation to (g) 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 2.8.2019;
- (i) in relation to (h) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (j) the submission of a 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 2.5.2019;
- (k) the implementation of the fire service installations proposal within **9** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 2.8.2019;
- (l) if any of the above planning conditions (a), (b), (c), (d), (e) or (i) 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
- (m) if any of the above planning conditions (f), (g), (h), (j) or (k) 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 attached at **Appendix IV**.

### **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**

<b>Appendix I</b>	Application form with plans and appendices received on 13.6.2018
<b>Appendix Ia</b>	Further Information dated 24.7.2018 responding to the Transport Department's comments
<b>Appendix Ib</b>	Further Information dated 6.9.2018 responding to the Transport Department's comments with revised vehicular access plan
<b>Appendix II</b>	Similar applications within the subject "R(C)" zone
<b>Appendix III</b>	Public comment received during statutory publication period
<b>Appendix IV</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>	Tree Preservation Plan
<b>Drawing A-4</b>	Drainage Plan
<b>Plan A-1</b>	Location Plan with Similar Applications
<b>Plan A-2</b>	Site plan
<b>Plan A-3</b>	Aerial Photo
<b>Plans A-4a to A-4d</b>	Site Photos

**PLANNING DEPARTMENT  
NOVEMBER 2018**