

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

**APPLICATION NO. A/YL-TYST/912**

<b><u>Applicant</u></b>	: Mr. CHEUNG Kam Kwong represented by Goldrich Planners and Surveyors Limited
<b><u>Site</u></b>	: Lot 1543 (Part) in D.D. 121, Shan Ha Tsuen, Yuen Long, New Territories
<b><u>Site Area</u></b>	: 1,987.8 m <sup>2</sup> (about)
<b><u>Lease</u></b>	: Block Government Lease (demised for agricultural use)
<b><u>Plan</u></b>	: Draft Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/11
<b><u>Zoning</u></b>	: “Village Type Development” (“V”) [Restricted to a maximum building height of 3 storeys (8.23m)]
<b><u>Application</u></b>	: Proposed Temporary Shop and Services (Motor-vehicle Showroom) 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 (motor-vehicle showroom) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently used for open storage of vehicles without valid planning permission and is not involved in any previous application.
- 1.2 The Site is accessible via a local track leading from Shan Ha Road to its west. Two ingresses/egresses are provided at the southwestern and northeastern peripheries respectively. According to the applicant, the proposed outdoor motor-vehicle showroom is for the display of about 80 second-hand private cars. No medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance, will be allowed to be parked/stored on or enter/exit the Site. No car beauty, car washing, car repairing, car dismantling or other workshop activities will be conducted on the Site. The vehicular access plan, the proposed site layout plan, the proposed landscape plan and the as-built drainage plan submitted by the applicant are shown at **Drawings A-1 to A-4** respectively.

1.3 The major development parameters of the application are as follows:

Site Area	About 1,987.8 m <sup>2</sup>
Total Floor Area (Non-domestic)	30 m <sup>2</sup>
No. and Height of Structures	2 (for site office (1-storey, 2.6m) and storeroom (1-storey, 2.6m) uses respectively)
Parking Spaces	4 (for private cars)
Loading/Unloading Space	1 (for light goods vehicles)
Operation Hours	9:00 a.m. to 6:00 p.m. daily including Sundays and public holidays

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

- (a) Application Form received on 19.7.2018 **(Appendix I)**
- (b) Further information dated 15.8.2018 providing response to the Transport Department's comments **(Appendix Ia)**  
*[accepted and exempted from publication and recounting requirements]*
- (c) Further information dated 29.8.2018 providing response to the Planning Department's comments **(Appendix Ib)**  
*[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 detailed in the Justification statement enclosed in the Application Form (**Appendix I**) and the further information (**Appendices Ia and Ib**). They can be summarized as follows:

- (a) The Site is zoned "V" on the OZP which is to designate both existing recognized villages and areas of land considered suitable for village expansion. 'Shop and Services' is a Column 2 uses in "V" zone.
- (b) The proposed use provides a venue for the display of second-hand private cars. It can create employment opportunities to the local residents and fulfill the local needs for private cars.
- (c) Sufficient manoeuvring space will be provided within the Site and no queueing, reversing and manoeuvring of vehicles out of the Site is required. Given a relatively low trip generation and attraction rates, no significant adverse traffic impact is anticipated.
- (d) There will be no adverse environmental impact. Visually, the subject development is compatible with the surrounding environment, which mainly

comprises open storage and residential dwelling uses. The landscape proposal, which proposes 38 trees to be planted along the site boundary, can alleviate both visual and landscape impacts (**Drawing A-3**). There is currently a village drain running along the eastern and southern peripheries of the site (**Drawing A-4**).

### 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 on the Site and sending the notice to the 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 under investigation. Should there be sufficient evidence to prove that the use on the Site constitutes an unauthorised development under the Town Planning Ordinance, enforcement action would be taken.

### 5. **Previous Application**

There is no previous planning application covering the Site.

### 6. **Similar Application**

6.1 There is one similar application (No. A/YL-TYST/855) for similar ‘shop and services’ use within the same “V” zone. Details of the application are at **Appendix II** and the location is shown on **Plan A-1**.

6.2 Application No. A/YL-TYST/855 for temporary public vehicle park for private car and light goods vehicle and shop and services (real estate agency) was approved with conditions by the Committee for a period of 3 years on 22.9.2017 on the grounds that the proposed development could provide services to meet any such demand in the area; would not jeopardize the planning intention of the “V” zone; not incompatible with the surrounding land uses; unlikely to generate adverse impacts on the surrounding areas; and the concerns of relevant departments could be addressed through the implementation of approval conditions.

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

7.1 The Site is:

- (a) accessible via a local track leading from Shan Ha Road to its west (**Plan A-3**);
- (b) paved, fenced off and occupied by tents and converted containers; and

- (c) used for open storage of vehicles without valid planning permission.

7.2 The surrounding areas have the following characteristics:

- (a) predominantly comprises village houses mixed with some open storage yards, warehouse, dumping ground, vehicle park, cultivated agricultural land and unused/vacant land;
- (b) the main village cluster of Shan Ha Tsuen is about 35m to the east of the Site, while Lam Hau Tsuen is about 300m to the northeast of the Site in the same “V” zone (**Plan A-1**); and
- (c) a vehicle park, a dumping ground for soil and construction waste, open storage yards and a warehouse to the northeast, west and northwest of the Site, are suspected unauthorized developments subject to enforcement action taken by the Planning Authority (**Plan A-2**).

## **8. Planning Intention**

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to 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 Site is accessible from Shan Ha 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) There is no Small House (SH) application located within boundary of the Site but there are one SH application received and under processing and 10 such approved applications within the 30m radius circle of the Site.
- (e) Should planning approval be given to the subject planning application, the lot owner(s) will need to apply to her office to permit the structures to be erected or regularize any irregularities on site. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application 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(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by her department.

### **Traffic**

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

- (a) No medium or heavy goods vehicle exceeding 5.5 tonnes, including container tractor/trailer, should be allowed to park or enter/exit the Site.
- (b) The applicant is reminded that sufficient space within the Site shall be provided for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.
- (c) The land status of the access road/path/track leading to the Site at Shan Ha Road shall be checked with the lands authority.
- (d) The management and maintenance responsibilities of the access road/path/track should be clarified and consulted with the relevant management and maintenance authorities accordingly.

#### 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 Shan Ha Road.

## **Environment**

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

- (a) There was no substantiated environmental complaint concerning the Site received in the past 3 years.
- (b) 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 falls within an area zoned “V” on the OZP. The application is seeking planning permission for proposed temporary shop and services (motor-vehicle showroom) for a period of 3 years.
- (b) Based on the submitted information, some low rise residential development/village houses, public vehicle park and open storage sites are abutting the Site. Significant landscape impact arising from the proposed use in the area is not anticipated. She has no objection to the application from the landscape planning perspective.
- (c) Should the Board approve this application, she would recommend the landscape conditions requiring the submission and implementation of a revised landscape and tree preservation proposal to the satisfaction of the Board or of the Director of Planning be stipulated.
- (d) With reference to aerial photo taken in 2015, there are some mature trees located along the periphery and/or in the proximity of the Site near its east boundary. Since such existing trees are missing in the landscape proposal, the applicant is reminded to indicate the location of these existing trees in the proximity. The proposed entrance/gate should be away from these existing trees.
- (e) With the consideration of the mature size of the proposed tree species along the west boundary, *Ficus microcarpa* may be too large for the narrow space. Smaller species as alternative should be considered. For suitable tree planting, a minimum 1.2m soil depth should be reserved and 1m diameter of tree pit should be provided. 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”.

**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 (**Drawing A-4**):
  - (i) 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.
  - (ii) The applicant should check and ensure the hydraulic capacity of the existing drainage facilities would not be adversely affected by the development.
  - (iii) Cross sections showing the existing and proposed ground levels of the Site with respect to the adjacent areas should be given.
  - (iv) Standard details should be provided to indicate the sectional details of the u-channel and the catchpit.
  - (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, LandsD 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, since he noted that the existing site is already hard-paved, he has no objection in principle to the proposed development from the public drainage point of view. Should the Board consider that the application is acceptable from the planning point of view, approval conditions requiring the submission of a revised drainage proposal, and the 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 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**

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

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

- (a) Before any new building works (including containers/open sheds as temporary buildings and land filling) are to be carried out on application site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (b) For UBW erected on leased land, enforcement action may be taken by the BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the application site under the BO.
- (c) The Site shall be provided with means of obtaining access thereto from a street and emergency vehicular access in accordance with Regulations 5 and 41D of the Building (Planning) Regulations respectively.
- (d) If the Site does not abut on a specified street of not less than 4.5m wide, its permitted development intensity shall be determined



under Regulation 19(3) of the Building (Planning) Regulation at the building plan submission stage.

**District Officer's Comments**

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

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

9.2 The following government department has no comment to the application:

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (d) Director of Electrical and Mechanical Services; and
- (e) Commissioner of Police (C of P).

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

On 27.7.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 17.8.2018, two public comments were received from members of the public, objecting to the application. One commenter (**Appendix III-1**) proposed to utilize the Site for public housing instead and the other commenter (**Appendix III-2**) observed that the Site is for brownfield use which is incompatible with the "V" zone.

**11. Planning Considerations and Assessments**

11.1 The subject application is for proposed temporary shop and services (motor-vehicle showroom) at a Site zoned "V" on the OZP. The proposed motor-vehicle showroom use is not entirely in line with the planning intention of the "V" zone which is to designate both existing recognized village and areas of land considered suitable for village expansion and for development of Small Houses by indigenous villagers. According to DLO/YL, LandsD, there is currently no Small House application under processing by her office at the Site. In this regard, approval of the development on a temporary basis would not frustrate the long-term planning intention of the "V" zone.

11.2 The proposed development is not entirely incompatible with the surrounding uses which mainly comprise village houses and some open storage yards (**Plan A-2**).

11.3 Relevant government departments consulted, including DEP, C for T, CE/MN DSD, D of FS and CTP/UD&L, PlanD have no objection to or adverse comment on the application. Adverse environmental, traffic, drainage, fire safety and landscape impacts are not anticipated.

- 11.4 As the Committee has approved one similar application for shop and services in the subject “V” zone, approval of the subject application is considered in line with the Committee’s previous decision.
- 11.5 Should the application be approved, the applicant should be advised that the development/use not under application (i.e. open storage of vehicles use) which currently exists on the Site is not condoned by the approval.
- 11.6 There are two public comments received on the application during the statutory publication period objecting to the application for reasons as summarized in paragraph 10 above. The above planning considerations and assessment 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 comments mentioned in paragraph 10, the Planning Department considers that the temporary shop and services (motor-vehicle showroom) 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 7.9.2021. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval conditions

- (a) no operation between 6:00 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 vehicle exceeding 5.5 tonnes, including container tractors and trailers, as defined in the Road Traffic Ordinance, is allowed to enter/be parked on the Site at any time during the planning approval period;
- (c) no car beauty, car washing, car repairing, car dismantling or other workshop activities, as proposed by the applicant, is allowed on the Site 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 submission of a revised landscape and tree preservation 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 7.3.2019;
- (f) in relation to (e) above, the implementation of the revised landscape and tree preservation proposal within **9** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 7.6.2019;

- (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 7.3.2019;
- (h) in relation to (g) above, the implementation of the revised 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 7.6.2019;
- (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 7.3.2019;
- (k) in relation to (j) above, 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 7.6.2019;
- (l) if any of the above planning conditions (a), (b), (c), (d) 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;
- (m) if any of the above planning conditions (e), (f), (g), (h), (j), (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; and
- (n) 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 at **Appendix IV**.

- 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 "V" zone, which is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission for 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 reason(s) for rejection should be given to the applicant.

**14. Attachments**

<b>Appendix I</b>	Application Form received on 13.2.2018
<b>Appendix Ia</b>	Further information dated 15.8.2018 providing response to the Transport Department's comments
<b>Appendix Ib</b>	Further information dated 29.8.2018 providing response to the Planning Department's comments
<b>Appendix II</b>	Similar Applications within the subject "V" Zone on the Tong Yan San Tsuen OZP
<b>Appendices III-1 and III-2</b>	Public comment received during the statutory publication period
<b>Appendix IV</b>	Recommended Advisory Clauses
<b>Drawing A-1</b>	Vehicular Access Plan
<b>Drawing A-2</b>	Proposed Site Layout Plan
<b>Drawing A-3</b>	Proposed Landscape Plan
<b>Drawing A-4</b>	As-built 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 and A-4b</b>	Site Photos

**PLANNING DEPARTMENT  
SEPTEMBER 2018**