

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/948

- Applicant** : Ms. CHAN Wai Fong represented by Metro Planning and Development Company Limited
- Site** : Government Land in D.D. 124, Tan Kwai Tsuen Road, Hung Shui Kiu, Yuen Long, New Territories
- Site Area** : 102 m² (about)
- Land Status** : Government Land (GL)
- Plan** : Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
- Zoning** : "Residential (Group B) 3" ("R(B)3")
[restricted to a maximum plot ratio of 1, maximum site coverage of 40% and maximum building height (BH) of 12 storeys including car park (36m)]
- Application** : Temporary Shop and Services (Convenience Store) 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 shop and services (convenience store) for a period of 3 years (**Plan A-1**). The Site falls within an area zoned "R(B)3" on the OZP. According to the Notes of the OZP for the "R(B)3" zone, 'Shop and Services' is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied for the applied use without valid planning permission (**Plans A-2 to A-4b**).
- 1.2 The Site abuts Tan Kwai Tsuen Road to its east. According to the applicant, the application is proposed to serve the nearby residents by providing daily goods such as canned drinks, biscuits, chips, and instant noodles, etc. The access area at the site frontage and the immediate area beyond the access gate will be hard paved to avoid any fugitive dust impact. As proposed by the applicant, no parking, loading/unloading activity and vehicle queuing is allowed outside the Site on Tan Kwai Tsuen Road. The loading/unloading of goods via a light van will be carried out at the public vehicle park at Hung Shun Road (**Plan A-3**), and the goods will

be delivered to the Site by trolleys. Plans showing the site layout and internal layout submitted by the applicant are at **Drawings A-1 and A-2**.

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

Site Area	About 102m ²
Total Floor Area (Non-domestic)	About 204m ²
No. and Height of Structures	1 (about 5m, 2 storeys) (G/F: for convenience store, storage of goods, site office and toilet uses; 1/F: for convenience store use)
Operation Hours	9:00 a.m. to 8:00 p.m. daily

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

- (a) Application Form received on 24.1.2019 **(Appendix I)**
- (b) Supplementary Planning Statement **(Appendix Ia)**
- (c) Supplementary information received on 28.1.2019 providing a revised site plan and layout plan **(Appendix Ib)**
- (d) Further information received on 6.3.2019 providing response to the comments of the Transport Department and the Water Services Department (WSD) on the loading/unloading arrangement and the liability and cost arising from the existing water mains within and in close vicinity to the Site **(Appendix Ic)**
[accepted and exempted from publication and recounting requirements]
- (e) Further information received on 11.3.2019 providing an internal layout plan **(Appendix Id)**
[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 Section 3 of the Supplementary Planning Statement **(Appendix Ia)** and further information received on 6.3.2019 **(Appendix Ic)**. They can be summarised as follows:

- (a) The Site falls within the “R(B)3” zone which is mainly intended for sub-urban medium-density residential developments in rural areas where commercial uses serving the residential neighbourhood may be permitted on application to the Board. The Site is considered appropriate for shop and services use to support the daily needs of the nearby residents and the temporary nature of the proposed use would not jeopardise the opportunity for utilising the Site for sub-urban medium-density residential developments.

- (b) The Site abuts Tan Kwai Tsuen Road, with medium density residential developments and a variety of shops found along the road. The proposed development is clean, tidy and non-polluting in nature. Considering the scale, nature, layout and form of the proposed development, it is not incompatible with the surrounding environment and would not affect the character of the area. Besides, there are similar planning approvals for shop and services use in other “R(B)” zones or entirely on GL granted by the Board.
- (c) It is estimated that the traffic generation would be insignificant to Tan Kwai Tsuen Road. No adverse environmental, landscape and drainage impacts are envisaged. The proposed development would generate neither environmental nor noise disturbance and the applicant will implement measures with reference to the “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” (Code of Practice). Regarding the existing water mains being affected, the applicant undertakes that the cost of any necessary diversion shall be borne by her. The applicant noted that the Government would not be liable to any damage caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.
- (d) The Site has been occupied for store use since 1980 by Mr. KUNG Hin To with Short Tern Tenancy (STT) No. 467. Subsequently, the Site was transferred to Mr. HUI Chi Wu for operation. On 6.8.2007, the District Lands Officer/Yuen Long, Lands Department (DLO/YL, LandsD) issued a letter to Mr. HUI concerning the violation of some STT conditions. On 1.4.2010, DLO/YL updated the STT conditions and assigned a new STT No. 2407 for the execution of Mr. HUI. The demand for rates by the Rating and Valuation Department was also updated. Due to unknown reasons, Mr. HUI did not execute STT No. 2407. The development at the Site was then transferred to the applicant of this planning application for further operation. On 30.10.2018, DLO/YL demanded the applicant to pay the administration fee and initial tolerance fee for the period from 1.10.2009 to 31.3.2019. The applicant has since paid the demand note and is willing to apply for STT should the application be approved by the Board.

3. Compliance with the “Owner’s Consent/Notification” Requirements

As the Site involves GL only, the “owner’s consent/notification” 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) is not applicable to the application.

4. Background

The Site falls entirely within GL. It is currently not subject to planning enforcement action.

5. Previous Application

There is no previous application in respect of the Site.

6. Similar Application

There is no similar application within the same “R(B)3” zone.

7. The Site and Its Surrounding Areas (Plans A-2 to A-4b)

7.1 The Site is:

- (a) abutting Tan Kwai Tsuen Road to its east; and
- (b) currently occupied by a convenience store without valid planning permission.

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

- (a) predominantly vehicle repair/metal/recycling materials workshops, warehouses, logistics centre and parking of vehicles intermixed with scattered residential structures, various shop and services, sitting out area, school and vacant land/structures;
- (b) to its immediate north and south are shop and services uses;
- (c) to its west is vehicle repair workshop use; and
- (d) to its east across Tan Kwai Tsuen Road is a sitting-out area.

8. Planning Intention

The planning intention of the “R(B)3” zone is primarily for sub-urban medium-density residential developments in rural areas where commercial uses serving the residential neighbourhood 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 summarised as follows:

Land Administration

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

- (a) No permission is given for occupation of the GL included in the Site (about 102m² subject to verification). The attention of the applicant is drawn to the fact that the act of occupation of GL without Government’s prior approval is not allowed.
- (b) The Site is accessible from Tan Kwai Tsuen Road through GL. Her office provides no maintenance works to the GL involved

and does not guarantee any right-of-way over the GL to the Site.

- (c) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (d) Should planning approval be given to the subject planning application, the applicant has to apply for a formal approval prior to the actual occupation of the GL. Besides, given the proposed use is temporary in nature, only application for regularisation or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) 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(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 imposed by her department.

Traffic

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

- (a) He has no adverse comment on the application and the further information (**Appendix Ib**) provided by the applicant from traffic engineering point of view.
- (b) The loading/unloading activities associated with the applied use shall not cause obstruction to public roads.

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

- (a) He has no comment from highways maintenance point of view as no vehicular access is proposed or to be granted under the subject application.
- (b) Should planning approval be given to the subject planning application, the applicant is reminded that the application is approved on the understanding that there is and will be no vehicular access to/from the Site.

Environment

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

Should the planning application be approved, the applicant will be advised to follow the relevant mitigation measures and requirements in the latest Code of Practice.

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 proposed development from a drainage point of view.
- (b) The applicant is reminded that the development should neither obstruct the overland flow nor adversely affect any existing watercourse, village drains or ditches, etc.

Water Supply

9.1.6 Comments of the Chief Engineer/Construction, WSD (CE/C, WSD):

She has no further comment on the further information (**Appendix Ib**) provided by the Applicant and no objection to the application subject to the following comments:

- (i) Existing water mains will be affected (**Plan A-2**). The cost of any necessary diversion shall be borne by the proposed development.
- (ii) Government shall not be liable to any damage whatsoever and howsoever caused arising from burst or leakage of the public water mains within and in close vicinity of the Site.

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. 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) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire services requirements will be formulated upon receipt of formal submission of general building plans.

District Officer's Comments

9.1.8 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 departments have no comment to the application:

- (a) Director of Agriculture, Fisheries and Conservation (DAFC);
- (b) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD);
- (c) Director of Electrical and Mechanical Services (DEMS); and
- (d) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 1.2.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 22.2.2019, no public comment was received.

11. Planning Considerations and Assessments

- 11.1 The subject application is for temporary shop and services (convenience store) for a period of 3 years at a site zoned “R(B)3” on the OZP. The planning intention of the “R(B)3” zone is primarily for sub-urban medium-density residential developments in rural areas where commercial uses serving the residential neighbourhood may be permitted on application to the Board. Although the applied use is not entirely in line with the planning intention of the “R(B)3” zone, there is no known programme for long-term development on the Site. Approval of the application on a temporary basis would not jeopardise the long-term planning intention of the “R(B)3” zone.
- 11.2 The applied development, which comprises one temporary structure with a total floor area of about 204m² and height of 5m (2 storeys), is relatively small in scale (**Drawings A-1 and A-2**). The proposed development is considered not incompatible with the surrounding area which is mixed in character with various workshops, warehouses, shops and services and residential structures, etc (**Plan A-2**).
- 11.3 There is no adverse comment on the application from concerned government departments consulted. In view of its small scale and temporary nature, significant adverse environmental, traffic, landscape and drainage impacts on the surrounding area are not envisaged. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to minimise any potential environmental nuisances or to address the technical requirements of other concerned government departments. Any non-compliance with the approval conditions or material deviations from the applied use will result in revocation of the planning permission and unauthorised development 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 Code of Practice in order to minimise any potential environmental nuisances.

- 11.4 There is no previous application in respect of the Site and no similar application within the same “R(B)3” zone.
- 11.5 No public comment was received on the application during the statutory public inspection period.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11, the Planning Department has no objection to the application.
- 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 22.3.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no operation between 8:00 p.m. and 9:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no loading/unloading activities associated with the applied use is allowed to be carried out on Tan Kwai Tsuen Road, as proposed by the applicant, and Tai To Tsuen Road at any time during the planning approval period;
- (c) 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 22.9.2019;
- (d) in relation to (c) 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 22.12.2019;
- (e) if any of the above planning conditions (a) or (b) 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
- (f) if any of the above planning conditions (c) or (d) 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 II**.

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

the proposed development was not in line with the planning intention of the "R(B)3" zone which was for sub-urban medium-density residential developments in rural areas. No strong planning justification had 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 reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application Form received on 24.1.2019
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Supplementary information received on 28.1.2019 providing a revised site plan and layout plan
Appendix Ic	Further information received on 6.3.2019 providing response to the comments of TD and WSD on the loading/unloading arrangement and the liability and cost arising from the existing water mains within and in close vicinity to the Site
Appendix Id	Further information received on 11.3.2019 providing an internal layout plan
Appendix II	Recommended Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Internal Layout Plan
Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a to A-4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2019**