

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-TYST/974

<u>Applicant</u>	: Mr. NG Chung Yin represented by Metro Planning and Development Company Limited
<u>Site</u>	: Lot 1562 RP (Part) in D.D. 121, Shan Ha Tsuen, Yuen Long, New Territories
<u>Site Area</u>	: 466 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Tong Yan San Tsuen Outline Zoning Plan (OZP) No. S/YL-TYST/12
<u>Zoning</u>	: “Village Type Development” (“V”) <i>[Restricted to a maximum building height of 3 storeys (8.23m)]</i>
<u>Application</u>	: Proposed Temporary Shop and Services (Convenience Stores) 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 (convenience stores) for a period of 3 years (**Plan A-1**). According to the Notes of the OZP for the “V” zone, ‘Shop and Services’ other than on the ground floor of a New Territories Exempted House (NTEH) is a Column 2 use which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by some temporary structures which are largely vacant and is not involved in any previous application (**Plans A-2, A-4a and 4b**).
- 1.2 According to the applicant, the proposed convenience stores are to serve the nearby residents who will access the shop mainly on foot. The items to be sold are daily necessities such as drinks and snacks. No petrol filling activity will be involved. Also, 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. All the proposed drainage facilities will be provided and maintained at the applicant’s own expense. Plans showing the vehicular access leading to the Site, site layout, landscape proposal and drainage proposal submitted by the applicant are at **Drawings A-1 to A-4** respectively.

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

Site Area	466 m ² (about)
Total Floor Area (Non-domestic)	42 m ² (about)
No. and Height of Structures	3 • two for convenience store (one 3.5m and one 3m, both 1 storey) • one for toilet (3m, 1 storey)
Parking Spaces	2 (for private cars) (5m x 2.5m)
Loading/Unloading Space	1 (for light goods vehicles) (7m x 3.5m)
Operation Hours	9:00 a.m. to 7:00 p.m. daily

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

- (a) Application Form with plans, drainage proposal and estimated traffic generation received on 21.6.2019 (**Appendix I**)
- (b) Further Information dated 4.7.2019 providing clarifications on the number of parking spaces and the estimated traffic generation with submission of revised layout plan and landscape plan (**Appendix Ia**)
[accepted and exempted from publication and recounting requirements]
- (c) Further Information dated 2.8.2019 providing clarifications on the proposed operation (**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 Part 9 of the Application Form (**Appendix I**) and the further information at **Appendix Ia**. They can be summarised as follows:

- (a) The proposed use with limited scale is in line with the planning intention of the subject “V” zone and is compatible with the surrounding environment. It can satisfy the daily needs of the neighbourhood with its proximity to Shan Ha Tsuen.
- (b) The submitted landscape proposal, drainage proposal and estimated traffic generation data demonstrated that the proposed use would not generate adverse impacts on the surrounding area.

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 Site is currently not subject to planning enforcement action.

5. Previous Application

There is no previous planning application covering the Site.

6. Similar Applications

6.1 There are two similar applications (No. A/YL-TYST/855 and 912) for ‘shop and services’ uses within the same “V” zone. Details of the applications are at **Appendix II** and their locations are 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) and application No. A/YL-TYST/912 for proposed temporary shop and services (motor-vehicle showroom) were approved with conditions by the Rural and New Town Planning Committee (the Committee) each for a period of 3 years on 22.9.2017 and 7.9.2018 respectively. The applications were approved mainly on the considerations that the proposed development were not incompatible with the surrounding environment; the proposed development would not jeopardise the planning intention of the “V” zone as there was no Small House application at the application site; and concerned government departments had no adverse comments on the application.

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 (**Drawing A-1** and **Plan A-3**);
- (b) paved and partly fenced off; and
- (c) currently occupied by some temporary structures which are largely vacant.

7.2 The surrounding areas have the following characteristics (**Plans A-2 to A-4b**):

- (a) predominantly comprises village houses and residential structures intermixed with some open storage/storage yards, warehouses, a vehicle

repair workshop, parking of vehicles, a motor-vehicle showroom, a car service, construction sites, an orchard, a refuse collection point (RCP) and some vacant land/structures, etc.;

- (b) a Small House under construction is located to the east of the Site. Within the subject “V” zone, the main village clusters of Shan Ha Tsuen and Lam Hau Tsuen are located at about 70m to the east of the Site and about 230m to the northeast of the Site respectively (**Plan A-3**);
- (c) a temporary shop and services (motor-vehicle showroom) located to the south of the Site is operating with valid planning permission under application No. A/YL-TYST/912; and
- (d) except for an open storage yard in the adjoining “Open Storage” zone and the RCP and orchard, the other open storage/storage yards, warehouses, vehicle repair workshop, parking of vehicles and car service in the vicinity are suspected unauthorised developments (UD) subject to enforcement action taken by the Planning Authority.

8. Planning Intention

The planning intention of the “V” zone is to designate both existing recognised 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 the 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 NTEH. 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 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 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). Her office does not provide maintenance work for 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) There is no Small House application approved/under processing within the Site.
- (e) 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 regularise any irregularities on site, if any. 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. Applications for any of the above will be considered by her department acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application will be approved. If such application is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by her department.

Traffic

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

- (a) The land status of the access road/path/track leading to the Site from Shan Ha Road shall be checked with the lands authority.
- (b) The management and maintenance responsibilities of the access road/path/track shall be clarified and consulted with the relevant management and maintenance authorities accordingly.
- (c) The applicant is reminded that sufficient space should be provided within the Site for manoeuvring of vehicles. In addition, no parking, queuing and reverse movement of vehicles on public road are allowed.

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

- (a) Adequate drainage measures should be provided at the site access to prevent surface water flowing from the Site to nearby public roads/drains.
- (b) His department shall not be responsible for the maintenance of any access connecting the Site and Shan Ha Road.

Environment

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

- (a) Should the planning application be approved, the applicant should be advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage

Sites” (Code of Practice) to minimise any potential environmental nuisances on the surrounding areas.

- (b) There was no substantiated environmental complaint concerning the Site received in the past three years.

Drainage

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

- (a) He has the following comments on the submitted drainage proposal (**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, should be indicated on plan (i.e. before reaching SIH1001328). The relevant connection details should be provided for comment.
 - (iii) The location and details (i.e. cross section) of the proposed hoarding/peripheral wall should be shown on the proposed drainage plan.
 - (iv) The development should neither obstruct overland flow nor adversely affect existing natural streams, village drains, ditches and the adjacent areas, etc.
 - (v) 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, 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

9.1.6 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

9.1.7 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 at the Site, he is not in a position to offer comments on their suitability for the use proposed in the application.
- (b) The applicant's attention is drawn to the following points:
 - (i) If the existing structures (not being a NTEH) are erected on leased land without the approval of BD, they are unauthorised 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 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 Site under the BO.
 - (iii) Before any new building works (including containers/open sheds as temporary buildings, demolition 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 Authorised Person should be appointed as the co-ordinator for the proposed building works in accordance with the 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

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

His office has not received any feedback from the locals.

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 (DEMS); and
- (e) Commissioner of Police (C of P).

10. Public Comment Received During the Statutory Publication Period

On 28.6.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 19.7.2019, one public comment was received from a member of the public (**Appendix III**) objecting to the application on the grounds that the Site is being used as an illegal petrol filling station and the existing road networks in the area are already overloaded, especially with the traffic of long vehicles.

11. Planning Considerations and Assessments

11.1 The subject application is for proposed temporary shop and services (convenience stores) at a site zoned "V" on the OZP. Although the applied use is not entirely in line with the planning intention of the "V" zone, which is primarily intended for development of Small Houses by indigenous villagers, the proposal is intended to serve the local residents and could meet any such demand in the area. According to DLO/YL, LandsD, there is currently no Small House application approved/under processing at the Site. As such, approval of the application on a temporary basis for a period of three years would not frustrate the long-term planning intention of the "V" zone.

11.2 The proposed development is not incompatible with the surrounding uses which comprise mainly village houses and residential structures intermixed with some open storage/storage yards, warehouses, a vehicle repair workshop, parking of vehicles, a motor-vehicle showroom and a car service, etc. (**Plan A-2**).

- 11.3 There is no adverse comment on the application from concerned government departments, including C for T and DEP. Furthermore, relevant approval conditions are recommended in paragraph 12.2 to minimise any potential environmental nuisances or to address the public concern and technical requirements of other concerned government departments. Any non-compliance with the approval conditions will result in revocation of the planning permission and UD on the Site will be subject to enforcement action by the Planning Authority. Should the planning application be approved, the applicant will also be advised to follow the latest Code of Practice to minimise any potential environmental impact on the surrounding areas.
- 11.4 Given that two similar applications have been approved in the same “V” zone, approval of the current application is in line with the Committee’s previous decisions.
- 11.5 There is one objecting public comment received on the application during the statutory publication period as summarised in paragraph 10 above. The planning considerations and assessments in paragraphs 11.1 to 11.4 above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comment mentioned in paragraph 10, 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 16.8.2022. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval conditions

- (a) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractor/trailers, as defined in the Road Traffic Ordinance, are allowed to be parked/stored on or enter/exit the Site, as proposed by the applicant, at any time during the planning approval period;
- (b) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (c) 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 16.2.2020;
- (d) in relation to (c) 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 16.5.2020;
- (e) in relation to (d) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;

- (f) 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 16.2.2020;
- (g) in relation to (f) 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 16.5.2020;
- (h) if any of the above planning conditions (a), (b) or (e) 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
- (i) if any of the above planning conditions (c), (d), (f) or (g) 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 IV**.

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

the proposed development is not in line with the planning intention of the "V" zone, which is primarily for development of Small Houses by indigenous villagers. 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 reason(s) for rejection should be given to the applicant.

14. Attachments

- Appendix I** Application Form with plans, drainage proposal and estimated traffic generation received on 21.6.2019
- Appendix Ia** Further Information dated 4.7.2019 providing clarifications on the number of parking spaces and the estimated traffic generation with submission of revised layout plan and landscape plan

Appendix Ib	Further Information dated 2.8.2019 providing clarifications on the proposed operation
Appendix II	Similar Applications within the subject “V” Zone on the OZP
Appendix III	Public Comment received during the Statutory Publication Period
Appendix IV	Recommended Advisory Clauses
Drawing A-1	Location Plan with Vehicular Access
Drawing A-2	Proposed Layout Plan
Drawing A-3	Proposed Landscape Plan
Drawing A-4	Proposed Drainage Plan
Plan A-1	Location Plan with Similar Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a and A-4b	Site Photos

**PLANNING DEPARTMENT
AUGUST 2019**