

RNTPC Paper No. A/YL-KTN/628
For Consideration by the Rural and New
Town Planning Committee
on 19.10.2018

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

APPLICATION NO. A/YL-KTN/628

<u>Applicant</u>	: Z X Limited represented by Everbright Surveyors Limited
<u>Site</u>	: Lot 513 in D.D. 110, Kam Tin, Yuen Long
<u>Site Area</u>	: 439 m ² (about)
<u>Lease</u>	: Block Government Lease (demised for agricultural use)
<u>Plan</u>	: Approved Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/9 and Approved Pat Heung OZP No. S/YL-PH/11
<u>Zoning</u>	: “Open Space” (“O”) (about 53%) and “Residential (Group C)2” (“R(C)2”) (about 43%) on the Kam Tin North OZP [the area under “R(C)2” zone is restricted to a maximum plot ratio of 0.4 and a maximum building height of 3 storeys (9m)] “Agriculture” (“AGR”) (about 4%) on the Pat Heung OZP
<u>Application</u>	: Temporary Car Repair Centre 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 car repair centre for a period of 3 years. The Site is fenced and currently used for the applied use without valid planning permission (**Plans A-2, A-4a to A-4b**).
- 1.2 The Site is the subject of 3 previous planning applications No. A/YL-KTN/39 and 131 for public car park and No. A/YL-KTN/415 for temporary staff canteen, which were approved with conditions by the Rural and New Town Planning Committee (the Committee) on 24.10.1997, 30.9.2001 and 6.9.2013 respectively. All the previous applications were submitted by different applicants of the current application. The last planning approval under application No. A/YL-KTN/415 was revoked on 6.12.2014 due to non-compliance with approval conditions related to implementation of drainage and fire safety installations proposals.

1.3 According to the applicant, the development involves an open shed with building height of about 3.5m and covered area of 220m² for car repairing workshop and a converted container with building height of 2.4m and floor area of about 14.4m² underneath for office use. Two private cars parking spaces and a loading/unloading space will be provided within the Site. The operation hours are between 10:00 a.m. and 6:00 p.m. Mondays to Fridays. The Site is accessible via a local track branching off Kam Tin Road. The layout plan and traffic plan as submitted by the applicant are at **Drawings A-1 and A-2**

1.4 In support of the application, the applicant has submitted application form with plans received on 29.8.2018 in **Appendix I**.

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 summarized as follows:

- (a) The applied temporary car repair center is to serve the needs of private car owners in the locality as there is genuine need for this type of car repairing service in the area which cannot be accommodated in the residential development.
- (b) The Site is surrounded by developed areas and hence the applied use is not incompatible with the neighbourhood area. A corrugated metal sheet fence has been erected at the northern boundary of the Site as visual and noise barrier to reduce adverse visual and noise to its neighbourhood.

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

The applicant is the sole “current land owners”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is subject to on-going planning enforcement action (No. E/YL-KTN/445) against an unauthorized development (UD) involving workshop use. Enforcement Notice was issued on 22.11.2017 to the concerned parties requiring discontinuation of the UD. Since the UD has not been discontinued upon expiry of the notice, the concerned parties are subject to prosecution action.

5. Previous Applications

- 5.1 The Site is the subject of 3 previous planning applications (No. A/YL-KTN/39, 131 and 415). All previous applications were submitted by different applicants of the current application. Details of these applications are summarised in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 Application No. A/YL-KTN/39 for public car park was approved with conditions by the Committee on 24.10.1997 for a period of 3 years for the reasons that the proposed use could be used temporarily to satisfy some of the parking demands before the planned development in the “O” and “R(C)2”; the proposed car park was considered compatible to the surrounding areas; no adverse comments from relevant departments; and approval should be granted on a temporary basis for 3 years instead of a permanent one in order not to frustrate the implementation of the “Kam Tin Road Improvement - Stage 2” project and long term development of the “O” and “R(C)2” zones. Subsequently, the site was being used for vehicle workshop that was in breach of the planning permission.
- 5.3 Application No. A/YL-KTN/131 for proposed temporary public car park was approved with conditions by the Committee on 30.3.2001 for a period of 3 years for similar reasons stated in paragraph 5.2 above. However, the application was revoked on 30.9.2001 due to non-compliance with approval conditions on the implementation of the drainage and landscape proposals.
- 5.4 Application No. A/YL-KTN/415 for temporary staff canteen was approved with conditions by the Committee on 6.9.2013 for a period of 3 years for the reasons that the canteen was relatively small in scale; no programme for any development within the “O” and “R(C)2” zones for public open space and residential use respectively; approval on temporary basis would not jeopardize the long-term planning intention of the “O”, “R(C)2” and “AGR” zones; and no adverse comments from relevant developments. However, the application was revoked on 6.12.2014 due to non-compliance with approval conditions on implementation of the drainage and fire services installations proposals.

6. Similar Application

There is no similar application within the same “O”, “R(C)2” and “AGR” zones on the OZPs.

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

- 7.1 The Site is:
 - (a) currently paved and fenced off and used for the applied use without valid planning permission; and

(b) accessible via a local track leading from Kam Tin Road.

7.2 The surrounding areas are mainly rural in character predominated by residential dwellings/structures, an electric substation (ESS), a farm, warehouse unused/vacant land, Shek Kong Barracks and construction sites for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) (**Plan A-2**) :

- (a) to its north is a residential development, namely Seasons Villas. There are other residential dwellings/structures located at its immediate east and west (i.e. the nearest one is about 5m away);
- (b) there is an ESS to its immediate south across a local track. To the further south across Kam Tin Road is the Shek Kong Barracks;
- (c) to its further west is a farm and to its further north is a nullah.

8. Planning Intentions

- 8.1 The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.
- 8.2 The planning intention of the “R(C)2” 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.
- 8.3 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

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 on Old Schedule Agricultural Lot held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.

- (b) Lot No. 513 in D.D. 110 within the Site is covered by a Short Term Waiver (STW) No. 4005 to permit structures erected thereon for the purpose of “temporary staff canteen”.
- (c) The Site is accessible from Kam Tin Road via Government Land (GL). His office provides no maintenance work for the GL involved and does not guarantee any right-of-way over the GL to the Site.
- (d) The Site falls within Shek Kong Airfield Height Restriction Area (SKAHRA). The height of the proposed structure shall not exceed the relevant airfield height limit within SKAHRA.
- (e) Should the planning application be approved, the STW holder(s) will need to apply to his office for modification of the STW conditions where appropriate. 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. Applications for any of the above will be considered by LandsD 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 imposed by the LandsD.

Traffic

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

- (a) There is insufficient information in the submission for TD to support the application. He has the following outstanding comments on the application from traffic engineering perspective not yet addressed by the applicant:
 - The applicant is required to estimate the traffic generation and attraction to the nearby public road arising from the proposed development.
- (b) Should the application be approved, approval condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.

- (c) The applicant is reminded that sufficient space within the Site should be provided for manoeuvring of vehicles.
- (d) The Site is connected to the public road network via a local access road which is not managed by Transport Department. The land status of that local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of that local access road should be clarified with the relevant lands and maintenance authorities accordingly.

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

- (a) His department does not and will not maintain any access connecting the Site and Kam Tin Road. The applicant should be responsible for his own access arrangement.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Nature Conservation

9.1.4 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

He has no comment on the application from nature conservation point of view as the Site has been paved and is occupied by structures.

Environment

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

- (a) There was no substantiated environmental complaint received in the past three years.
- (b) In accordance with the latest “Code of Practice on Handling the Environmental Aspect of Temporary Uses and Open Storage Sites” (the COP), he does not support the application as there are sensitive receivers nearby (the nearest is at its immediate east and west about 5m away) (**Plan A-2**) and in the vicinity of the Site, and noise nuisance of vehicle repair workshop is expected.
- (c) Should the application be approved, the applicant is 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” issued by DEP.

Leisure and Cultural Services

9.1.6 Comments of the Director of Leisure and Cultural Services (DLCS):

- (a) He has no in-principle objection to the application as the application involves private lot only and the applicant is the sole “current land owner”.
- (b) The portion of the Site zoned “O” is not on the priority list for development agreed by the Yuen Long District Council (YLDC). He has no plan to develop the Site into public open space at present.

Landscape

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

- (a) She has some reservation to the application from the landscape planning perspective.
- (b) The Site is the subject of 3 previous applications for temporary public car park and temporary staff canteen which were approved by the Committee between 1997 and 2013. In the last application No. A/YL-KTN/415, she has no objection to the application and the landscape condition was fully complied.
- (c) Compared the aerial photo of 2015 to latest photo of 2018, there is no significant change in the rural landscape character where the Site is located. The surrounding area is of rural landscape character with small houses, temporary structures and scattered tree groups. The applied use is not incompatible with the landscape setting in proximity.
- (d) According to site visit in September 2018, the Site is hard paved, fenced off and the applied use is in operation. The accepted trees and shrubs planting as implemented for compliance with the landscape condition under the last application No. A/YL-KTN/415 could not be found, impact on the landscape resources had been made.

- (e) Should the application be approved, approval conditions on submission and implementation of landscape proposal should be included in the planning permission.

Drainage

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

- (a) He has no in-principle objection to the development from the public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the submission, implementation and maintenance of a drainage proposal for the development to the satisfaction of the Director of Drainage Services or of the Board should be included.

Fire Safety

9.1.9 Comments of the Director of Fire Services (D of FS):

- (a) He has no in-principle objection 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 layout plan should be drawn to scale and depicted with dimensions and nature of occupancy. 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 (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

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

- (a) Before any new building works (including containers/open sheds as temporary buildings) are to be carried out on the Site, prior approval and consent of BD should be obtained. Otherwise, they are Unauthorized Building Works (UBW). An Authorized

Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

- (b) If the existing structures (not being a New Territories Exempted House) are erected on leased land without the approval of the BD, they are UBW under the BO and should not be designated for any proposed use under the current planning application.
- (c) For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO. 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. 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 Views

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

His office has not received any comments from locals upon close of consultation and has no particular comments on the application.

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

- (a) Chief Engineer 1/Major Works, HyD (CE1/MW, HyD);
- (b) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (c) Director of Electrical and Mechanical Services (DEMS);
- (d) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD); and
- (e) Commissioner of Police (C of P).

10. Public Comment Received During Statutory Publication Period

On 7.9.2018, the application was published for public inspection. During the first three weeks of the statutory public inspection period, which ended on 28.9.2018, one comment from a general public was received (**Appendix III**). The commenter objects the application mainly on the grounds that the application is to legitimize an ongoing

unapproved use; car repair work can cause extensive damage to the soil via leaching of toxins and use of chemicals and inappropriate for the intended use of the Site; the work should be carried out in custom built facilities with adequate drainage with environmental facilities; the application should be rejected to encourage the site owner to clean up the Site and eliminate brownfield operations.

11. Planning Considerations and Assessments

- 11.1 The development for temporary car repair center falls within an area zoned “O” (53%) and “R(C)2” (43%) with minor portion in “AGR” (4%). It is not in line with the planning intentions of the “O” and “R(C)2” zones which is primarily for provision of outdoor open-air public space for active and/or passive recreational uses, and for low-rise, low density residential developments. Although DLCS indicated that there is no plan to develop the Site into public open space at present for the “O” portion of the Site and there is currently no development programme for the “R(C)2” zone, no strong planning justification has been given in the submission to justify a departure from the planning intentions, even on a temporary basis.
- 11.2 The development is not compatible with the surrounding areas which are mainly rural in character predominated by residential dwellings/structures, a farm and unused/vacant land (**Plans A-2**). The applied use involve workshop-related activities which would likely cause environmental nuisance on the surroundings. DEP does not support the application as there are sensitive receivers to its immediate east and west (the nearest residential dwellings about 5m away), and in the vicinity of the Site (**Plan A-2**), and noise nuisance of vehicle repair workshop is expected. C for T advised that there is insufficient information in the submission to support the application and he has outstanding comment on traffic aspect. The applicant fails to demonstrate that the development would not generate adverse traffic impact and environmental nuisances on the surroundings. Also, CTP/UD&L of PlanD has some reservation to the application as the accepted trees and shrubs planting implemented under the last application No. A/YL-KTN/415 could not be found, impact on the landscape resources had been made.
- 11.3 Three previous applications for public car park or staff canteen use had been approved by the Committee between 1997 and 2013. However, the nature of the uses is different as compared to the current application. No previous or similar approval had been granted within the same “O” and “R(C)2” zone for car repair centre use. The approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within these zones. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

- 11.4 One objecting comment was received during the statutory publication period as mentioned in paragraph 10 above. In this regard, the planning considerations and assessments above are relevant.

12. Planning Department's Views

- 12.1 Based on the assessment made in paragraph 11 and having taking into account the public comment in paragraph 10, the Planning Department does not support the application for the following reasons:

- (a) the development is not in line with the planning intentions of the “O” and “R(C)2” zones. The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public. The planning intention of the “R(C)2” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Town Planning Board. No strong planning justification has been given in the submission for a departure from the planning intentions, even on a temporary basis;
- (b) the applicant fails to demonstrate that the development would not generate adverse traffic impact and environmental nuisance on the surrounding areas; and
- (c) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the same “O” and “R(C)2” zones. The cumulative effect of approving such applications would result in 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 year until 19.10.2021. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 6:00 p.m. to 10:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no operation on Saturdays and Sundays, as proposed by the applicant, is allowed on the Site during the planning approval period;

- (c) no medium or heavy goods vehicles exceeding 5.5 tonnes, including container tractors/trailers, as defined in the Road Traffic Ordinance are allowed to be parked/stored on or enter/exit 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 landscape proposal within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 19.4.2019;
- (f) in relation to (e) above, the implementation of the landscape 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 19.7.2019;
- (g) the submission of 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 19.4.2019;
- (h) in relation to (g) above, the implementation of 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 19.7.2019;
- (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 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 19.4.2019;
- (k) in relation to (j) above, the implementation of 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 19.7.2019;
- (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) 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; and

- (n) upon expiry of the planning permission, the reinstatement of the application site to an amenity area to the satisfaction of the Director of Planning or of the Town Planning Board.

Advisory Clauses

The advisory clauses are in **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 reason(s) for rejection should be given to the applicant.

14. Attachments

Appendix I	Application form with plans received on 29.8.2018
Appendix II	Previous s.16 applications covering the Site
Appendix III	Public comment received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Site Layout Plan
Drawing A-2	Traffic Plan
Plan A-1a	Location Plan
Plan A-1b	Previous Application Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo

Plans A-4a and Site Photos
4b

PLANNING DEPARTMENT
OCTOBER 2018