

RNTPC Paper No. A/YL-KTN/738
For Consideration by the Rural and
New Town Planning Committee
on 18.12.2020

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/738

<u>Applicant</u>	: Mr. Lam Tung Man represented by R-riches Property Consultants Limited
<u>Site</u>	: Lots 1613 S.C, 1613 S.D and 1613 S.F (Part) in D.D. 107, Sha Po Tsuen, Kam Tin, Yuen Long, New Territories
<u>Site Area</u>	: About 421m ²
<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
<u>Zoning</u>	: “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)]
<u>Application</u>	: Proposed Temporary Shop and Services with Ancillary Office for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services with ancillary office for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use under the “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is partly vacant and partly used for parking of vehicles without valid planning permission (**Plans A-2 and A-4**).
- 1.2 The Site is separated into eastern and western portions. According to the applicant, the proposed use involves 2 two-storey structures with a total floor area of about 288m² and building height of 7.2m for shop and services for solar panels, storage and display of solar panels, ancillary office and meeting room. The operation hours are from 9:00 a.m. to 7:00 p.m. daily, including public holidays. One private car parking space and one loading and unloading space

for light goods vehicle will be provided at the Site. No vehicles exceeding 5.5 tonnes will be parked/ stored at the Site. The Site is accessible via a local track branching off from San Tam Road and Sha Po Tsuen Road. The layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 In support of the application, the applicant has submitted the following documents:
- (a) Application form with plans received on 29.10.2020 **(Appendix I)**
 - (b) Further Information (FI) received on 12.11.2020 in response to departmental comments **(Appendix Ia)**
[exempted from publication requirement]
 - (c) FI received on 8.12.2020 and 10.12.2020 in response to departmental comments **(Appendix Ib)**
[exempted from publication requirement]
 - (d) FI received on 11.12.2020 in response to departmental comments **(Appendix Ic)**
[exempted from publication requirement]

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form in **Appendix I**. They can be summarized as follows:

- (a) The proposed use is on a temporary basis and will not jeopardize the long-term planning intention of the “V” zone.
- (b) The roof of the village houses in Sha Po Tsuen near the Site would provide opportunity for installation of solar panel system. The proposed use is to serve the nearby locals and to promote renewable energy generation. The proposed use will not involve electricity generation and no solar panel will be displayed outdoor at the Site.
- (c) No significant adverse traffic, environmental, landscape and drainage impacts to the surrounding area are anticipated. The applicant will submit drainage and fire services installations proposals if the approval is granted and follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’.

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

The applicant is not the “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 site notice and sending notice to the Kam Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members’ inspection.

4. Background

The Site is currently not subject to any active planning enforcement action. Should there be sufficient evidence to prove that the current operation on the Site constitutes an unauthorized development under the Town Planning Ordinance, enforcement action will be taken.

5. Previous Application

There is no previous application at the Site.

6. Similar Application

There is no similar application for shop and services within the same “V” zone.

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

7.1 The Site is:

- (a) separated into two portions with a piece of vacant private land in between and located at the fringe of the village cluster;
- (b) paved, partly vacant and partly used for parking of vehicles without valid planning permission; and
- (c) accessible from San Tam Road and Sha Po Tsuen Road via a local track.

7.2 The surrounding areas are rural in character predominated by residential dwellings/structures, parking of vehicles and vacant/ unused land:

- (a) to its north across Sha Po Tsuen Road are parking of vehicles, residential dwellings/ structures and unused land;

- (b) to its east and south are residential dwellings/ structures and unused land; and
- (c) to its west are storage yard, parking of vehicles, refuse collection point, toilet, a pumping station and a basketball court.

8. Planning Intention

The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. 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 Old Schedule Agricultural Lots 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) Should the application be approved, the lot(s) owner(s) will need to apply to his office to permit the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as 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 rent or fee, as may be imposed by the LandsD.

- (c) There is no Small House application approved or under processing within the Site.

Traffic

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

- (a) He has no comment on the application from traffic engineering perspective.
- (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 Site is connected to the public road network via a section of a local access road which is not managed by Transport Department (TD). The land status of the local access road should be checked with the LandsD. Moreover, the management and maintenance responsibilities of the 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 shall not be responsible for the maintenance of any access connecting the Site and Sha Po Tsuen Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to nearby public roads and drains.

Environment

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

- (a) There is no environmental complaint concerning the Site received by DEP in the past three years.
- (b) 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.

Drainage

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

- (a) He has no in-principle objection to the proposed development from public drainage point of view.
- (b) Should the application be approved, approval conditions requiring the applicant to submit, implement and maintain the drainage proposal for the development should be included in the planning permission.

Fire Safety

9.1.6 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 plans 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

9.1.7 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, demolition and land filling, etc.) are to be carried out on the Site, prior approval and consent of the BA should be obtained, otherwise they are unauthorized building works (UBW) under the Buildings Ordinance (BO). An Authorized Person 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 the prevailing 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.
- (c) Detailed checking under the BO will be carried out at building plan submission stage.
- (d) His detailed comments are in **Appendix III**.

Nature Conservation

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

Noting the Site has been paved, he has no adverse comment on the application from nature conservation perspective.

District Officer's Comments

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

He has not received any comment from locals and he has no comment on the application.

- 9.2 The following Government departments have no comment on/ no objection to the application:

- (a) Chief Engineer/Construction, Water Supplies Department;
- (b) Project Manager (West), Civil Engineering and Development Department;
- (c) Director of Electrical and Mechanical Services; and
- (d) Commissioner of Police.

10. Public Comment Received During Statutory Publication Period

On 6.11.2020, the application was published for public inspection. During the three-week statutory publication period, one comment from an individual was received objecting to the application mainly on the grounds that the proposed use amidst the residential cluster will affect the rural living and ecological environment (**Appendix II**).

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services with ancillary office for a period of 5 years at the Site within the “V” zone. The planning intention of the “V” zone is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. The proposed use is not entirely in line with the planning intention of the “V” zone. Nevertheless, DLO/YL of LandsD advised that there is no Small House application approved or under processing at the Site. It is considered that temporary approval of the application would not frustrate the long-term planning intention of the “V” zone.
- 11.2 According to the applicant, the proposed use is intended to serve the nearby locals. The proposed use is considered not incompatible with the surrounding area which is rural in character intermixed with residential dwellings/structures and vacant land.
- 11.3 In view of the retail nature of the proposed use and the location of the Site at the fringe of the village cluster, it is unlikely that the proposed temporary shop and services would generate significant adverse traffic and drainage impacts and environmental nuisance to the surrounding area. Relevant departments consulted including C for T, DEP, CE/MN of DSD and D of FS have no adverse comment on the application. To minimize the possible environmental nuisance generated by the proposed use, approval conditions restricting the operation hours and vehicle type is recommended in paragraphs 12.2 (a) and (b) below. The applicant will also be advised to follow the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”. The technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraphs 12.2 (c) to (h) below.
- 11.4 A public comment objecting to the application was received during the statutory publication period as detailed in paragraph 10 above. In this regard, the departmental comments and planning considerations and assessments as stated 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 proposed temporary shop and services with ancillary office for a period of 5 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 5 years until

18.12.2025. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:00 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 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;
- (c) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (d) 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 18.6.2021;
- (e) in relation to (d) 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 18.9.2021;
- (f) in relation to (e) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (g) 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 18.6.2021;
- (h) in relation to (g) 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 18.9.2021;
- (i) if any of the above planning conditions (a), (b), (c) or (f) 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
- (j) if any of the above planning conditions (d), (e), (g) or (h) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix III**.

- 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 to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by the Government projects. 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

Appendix I	Application form with plans received on 29.10.2020
Appendix Ia	FI received on 12.11.2020
Appendix Ib	FI received on 8.12.2020 and 10.12.2020
Appendix Ic	FI received on 11.12.2020
Appendix II	Public comment received during the statutory publication period
Appendix III	Advisory clauses
Drawing A-1	Layout Plan

Plan A-1	Location Plan
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4	Site Photos

**PLANNING DEPARTMENT
DECEMBER 2020**