

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/751

<u>Applicant</u>	Mr. LAM Chun Nok
<u>Site</u>	Lots 4122, 4123, 4124 and 4125 (Part) in D.D. 104 and Adjoining Government Land, San Tam Road, Kam Tin, Yuen Long
<u>Site Area</u>	1,483m ² (including Government Land of about 325m ² (21.9%))
<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>	“Other Specified Uses” annotated “Railway Reserve” (“OU (Railway Reserve)”))
<u>Application</u>	Temporary Shop and Services (Financial Institution) with Ancillary Staff Canteen 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 (financial institution) with ancillary staff canteen for a period of 3 years. The Site is currently used as financial institution, real estate agency and eating place without planning permission (**Plans A-2 to A-4**).
- 1.2 The Site is the subject of three previous applications submitted by a different applicant from the current application for proposed temporary open storage and shop and services with ancillary staff canteen uses which were all approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2013 and 2018 for a period of 2 years and 3 years. However, all planning permissions were revoked due to non-compliance with approval conditions. The last application No. A/YL-KTN/592 for temporary shop and services (financial institution) with ancillary staff canteen was revoked in 2020 due to non-compliance with approval conditions.

- 1.3 According to the applicant, the development involves 8 one-storey structures with a total floor area of about 299m² and building height of 3m to 4m for financial institution, staff canteen, storage of documents, washroom and rain shelter. A total of 8 private car parking spaces and 1 loading/unloading space for light goods vehicle are provided. The Site is accessible via a local track branching off from San Tam Road. The operation hours are from 9:30 a.m. to 7:30 p.m. daily, including public holidays. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 A comparison of the current application and the previous approved application No. A/YL-KTN/592 is shown in the following table:

Major Development Parameters	Last Approved Application No. A/YL-KTN/592 (a)	Current Application (b)	Differences (b)-(a)
Site Area (m ²)	1,547m ²	1,483m ²	-64m ² (-4.1%)
Applied Use	Proposed Temporary Shop and Services (Financial Institution) with Ancillary Staff Canteen for a Period of 3 Years	Proposed Temporary Shop and Services (Financial Institution) with Ancillary Staff Canteen for a Period of 3 Years	No change
No. of structures	6	8	+2 (+33.3%)
Total Floor Area (m ²)	210m ²	299m ²	+89m ² (+42.4%)
Building Height of Structures (m)	3.5m	3m – 4m	±0.5m (±14.3%)
Parking Space for Private Cars	8	8	No change
Loading/Unloading Space	1	1	No change

- 1.5 In support of the application, the applicant has submitted the following documents :
- (a) Application form with plans received on 19.1.2021. **(Appendix I)**
 - (b) Further Information (FI) received on 4.3.2021 and 5.3.2021 in response to departmental comments
[exempted from publication requirement] **(Appendix Ia)**
 - (c) FI received on 9.3.2021 providing clarification
[exempted from publication requirement] **(Appendix Ib)**

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form and FIs (**Appendices I to Ib**). They can be summarized as follows:

- (a) To minimize risk associated with the gas pipeline in close vicinity of the Site, the applicant has revised the layout by deleting a structure. Also, the floor area of the eating place is reduced and it will only serve staff working at the Site. Advance booking is required for visitors to access the Site to regulate and prevent excessive number of visitor to the Site. The applicant will also liaise with government department / Hong Kong and China Gas Company Limited (HKCG) on the gas pipe issue.
- (b) The applicant will follow relevant government guidelines for operation of the development including ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’, ‘Control of Oil Fume and Cooking Odour from Restaurant and Food Business’ and ‘Professional Persons Environmental Consultative Committee Practice Notes 5/93’. No medium or heavy goods vehicle exceeding 5.5 tonnes will enter/exit the Site.
- (c) The planning permission of the last application (No. A/YL-KTN/751) was revoked due to non-compliance with approval conditions on the drainage, fire service installations (FSIs) and landscape aspects. The applicant stated that he had made effort to submit the relevant proposals but they were not accepted by concerned departments. Nevertheless, drainage facilities, FSIs and landscaping are already provided at the Site and the applicant submitted the relevant proposals and records of these facilities in the current application in support of the proposal. The applicant stated that he will strictly follow the proposed scheme and make effort to comply with all the approval conditions.

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

The applicant is not the “current land owner” of the private land portion of the Site but has complied with the requirement as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under section 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting site notice and sending registered mail to the Kam Tin Rural Committee. Detailed information would be deposited at the meeting for Members’ inspection. For the Government land portion, the “Owner’s Consent/ Notification” Requirements are not applicable.

4. **Background**

The Site is currently not subject to any active planning enforcement action.

5. **Previous Applications**

- 5.1 The Site is the subject of three previous applications submitted by a different applicant from the current application. Details of the applications are summarized in **Appendix II** and their locations are shown on **Plan A-1**.

- 5.2 Application No. A/YL-KTN/419 for proposed temporary open storage of construction materials (excluding cement/sand/chemical products/dangerous goods) for a period of 2 years was approved with conditions by the Committee in 2013, mainly for the reasons that temporary approval of the application would not frustrate the long-term planning intention of the “OU(Railway Reserve)” zone; the development was not incompatible with the surrounding land uses and was generally in line with the Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses as relevant departments consulted, except the Director of Environmental Protection (DEP), had no adverse comments on the application; DEP’s concern could be addressed by appropriate approval conditions; and there were similar applications approved by the Committee within the same zone. However, the approval was revoked in 2014 due to non-compliance with approval conditions related to provision of boundary fencing, and drainage, landscaping and fire safety aspects.
- 5.3 Application Nos. A/YL-KTN/451 and 592 for proposed temporary shop and services (real estate agency and/ or financial institution) with ancillary staff canteen were approved with conditions by the Committee for a period of 3 years in 2014 and 2018 respectively for similar reasons that temporary approval would not frustrate the long-term planning intention of the “OU(Railway Reserve)” zone; the development was not incompatible with the surrounding land uses; and concerned departments generally had no adverse comment on the application and their concerns could be addressed by approval conditions. For Application No. A/YL-KTN/451, the planning permission was revoked in 2016 due to non-compliance of approval condition on provision of FSIs. For Application No. A/YL-KTN/592, while the condition on provision of boundary fencing was complied with, the planning permission was revoked in 2020 due to non-compliance with approval conditions on submission and implementation of tree preservation proposal, submission of existing drainage facilities record and implementation of the accepted FSIs proposal.

6. Similar Application

There is no similar application for shop and services use within the same “OU (Railway Reserve)” zone.

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

7.1 The Site is:

- (a) fenced, paved and currently used for financial institution, real estate agency and eating place without planning permission; and
- (b) accessible via a local track branching off San Tam Road to the west.

7.2 The surrounding areas are rural in character intermixed with residential dwellings/structures, cultivated/fallow agricultural land, open storage/storage yards, site office, parking of vehicles and vacant/unused land:

- (a) to its north, south and southeast are residential dwellings/structures, vacant/unused land, cultivated/fallow agricultural land, site office and open storage/storage yards;
- (b) to its immediate east in the “Conservation Area” (“CA”) zone are cultivated agricultural land, a residential dwelling/structure, parking of vehicles and unused land; and
- (c) to its west are San Tam Road and San Tin Highway.

8. Planning Intention

The planning intention of the “OU(Railway Reserve)” zone is intended primarily for railway development. According to the Explanatory Statement of OZP, the area covers the proposed Northern Link (NOL) alignment. The exact alignment of the NOL has yet to be finalized.

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 Government Land and 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) The Government Land (GL) of the Site is covered by a Short Term Tenancy (STT) No. 2970 for the purpose of “Temporary Shop and Services (Real Estate Agency and Financial Institution) with Ancillary Staff Canteen”.
- (c) The private land (PL) of Lot Nos. 4123, 4124 and 4125 in D.D. 104 are covered by Short Term Waiver (STW) Nos. 3966, 3967 and 3968 respectively to permit structures for the purpose of “Temporary Shop and Services (Real Estate Agency and Financial Institution) with Ancillary Staff Canteen”.
- (d) Should the application be approved, the STT/STW holder will need to apply to his offices for modification of the STT/STW conditions where appropriate. Moreover, the lot owner(s) of the lot without STW will need to apply to his offices for permitting 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 of the landlord or lessor at its sole discretion and there is no guarantee that such applications will be approved. If such applications are 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.

9.1.2 Comments of the Chief Estate Surveyor/Railway Development, LandsD (CES/RD, LandsD):

The Site falls within “RDS 2014 Northern Link and Kwu Tung Station Administrative Route Protection Boundary” and “RDS2014 Northern Link and Kwu Tung Station Limit of Area of Influence”. Provided that the Railway Development Office of Highways Department has no adverse comment on the application and the development would not pose obstacles to the implementation of the NOL project, he has no comment on the application.

Traffic

9.1.3 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 his department. The land status of the local access road should be clarified with the LandsD by the applicant. Moreover, the management and maintenance responsibilities of the local access road should be clarified with the relevant lands and maintenance authorities accordingly. Sufficient maneuvering spaces shall be provided within the Site.

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

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

9.1.5 Comments of the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department (CE/RD 2-2, RDO, HyD):

- (a) The Site falls within the Administrative Route Protection (ARP) boundary of the planned NOL. The alignment and the ARP boundary of NOL may subject to further amendments.
- (b) Having considered the temporary nature of the application, the impact on NOL per-construction (e.g. geotechnical investigation) and construction works is tolerable within 3 years.
- (c) Should the application be approved, the applicant is advised to allow access, occupancy and usage of the portion of GL within the Site for MTR Corporation Limited and their contractor(s) to carry out works.

Environment

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

- (a) He has no objection to the application.
- (b) There was no environmental complaint concerning the Site received in the past three years.
- (c) The applicant is advised to (i) 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” to minimize any potential environmental nuisance; (ii) to provide adequate supporting infrastructure/facilities for proper collection, treatment and disposal of waste/ wastewater generated from the applied use. If septic tank and soakaway system will be used in case of unavailability of public sewer, its design and construction shall follow the requirements of EPD’s Practice Note for Professional Person (ProPECC) PN 5/93 “Drainage Plans subject to Comment by the Environment Protection Department” including percolation test; (iii) to control the oil fume and cooking odour emissions from the canteen, the applicant should follow “Control of Oily Fume and Cooking Odour from Restaurant and Food Business” issued by EPD; and (iv) it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances, and provide necessary mitigation measures to prevent polluting the watercourse and pond adjacent to the Site.

Nature Conservation

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

Considering its previous application for the same use at the Site was approved by the Committee, he has no strong view against the current application. The Site abuts the “CA” zone in the east and there is a watercourse along the northern boundary of the Site (**Plan A-2**). Should the application be approved, the applicant shall be advised to adopt necessary measures to avoid disturbance and pollution to the watercourse and encroachment into the abutting “CA” zone.

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 applicant to submit, implement and maintain the drainage proposal for the development should be included in the planning permission.

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 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 or referral from relevant licensing authority.

Building Matters

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

- (a) As there is no record of approval granted by the Building Authority (BA) 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) 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 BO. An Authorized Person should be appointed as the co-ordinator for the proposed building works in accordance with the BO.
- (c) His detailed comments on UBW, provision of access temporary or licensed structures are at **Appendix IV**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

Gas Safety

9.1.11 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (a) There is a high pressure underground town gas transmission pipeline (running along San Tam Road) in close vicinity of the Site (**Plan A-2**). It is noted that one structure is removed from the original layout and advanced booking is required for visitors to access the Site. Besides, the eating place will no longer be opened to the public and be served as a staff canteen. By such changes, the numbers of staff and visitor estimated by the applicant are significantly reduced. In light of that, he considers that a Quantitative Risk Assessment (QRA) is not a compulsory requirement in this case.
- (b) For the sake of public safety and continuity of gas supply, the parties involved in planning, designing, organizing and supervising any works near the gas pipeline (the involved parties) should approach the HKCG for requisition of gas pipe layout plan(s) and liaise with HKCG any required minimum set back distance away from it during the design and construction stages of the development.

Food and Environmental Hygiene

9.1.12 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) If the proposal involves any commercial/trading activities, there should be no encroachment on the public place and no environmental nuisance should be generated to the surroundings. Its state should not be a nuisance or injurious or dangerous to healthy and surrounding environment. Also, for any waste generated from the commercial/trading activities, the applicant should handle on their own/at their expenses.
- (b) Proper licence / permit issued by his department is required if there is any food business / catering service / activities regulated by the DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. The operation of any eating place should be under a food license issued by the FEHD. A staff canteen that exclusively use by the staff members of that working place does not require a food business licence from his department. However, if the said canteen provided foods to the outsiders with payment, a food business licence is required.
- (c) The operation of the food business place must not cause any environmental nuisance to the surrounding. The refuse generated by the proposed eating place are regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.

District Officer's Comments

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

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

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

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

10. Public Comments Received During Statutory Publication Period

On 29.1.2021, the application was published for public inspection. During the three-week statutory publication period, four public comments from HKCG, a Yuen Long District Council member and individuals were received (**Appendices III-1 to III-4**). The HKCG objects to the application on the grounds that the site boundary should be adjusted such that the High Pressure pipeline will not be encroached and a QRA should be conducted to evaluate the risk and determine the mitigation measures. The other comments object to the application mainly on the grounds that the Site is subject to repeated revocation of planning approvals and the applicant's commitment to comply with approval condition is doubtful; commercial activities in residential clusters will cause environmental pollution, increase fire hazard risk, and affect safety and living standard of the villagers.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services (financial institution) with ancillary staff canteen for a period of 3 years at the "OU(Railway Reserve)" zone. The planning intention of the "OU(Railway Reserve)" zone is primarily intended for railway development, i.e., the NOL. Although the development is not in line with the planning intention, CE/RD2-2, RDO of HyD advised that in view of the temporary nature of the application, the impact on NOL per-construction (e.g. geotechnical investigation) and construction works is tolerable within 3 years. As such, temporary approval would not frustrate the long-term planning intention of the "OU (Railway Reserve)" zone.
- 11.2 The proposed development is considered not incompatible with the surrounding land uses which are rural in character intermixed with residential dwellings/structures, cultivated/fallow agricultural land, and vacant/unused land.
- 11.3 Relevant departments consulted including C for T, DEP, CE/MN of DSD, D of FS and DEMS have no adverse comment on the application. To minimize any possible environmental nuisance generated by the development, approval condition on restriction on operation hours is recommended in paragraph 12.2 (a) below. Besides, the applicant will be advised to follow the "Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites". Technical requirements of C for T, CE/MN of DSD and D of FS could be addressed by approval conditions (b) to (h) in paragraph 12.2 below.
- 11.4 The Site is subject to 3 previous applications. The last two applications for temporary shop and services (financial institution and/or real estate agency) with ancillary staff canteen for 3 years were approved by the Committee in 2014 and 2018. However, planning permission for both applications were revoked due to non-compliance with the approval conditions. The current application is for the same use submitted by a different applicant. The applicant explained that in the previous approved application No. A/YL-KTN/592, effort had been made to comply with the approval conditions but the submissions were not accepted by concerned departments.

Nevertheless, drainage facilities, FSIs and landscaping are already provided at the Site. In the current application, drainage, FSIs and landscape proposals and record of the existing conditions of these facilities are submitted in support of the application. CE/MN of DSD and D of FS have no adverse comment on the application. Also, the applicant commits to comply with all the approval conditions if the current application is approved. When compared with the last approved application (No. A/YL-KTN/592), the current application is subject to similar site area, total floor area and layout. There is also no major change in planning circumstance. Hence, it is considered that sympathetic consideration could be given to the current application. Shorter compliance periods are recommended to monitor the progress of compliance with approval conditions should the Committee decide to approve the current application. Moreover, the applicant will be advised that should he fail to comply with the approval condition again resulting in revocation of the planning permission, sympathetic consideration may not be given to any further application.

- 11.5 Four public comments were received during the statutory publication period objecting to the application as mentioned in paragraph 10 above. In this regard, the departmental comments and planning assessments and considerations above are relevant.

12. Planning Department's View

- 12.1 Based on the assessments made in paragraph 11, and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department considers that the temporary shop and services (financial institution) with ancillary staff canteen 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 12.3.2024. The following conditions of approval with shorter compliance period and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 7:30 p.m. to 9:30 a.m., as proposed by the applicant, is allowed on the Site 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 provision of boundary fencing on the Site within **3** months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 12.6.2021;
- (d) the submission of drainage proposal within **3** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 12.6.2021;

- (e) in relation to (d) above, the implementation 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 12.9.2021;
- (f) 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 **3** months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 12.6.2021;
- (h) in relation to (g) above, the implementation 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 12.9.2021;
- (i) if any of the above planning conditions (a), (b) 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 (c), (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 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 "OU(Railway Reserve)" zone which is primarily for railway development. 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 19.1.2021
Appendix Ia	Further Information received on 4.3.2021 and 5.3.2021
Appendix Ib	Further Information received on 9.3.2021
Appendix II	Previous applications covering the Site
Appendices III-1 to III-4	Public comments received during the statutory publication period
Appendix IV	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1	Location Plan with Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plans A-4a & 4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2021**