

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTN/753

<u>Applicant</u>	: Mr. Tang Kin Wai represented by R-riches Property Consultants Limited
<u>Site</u>	: Lot 283 S.A RP (Part) in D.D. 109, Kam Tin Road, Kam Tin, Yuen Long
<u>Site Area</u>	: About 868m 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>	: Temporary Shop and Services for a Period of 5 Years

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary shop and services for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services’ is a Column 2 use in “V” zone which requires planning permission from the Town Planning Board (the Board). The Site is currently occupied by a pet service, metalware retail and car services, and the shop and services is with planning permission (**Plans A-2 and A-4b**).
- 1.2 The Site is the subject of nine previous applications for various shop and services uses which were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2011 and 2019. However, except three applications (Nos. A/YL-KTN/430, 611 and 644), all planning permissions were revoked due to non-compliance of approval conditions related to landscape, drainage and/or fire safety aspects. The last application No. A/YL-KTN/644 was approved with conditions by the Committee on 8.3.2019 for a period of 3 years. The planning permission, covering the current shop and services use operating on site, is valid

until 8.3.2022.

- 1.3 The Site is divided into eastern and western portions by a local track. According to the applicant, the applied use involves 6 one-storey structures with building height of 3m to 4.6m and a total floor area of about 222m² for shop and services (including pet grooming, metalware products, car beauty products, etc.), storage of goods and fire service water tank uses. One loading/unloading space for light goods vehicles is provided within the Site. The operation hours are from 9 a.m. to 8 p.m. daily, including public holidays. The Site is accessible from Kam Tin Road via a local access. The layout plan submitted by the applicant is at **Drawing A-1**.
- 1.4 A comparison of the major development parameters of the current application and the last approved application (No. A/YL-KTN/644) is given in the following table:

Major Development Parameters	Last Approved Application No. A/YL-KTN/644 (a)	Current Application (b)	Differences (b) – (a)
Site Area (m ²)(about)	868.3	868	-0.3 (-0.03%)
Applied Use	Temporary Shop and Services (Real Estate Agent, Grocery, Metalware Retail Shop and Car Beauty Product) with Ancillary Office for a Period of 3 Years	Temporary Shop and Services for a Period of 5 Years	Approval period sought from 3 to 5 years
No. of Loading/Unloading Spaces	1	1	No change
No. of Structure(s)	6	6	No change
Total Floor Area (m ²)	221.25	222	+0.75 (+0.34%)
Building Height of Structure(s) (m)	3 to 4.6	3 to 4.6	No change

- 1.5 In support of the application, the applicant has submitted the following documents:
- (a) Application form with plans received on 27.1.2021 **(Appendix I)**
- (b) Further Information (FI) received on 16.3.2021 in response to departmental comments **(Appendix Ia)**
(*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** and FI in **Appendix Ia**. They can be summarized as follows:

- (a) The applied use intends to serve nearby local residents. The Site involves various previous approved planning applications including the last application for the same use. Therefore, approval of the application will not set undesirable precedent. The development is only on a temporary basis and will not frustrate the long-term planning intention of “V” zone. Due to future operation and change of tenant, the current application will allow interchange of the type of retail shop and services within the ‘shop and services’ use.
- (b) The development will not create significant adverse traffic, environmental, landscape and drainage impacts on the surrounding areas. The applicant will strictly follow the ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’. Medium or heavy goods vehicles exceeding 5.5 tonnes are prohibited within the Site.

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

The applicant is not a “current land owner” 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 a site notice and notifying 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 planning enforcement action.

5. Previous Applications

- 5.1 The Site is the subject of nine previous applications (Nos. A/YL-KTN/365, 403, 409, 417, 430, 438, 547, 611 and 644) for various shop and services uses covering different parts of the Site. Application Nos. A/YL-KTN/547 and the last application No. A/YL-KTN/644 were submitted by the applicant of the current application and the other applications were submitted by different applicants. All of them were approved with conditions by the Committee between 2011 and 2019 for 3 years. Details of the previous applications are summarized in **Appendix II** and their locations are shown on **Plan A-1b**.
- 5.2 The western portion of the Site involves 5 applications (Nos. A/YL-KTN/365 and 430) for real estate agency on one site, Nos. A/YL-KTN/409 and 438 for grocery and

metalware retail shop on another site, and No. A/YL-KTN/611 for grocery, metalware retail shop and car beauty product covering the whole western portion) approved between 2011 and 2018 for similar reasons that temporary approvals would not jeopardize the long-term planning intention of “V” zone; the developments would serve some local needs; they were not incompatible with the surrounding land uses and unlikely generate significant environmental nuisance to the surrounding areas; similar applications were approved within the same “V” zone; and relevant government departments consulted had no adverse comment on the applications. The planning permission of application Nos. A/YL-KTN/365, 409, 438 and 611 were revoked in 2014 and 2019 due to non-compliance with approval conditions related to landscape, drainage and/or fire safety aspects. All approval conditions for application No. A/YL-KTN/430 had been complied with and the planning permission lapsed in 2017.

- 5.3 The eastern portion of the Site involves 3 applications (No. A/YL-KTN/403 for grocery and metalware retail shop, No. A/YL-KTN/417 for pet grooming and retail shop and No. A/YL-KTN/547 for real estate agency) approved with conditions between 2013 and 2017 for similar reasons as stated in paragraph 5.2 above. However, all of them were revoked in 2013, 2015 and 2019 respectively due to non-compliance with approval conditions related to landscape, drainage and/or fire safety aspects.
- 5.4 The last application (No. A/YL-KTN/644) for temporary shop and services (real estate agent, grocery, metalware retail shop and car beauty product) with ancillary office was approved with conditions on 8.3.2019 for similar reasons as stated in paragraph 5.2 above. One of the approval conditions on submission of fire service installations proposal has been complied. However, other conditions including the submission of drainage proposal and the implementation of drainage proposal and fire service installations proposal have not yet been complied. The planning permission is valid until 8.3.2022.

6. Similar Applications

- 6.1 There are three similar applications (Nos. A/YL-KTN/572, 602 and 622) for shop and services uses within the same “V” zone. Details of the application are at **Appendix III** and the locations are shown on **Plan A-1a**.
- 6.2 Application No. A/YL-KTN/572 for temporary shop and services (book shop) was approved with conditions by the Committee for 3 years in 2017 for the reasons that approval on a temporary basis would not jeopardize the planning intention of the “V” zone; the development was not incompatible with the surrounding environment and unlikely cause adverse environmental impacts on the surrounding areas; and there was no adverse departmental comment. However, the planning permission was revoked in 2020 due to non-compliance with approval condition.
- 6.3 Applications No. A/YL-KTN/602 and 622 on the same site for temporary shop and services (motor vehicle showroom) with storage of vehicles/vehicles parts and

ancillary offices use located at the further east of the same “V” zone and involving larger site area and structures (5,246m²/5,310m² and total floor area of 3,132 m²/4,548.8m²) than the current application, was rejected by the Board on review and by the Committee in 2018 and 2019 respectively on the grounds that the development was not in line with the planning intention of the “V” zone; and the scale of the development was excessive and not compatible with the developments in the surrounding area.

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

7.1 The Site is:

- (a) occupied by a pet service and metalware retail shop and car services, and the shop and service is with planning permission; and
- (b) accessible from Kam Tin Road via a local track.

7.2 The surrounding area are mainly rural in character intermixed with residential structures/dwellings, open storage/storage yards, parking of vehicles and vacant/unused land. Some shops/commercial uses are located on the ground floor of the village houses in the vicinity:

- (a) to its east and northeast are residential dwellings/structures, parking of vehicles and unused land;
- (b) to its immediate south is a refuse collection point. To its further south across Kam Tin Road are parking of vehicles, residential structures/dwellings and vacant/unused land;
- (c) to its immediate west is the Salvation Army Kam Tin Integrated Service Centre zoned “Government, Institution or Community” (“G/IC”). Residential dwellings/structures and real estate agency and animal clinic on the ground floor of village houses are located to the further west; and
- (d) to its north are storage/open storage yards, unused land, residential dwellings/structures and car service.

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 ground floor of a New Territories Exempted House (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 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 an 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) Part of Lot No. 283 S.A RP in D.D. 109 is covered by Short Term Waiver (STW) No. 3688 to permit “Temporary Shop and Services (Real Estate Agency, Grocery and Metalware Retail Shop)”.
- (c) Should the 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. 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 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 the LandsD.
- (d) There is no Small House application approved or under processing at 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 incorporated.
- (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/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 Kam Tin Road.
- (b) Adequate drainage measures should be provided to prevent surface water running from the Site to the nearby public roads and drains.

Environment

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

- (a) There was no substantiated environmental complaint concerning the Site received 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.

Landscape

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

- (a) She has no objection to the application from the landscape planning point of view.
- (b) According to the aerial photo of 2020, the surrounding area comprises village houses, temporary structures, car parks and scattered tree groups. The applied use is considered not incompatible with the existing landscape setting in proximity.
- (c) According to the site record dated 2.7.2020, the Site was fenced off with temporary structures erected and in operation. Existing trees within the Site maintained under previous approved application (No. A/YL-KTN/644) including *Ficus microcarpa* (細樹榕) and *Celtis sinensis* (朴樹) were found in southern part of the Site. Referring to the planning statement, no tree felling is proposed within the Site and based on the layout plan, the proposed structures are generally similar to those in the previous approved application (No. A/YL-KTN/644) which are not in conflicts with the existing trees. Further adverse landscape impact arising from the applied use is not anticipated.

- (d) Should the application be approved, the condition on all existing trees within the Site should be maintained satisfactorily at all times during the approval period should be included.
- (e) Based on the site photos dated 17.11.2020, some of the existing trees within the Site are with sparse leaves, the applicant is advised to step up maintenance works to keep the existing trees healthy and in good condition.
- (f) The applicant is reminded that approval of the application does not imply approval of tree works such as pruning, transplanting and felling under lease. The applicant should seek comments and approval from the relevant authority on the proposed tree works and compensatory planting proposal, where appropriate

Nature Conservation

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

Considering the previous application for similar use was approved by the Committee, he has no comment on the application from nature conservation point of view.

Drainage

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

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

Fire Safety

9.1.8 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 layout plans should be drawn to scale and depicted with dimensions and nature of occupancy. The location

of where the proposed FSI 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

9.1.9 Comments of the Chief Building Surveyor/New Territories 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, the prior approval and consent of the BA 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.
- (c) His detailed comments on UBW, provision of access, temporary or licenced structures are at **Appendix V**.
- (d) Detailed checking under the BO will be carried out at building plan submission stage.

District Officer's Comments

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

He has not received any locals' comment on the application and he has no comment from departmental point of view.

9.2 The following Government departments have no comment on 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 Comments Received During Statutory Publication Period

On 5.2.2021, the application was published for public inspection. During the three-week statutory publication period, two public comments were received from individuals (**Appendices IV-a and IV-b**). They object to the application mainly on the grounds that the applied use will cause environmental pollution, increase fire hazard risk and affect safety and living quality of the villagers; and the Site is subject to revoked planning permission due to non-compliance of approval conditions.

11. Planning Considerations and Assessments

- 11.1 The application is for temporary shop and services for a period of 5 years at 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 applied use is not entirely in line with the planning intention of “V” zone. Nevertheless, DLO/YL, LandsD advised that there is no Small House application approved or under processing at the Site. It is considered that approval of the application on a temporary basis of 5 years would not jeopardize the long-term planning intention of the “V” zone.
- 11.2 The development is considered not incompatible with the surrounding land uses which are rural in character intermixed with residential structures/dwellings, parking of vehicles and vacant/unused land. According to the applicant, the applied shop and services use intends to serve the locals.
- 11.3 Given the nature of the development and its proximity to Kam Tin Road, it is unlikely that the applied shop and services use would generate significant environmental nuisance on the surrounding area. Relevant departments consulted, including C for T, DEP, CE/MN of DSD, D of FS and CTP/UD&L of PlanD have no adverse comment on the application. To minimize any possible environmental nuisance, approval conditions restricting the operation hours and types of vehicles are recommended in paragraph 12.2 (a) to (b) below. Besides, the applicant will be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Open Storage and Other Temporary Uses”. The technical requirements of C for T, CTP/UD&L of PlanD, CE/MN of DSD and D of FS could be addressed by approval conditions in paragraph 12.2 (c) to (i) below.
- 11.4 The Site is the subject of nine previous applications for various shop and services uses covering different parts or the whole Site which were approved with conditions for 3 years by the Committee between 2011 and 2019 mainly for the reasons as stated in paragraph 5.2 above. The last application No. A/YL-KTN/644 submitted by the applicant of the current application was approved with conditions by the Committee in 2019 and the planning permission is valid until 8.3.2022. There is also one similar application within the same “V” zone approved with conditions for 3 years by the Committee in 2017. Two similar applications (No. A/YL-KTN/602 and 622) which were rejected by the Board on review and the Committee in 2018 and 2019 are located at the same site located to the further east of the Site and involving much larger site area and structures when compared with the current application, and

was rejected considering that the development was excessive and not compatible with the surroundings.

- 11.5 Two public comments were received during the statutory publication period objecting to the application as set out in paragraph 10 above. In this regard, the departmental comments as well as the planning assessments and considerations 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 comments mentioned in paragraph 10, the Planning Department has no objection to the temporary shop and services 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 26.3.2026. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no operation between 8:00 p.m. to 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) existing trees within the Site shall be maintained satisfactorily at all times during the planning approval period;
- (e) 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 26.9.2021;
- (f) in relation to (e) 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 26.12.2021;
- (g) in relation to (f) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (h) 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 26.9.2021;

- (i) in relation to (h) 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 26.12.2021;
- (j) if any of the above planning conditions (a), (b), (c), (d) or (g) 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
- (k) if any of the above planning conditions (e), (f), (h) or (i) 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 V**.

- 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 "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 Government projects. 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 27.1.2021
Appendix Ia	FI received on 16.3.2021
Appendix II	Previous applications covering the Site

Appendix III	Similar applications within the same “V” zone on the Kam Tin North OZP
Appendix IV	Public comments received during the statutory publication period
Appendix V	Advisory Clauses
Drawing A-1	Layout Plan
Plan A-1a	Location Plan with Similar Applications
Plan A-1b	Location Plan with Previous Applications
Plan A-2	Site Plan
Plan A-3	Aerial Photo
Plan A-4a to 4b	Site Photos

**PLANNING DEPARTMENT
MARCH 2021**