

RNTPC Paper No. A/YL-KTN/941
For Consideration by
the Rural and New Town
Planning Committee
On 8.9.2023

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

APPLICATION NO. A/YL-KTN/941

<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>	:	Draft Kam Tin North Outline Zoning Plan (OZP) No. S/YL-KTN/10
<u>Zoning</u>	:	“Other Specified Uses” annotated “Railway Reserve” (“OU (Railway Reserve)”)
<u>Application</u>	:	Temporary Shop and Services (Financial Institution) and Eating Place with Ancillary Facilities for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary shop and services (financial institution) and eating place with ancillary facilities for a period of 3 years at the application site (the Site), which falls within an area zoned “OU(Railway Reserve)” on the Kam Tin North OZP (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). The Site is currently used for the applied use without valid planning permission (**Plans A-2 to A-4**).
- 1.2 According to the applicant, the development involves 10 one-storey structures with a total floor area of about 372m² and building height of 3m to 4m for financial institution, washroom, eating place, storage and rain shelter uses. A total of 10 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 for shop and services (financial institution) are from 9:30 a.m. to 7:30 p.m. daily, including public holidays and

for eating place will be 11:00a.m. to 9:00p.m. daily, including public holidays. The layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 The Site is involved in four approved previous applications, including the last approved application (No. A/YL-KTN/751) for the temporary shop and services (financial institution) with ancillary staff canteen submitted by the same applicant as the current application which was revoked in June 2023 (details in paragraph 5 below). The current application is submitted with changes in the applied use, number of structures, total floor area and parking space. A comparison of the major development parameters of the current application and application No. A/YL-KTN/751 is summarised as follows:

Major Development Parameters	Last Approved Application No. A/YL-KTN/751 (a)	Current Application (b)	Differences (b)-(a)
Site Area (m ²)	1,483m ²	1,483m ²	No change
No. of structures	8	10	+2 (+33.3%)
Total Floor Area (m ²)	299m ²	372m ²	+73m ² (+24.4%)
Building Height of Structures (m)	3m – 4m	3m – 4m	No change
Parking Space for Private Cars	8	10	+2 (+33.3%)
Loading/Unloading Space	1	1	No change

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

- (a) Application form with plans received on 12.7.2023 (**Appendix I**)
- (b) Further Information (FI) received on 28.8.2023 and 4.9.2023 in response to departmental comments* (**Appendix Ia**)

** exempted from publication and recounting requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in the application form, supplementary information and FI at **Appendices I** and **Ia**. They can be summarised as follows:

- (a) The development is to serve the nearby residents and workers for alleviating the pressing demand for shop and services and eating place in the area. The applied use is not incompatible with the surrounding land uses.
- (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. The applicant encountered difficulties in finding suitable contractors during pandemic. While he had made effort to submit the relevant proposals, they were not accepted by the concerned departments. The applicant stated that he will strictly follow the proposed scheme and make effort to comply with all the approval conditions .
- (d) The applicant will terminate the operation and vacate the Site for railway development upon government acquisition/resumption.

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. Subject to collection of sufficient evidence, appropriate enforcement action under the Town Planning Ordinance would be undertaken.

5. **Previous Applications**

5.1 The Site is the subject of four previous applications (No. A/YL-KTN/419, 451, 592 and 751). Except Application No. A/YL-KTN/751, the other three previous applications were submitted by different applicants. Application No. A/YL-KTN/419 for proposed temporary open storage of construction materials (excluding cement/sand/chemical products/dangerous goods) is not relevant to the current application. The other three applications are for temporary shop and services (financial institution and/or real estate agency) with ancillary staff canteen which were approved with conditions by the Rural and New Town Planning Committee (the Committee) between October 2014 to March 2021 mainly on the considerations 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/or their concerns could be addressed by approval conditions. All the planning permission for applications No. A/YL-KTN/451, 592 and 751 were revoked between 2016 and 2023 due to non-compliance with approval conditions.

- 5.2 Compared with the last application No. A/YL-KTN/751 which was submitted by the same applicant as the current application, the current application is the same in terms of site boundary and area, and similar in the applied use and layout with additional structures, floor area and parking spaces. The planning permission was revoked in June 2023 due to non-compliance with approval conditions on provision of boundary fencing, and submission and implementation of drainage proposal.
- 5.3 Details of the previous application are summarised in **Appendix II** and the location is shown on **Plan A-1**.

6. Similar Application

There is no similar application for shop and services and eating place uses 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) currently used for the applied use without valid planning permission; and
- (b) accessible via a local track branching off San Tam Road.

7.2 The surrounding areas have the following characteristics:

- (a) to its north, south and southeast are residential dwellings/structures, open storage/storage yards (including one with planning permission under application No. A/YL-KTN/841), workshop, cultivated/fallow agricultural land and vacant land;
- (b) to its immediate east in the “Conservation Area” (“CA”) zone are woodland, camping site, parking of vehicles, storage yards and vacant 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

All departments consulted have no objection to or no adverse comment on the

application. Their general comments on the application and advisory comments in the Recommended Advisory Clauses are provided in **Appendices III** and **IV** respectively.

10. Public Comments Received During Statutory Publication Period (Appendix V)

The application was published for public inspection. During the statutory public inspection period, a public comment from an individual was received objecting to the application mainly on the grounds that there was previous non-compliance with approval conditions.

11. Planning Considerations and Assessments

11.1 The application is for temporary shop and services (financial institution) and eating place with ancillary facilities 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. While the applied use is not in line with the planning intention of “OU(Railway Reserve)” zone, the applicant indicates that he will terminate the operation and vacate the Site upon government acquisition/resumption for railway development. The Chief Engineer/Railway Development 2-2, Railway Development Office of the Highways Department has no adverse comment on the application from railway development perspective. 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 and intermixed with residential dwellings/structures, open storage/storage yards, workshop, cultivated/fallow agricultural land and vacant land. The Chief Town Planner/Urban Design and Landscape of Planning Department considers that no significant landscape impact arising from the proposed development is anticipated.

11.3 Relevant departments consulted including the Commissioner for Transport, Director of Environmental Protection, the Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD), and the Director of Fire Services (D of FS) have no objection to or no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 12.2 below. The applicant will also be advised to follow the revised ‘Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites’ issued by EPD to minimise possible environmental nuisances and the relevant Practice Note for Professional Person PN 5/93 on ‘Drainage Plans subject to Comment by the Environmental Protection Department’ including percolation test if septic tank and soakaway system will be used at the Site.

11.4 There are three approved previous applications for temporary shop and services as stated in paragraph 5 above. The last application submitted by the same applicant as the current application was revoked due to non-compliance with approval conditions including submission and implementation of drainage

proposal. In this regard, the applicant has submitted a drainage proposal to support the current application. CE/MN, DSD has no objection on the current application subject to relevant approval conditions. Should the Committee decide to approved the application, the applicant will be advised that should he fail to comply with any of the approval conditions again resulting in the revocation of the planning permission, sympathetic consideration may not be given to any further application.

- 11.5 Regarding the public comment objecting to the application as mentioned in paragraph 10, the departmental comments and planning assessments as stated 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 comment mentioned in paragraph 10 above, the Planning Department considers that the applied use 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 8.9.2026. The following conditions of approval with shorter compliance period and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) the submission of a revised drainage proposal within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.3.2024;
- (b) in relation to (a) above, the implementation of the revised drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 8.6.2024;
- (c) the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the submission of a revised 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 8.3.2024;
- (e) in relation to (d) above, the implementation of the revised 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 8.6.2024;
- (f) if any of the above planning conditions (c) 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

- (g) if any of the above planning conditions (a), (b), (d) or (e) 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 12.7.2023
Appendix Ia	Further Information received on 28.8.2023 and 4.9.2023
Appendix II	Previous applications covering the Site
Appendix III	Government departments' general comments
Appendix IV	Recommended advisory clauses
Appendix V	Public comment
Drawing A-1	Layout Plan
Plan A-1	Location Plan with Previous Applications

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

**PLANNING DEPARTMENT
SEPTEMBER 2023**