

RNTPC Paper No. A/YL-KTN/942
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/942

<u>Applicant</u>	:	Z X Limited (中信(香港)投资有限公司) represented by R-riches Property Consultants Limited
<u>Site</u>	:	Lot 513 in D.D. 110, Kam Tin Road, Pat Heung, Yuen Long, New Territories
<u>Site Area</u>	:	About 437 m ²
<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 and approved Pat Heung Outline Zoning Plan (OZP) No. S/YL-PH/11
<u>Zoning</u>	:	“Open Space” (“O”) (about 53%) and “Residential (Group C) 2” (“R(C)2”) (about 43%) on the Kam Tin North OZP [the area under “R(C)2” zone is restricted to a maximum plot ratio of 0.4 and maximum building height of 3 storeys (9m)] “Agriculture” (“AGR”) (about 4%) on the Pat Heung OZP
<u>Application</u>	:	Proposed Temporary Shop and Services and Eating Place with Ancillary Facilities for a Period of 3 Years and Filling of Land

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services and eating place with ancillary facilities for a period of 3 years and filling of land at the application site (the Site), which falls within an area partly zoned “O” and “R(C)2” on the Kam Tin North OZP and partly zoned “AGR” on the Pat Heung OZP (**Plan A-1**). According to the covering Notes of the OZPs, temporary use or development of any land not exceeding a period of 3 years requires planning permission from the Town Planning Board (the Board). Filling of land within the “AGR” zone also requires planning permission from the Board. The Site is fenced off, hard paved and currently used for vehicle workshop (**Plans A-2 to A-4**).

- 1.2 According to the applicant, the proposed development involves three one-to-two-storey structures with a total floor area of about 380m² and building height of 3m to 7m for eating place, shop and services and washroom uses. The whole site has been filled with concrete by not more than 0.2m in depth (from +10mPD to +10.2mPD) for site formation, parking, loading/unloading (L/UL) space and vehicular circulation. A maximum of 10 staff members will be stationed at the Site to support the operation. A total of 4 private car parking spaces and 1 L/UL space for light goods vehicle will be provided. The Site is accessible via a local track branching off from Kam Tin Road. The proposed operation hours are from 9:00 a.m. to 9:00 p.m. daily, including public holidays. The layout plan and paved ratio plan submitted by the applicant are at **Drawings A-1 and A-2**.
- 1.3 The Site is involved in five previous applications, including the last application (No. A/YL-KTN/784) for the proposed temporary shop and services use submitted by the same applicant as the current application (details in paragraph 5 below). The planning permission under application No. A/YL-KTN/784 was revoked in June 2023. 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 the last approved application No. A/YL-KTN/784 is summarised as follows:

Major Development Parameters	Last Approved Application No. A/YL-KTN/784 (a)	Current Application (b)	Differences (b)-(a)
Site Area (m ²)	437m ²	437m ²	No change
No. of structures	2	3	+1 (+50%)
Total Floor Area (m ²)	290m ²	380m ²	+90m ² (+31%)
Building Height of Structures (m)	2.6m – 5.5m	3m – 7m	+1.5m (+27.3%)
Parking Space for Private Cars	8	10	+2 (+25%)
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 14.7.2023 (**Appendix I**)
- (b) Further Information (FI) received on 30.8.2023 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 of Season Villas 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 filling of land of 0.2m in depth is necessary for site formation, parking, L/UL spaces and circulation purposes. The Site will be reinstated upon expiry of the planning approval.
- (d) The planning permission of the last application (No. A/YL-KTN/784) was revoked due to non-compliance with approval conditions. The applicant has made effort to submit the relevant proposals, they were not accepted by concerned departments. The applicant states 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 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.

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 five previous applications (A/YL-KTN/39, 131, 415, 628 and 784). Applications No. A/YL-KTN/39, 131, 415 and 628 for proposed temporary public car park; staff canteen; and car repair centre are not relevant to the current application. Application No. A/YL-KTN/784 for proposed temporary shop and services was approved with conditions by the Rural and New Town Planning Committee (the Committee) in September

2021 mainly on the considerations that temporary approval would not frustrate the long-term planning intentions of the “O”, “R(C)2” and “AGR” zones; the development was not incompatible with the surrounding land uses; or concerned departments generally had no adverse comment on the application and their concerns could be addressed by approval conditions. The planning permission was revoked in June 2023 due to non-compliance with approval conditions on implementation of Fire Service Installations (FSIs) proposal and drainage proposal.

- 5.2 Compared with application No. A/YL-KTN/784 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 applied use and layout, with additional structures, floor area and parking spaces.
- 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 temporary shop and services and eating place uses within the same “O”, “R(C)2” and “AGR” zones in the vicinity of the Site.

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

- 7.1 The Site is:
- (a) fenced off, hard paved and currently used for vehicle workshop; and
 - (b) accessible via a local track branching off Kam Tin Road.
- 7.2 The surrounding areas have the following characteristics:
- (a) to its north is a residential development, namely Seasons Villas (四季雅苑). To its further northeast is a nullah, an open storage yard and a works site with valid planning permission (under application No. A/YL-PH/913) for temporary transitional housing development and hobby farm uses;
 - (b) to its west are residential dwelling/structures and hobby farms; and
 - (c) to its east are residential dwelling/structures and grassland in “AGR” zone on the Pat Heung OZP. To its further south, across Kam Tin Road, is Shek Kong Barracks.

8. Planning Intention

- 8.1 The planning intention of the “O” zone is primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public.

- 8.2 The planning intention of the “R(C)” zone is primarily for low-rise, low-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.
- 8.3 The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. According to the Explanatory Statement of the Pat Heung OZP, as filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activities within the “AGR” zone.

9. Comments from Relevant Government Departments

- 9.1 Apart from the government departments as set out in paragraph 9.2 below, other 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.
- 9.2 The following government department does not support the application:

Agriculture and Nature Conservation

- 9.2.1 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):
- (a) does not support the application from agricultural perspective as the Site possesses potential for agricultural rehabilitation;
 - (b) the Site falls within “R(C)2”, “O” and “AGR” zones and is a cemented land with structures. The agricultural activities are active in the vicinity, and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as greenhouses and plant nurseries, etc.; and
 - (c) no comment on the application from nature conservation perspective.

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

The application was published for public inspection. During the statutory public inspection period, four public comments from local residents and individuals were received objecting to the application mainly on the grounds that approval conditions of previous planning permission have not been complied with; and the proposed development would induce adverse traffic, environmental, drainage, noise, air quality, water quality and ecological impacts affecting the living standard of the local residents.

11. Planning Considerations and Assessments

- 11.1 The application is for proposed temporary shop and services and eating place with ancillary facilities for a period of 3 years and filling of land within an area zoned “O” (53%) and “R(C)2” (43%) on the Kam Tin North OZP and with a minor portion zoned “AGR” (4%) on the Pat Heung OZP. The proposed use is not in line with the planning intentions of the “O”, “R(C)2” and “AGR” zones which are primarily for provision of outdoor open-air public open space for active and/or passive recreational uses; for low-rise, low density residential developments; and to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. For the “O” portion, DLCS stated that there is no plan to develop the Site into public open space at present and has no objection to the application. For the “R(C)2” portion, there is no known proposal for long-term development. While DAFC does not support the application from agricultural perspective, only 4% of the Site (about 17m²) falls within “AGR” zone. According to applicant, the proposed development is intended to serve the nearby residents and workers. It is considered that approval of the application on a temporary basis for 3 years would not jeopardize the long-term planning intentions of “O”, “R(C)2” and “AGR” zones respectively.
- 11.2 Filling of land within the “AGR” zone requires planning permission from the Board as it may cause adverse drainage and environmental impacts on the surrounding areas. In this regard, the Chief Engineer/Mainland North of the Drainage Services Department (CE/MN of DSD) and the Director of Environmental Protection (DEP) have no adverse comment on the proposed filling of land from drainage and environmental perspectives. An approval condition requiring the reinstatement of the “AGR” portion of the Site to an amenity area is recommended should the Committee decide to approve the application.
- 11.3 The proposed use is considered not incompatible with the surrounding area which is rural character intermixed by residential development, residential dwelling/structures, hobby farms, and grassland. The Chief Town Planner/Urban Design and Landscape of Planning Department considers that significant landscape impact arising from the proposed development is not anticipated and no objection from landscape planning perspective.
- 11.4 Relevant departments consulted including Commissioner for Transport, Director of Environmental Protection, Chief Engineer/Mainland North of Drainage Services Department, Director of Fire Services have no objection to or no adverse comment on the application. To address the technical requirements of concerned government departments, appropriate approval condition 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..

- 11.5 The Site is the subject of a previous applications (No. A/YL-KTN/784) for temporary shop and services submitted by the same applicant as the current application as mentioned in paragraph 5 above. The planning permission of No. A/YL-KTN/784 was revoked due to non-compliance with approval conditions on implementation of FSIs and drainage proposals. In this regard, the applicant has submitted FSIs and drainage proposals to support the current application. D of FS and CE/MN, DSD have no objection to the current application. Sympathetic consideration should be given to the application subject to further submission and/or implementation of the proposals. Should the Committee approve the application, the applicant will also 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.
- 11.6 Regarding the four public comments objecting to the application as mentioned in paragraph 10, the departmental comments and planning assessments 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 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 implementation of the accepted 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) the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (c) 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;
- (d) in relation to (c) 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 8.6.2024;
- (e) if any of the above planning condition (b) 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;

- (f) if any of the above planning conditions (a), (c) or (d) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (g) upon expiry of the planning permission, the reinstatement of the portion zoned “Agriculture” in the site to an amenity area, as proposed by the applicant, to the satisfaction of the Director of Planning or of the Town Planning Board.

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 intentions of the “O” , “R(C)2 and “AGR” ” zones which are primarily for the provision of outdoor open-air public space for active and/or passive recreational uses serving the needs of local residents as well as the general public; for low-rise, low density residential developments; and to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes respectively. No strong planning justification has been given in the submission for a departure from the planning intentions, 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 14.7.2023
Appendix Ia	Further Information received on 30.8.2023 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 comments
Drawing A-1	Layout Plan
Drawing A-2	Paved Ratio 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**