

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/YL-KTS/914

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| <u>Applicant</u> | : Mr. Tang Ka Fai represented by Metro Planning & Development Company Limited |
| <u>Site</u> | : Lot 291 (Part) in D.D. 109, Kam Sheung Road, Kam Tin, Yuen Long |
| <u>Site Area</u> | : About 640m ² |
| <u>Lease</u> | : Block Government Lease (demised for agricultural use) |
| <u>Plan</u> | : Approved Kam Tin South Outline Zoning Plan (OZP) No. S/YL-KTS/15 |
| <u>Zoning</u> | : “Village Type Development” (“V”) [maximum building height of 3 storeys (8.23m)] |
| <u>Application</u> | : Proposed Temporary Shop and Services (Real Estate Agency and Convenience Store) and Eating Place for a Period of 5 Years |

1. The Proposal

- 1.1 The applicant seeks planning permission to use the application site (the Site) for proposed temporary shop and services (real estate agency and convenience store) and eating place for a period of 5 years. According to the Notes of the OZP, ‘Shop and Services’ and ‘Eating Place’ are Column 2 uses within the “V” zone, which require planning permission from the Town Planning Board (the Board). The Site is currently vacant (**Plans A-2 and A-4**).
- 1.2 According to the applicant, the proposed development involves four 1 to 2-storey structures with building height ranging from 3m to 6.5m and total floor area of about 452m² for real estate agency, convenience store, eating place, toilet and electricity meter room uses. The estimated number of staff working at the real estate agency, convenience store and eating place are 4, 4 and 6 respectively. The applicant states that the proposed eating place will have a maximum capacity of

20 seats. Six private car parking spaces and one loading/unloading bay for light goods vehicle will be provided at the Site. The operation hours for the proposed development will be between 9:00 a.m. and 11:00 p.m. daily, including public holidays. The Site is accessible from Kam Sheung Road. The site layout plan submitted by the applicant is at **Drawing A-1**.

- 1.3 The Site is the subject of three previous applications. The last one (Application No. A/YL-KTS/884) for proposed temporary shop and services (real estate agency) for 3 years was approved by the Rural and New Town Planning Committee (the Committee) in April 2021.
- 1.4 In support of the application, the applicant has submitted the following documents:
 - (a) Application form with supplementary information (Appendix I) received on 15.11.2021
 - (b) Further Information (FI) received on 6.1.2022 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, supplementary information and FI at **Appendices I and Ia**. They can be summarized as follows:

- (a) The proposed development will cater for the demand for real estate agency service, grocery and eating place of the nearby residents. The proposed development is not incompatible with the surrounding environment. It will not jeopardize the long-term planning intention of the “V” zone.
- (b) The proposed development will have insignificant traffic, environmental, noise and drainage impacts. Similar applications in the “V” zone in the vicinity of the Site were granted with planning permissions by the Committee. The applicant will comply with all the approval conditions should the application be approved.

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

The applicant is not a “current land owner” but has complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by posting notice at the Site and sending notice to Kam

Tin Rural Committee by registered mail. Detailed information would be deposited at the meeting for Members' inspection.

4. Town Planning Board Guidelines

- 4.1 The Town Planning Board Guidelines for 'Application for Eating Place within "Village Type Development" Zone in Rural Areas under Section 16 of the Town Planning Ordinance' (TPB PG-No. 15A) are relevant to this application. Extract of the Guidelines is attached at **Appendix II**:
- 4.2 According to TPB PG-No. 15A (paragraph 1(c) of **Appendix II**), even if a proposal is acceptable in land-use planning terms and other planning criteria are met, under normal circumstances only a temporary approval for a maximum of three years should be considered so as to retain planning control on the development at the Site and to cater for future changing circumstances in future.

5. Background

The Site is not the subject of any active planning enforcement case.

6. Previous Applications

- 6.1 The Site is the subject of three previous applications (No. A/YL-KTS/490, 508 and 884), submitted by different applicants for the first two applications and by the same applicant for the last one. Details of the applications are summarized in **Appendix III** and their locations are shown on **Plan A-1b**.
- 6.2 Application No. A/YL-KTS/490 for temporary open storage of private cars for sale and display was rejected by the Committee in June 2010 and Application No. A/YL-KTS/508 for temporary open public car park (private car, light goods vehicle and medium goods vehicle) was approved with conditions by the Board on review in March 2011. The proposed uses of two applications are different from that of the current application.
- 6.3 Application No. A/YL-KTS/884 for proposed temporary shop and services (real estate agency) was approved with conditions by the Committee in April 2021 for 3 years on the considerations that approval of the application on a temporary basis would not jeopardize the long-term planning intention; the proposed development was not incompatible with the surrounding land uses; relevant departments had no adverse comments; the departmental concerns could be addressed by appropriate approval conditions; and similar application in the vicinity had been approved. The planning permission is valid until 30.4.2024.

7. Similar Applications

- 7.1 There are six similar applications (No. A/YL-KTS/758, 782, 795, 799, 863 and 895) for temporary shop and services use (real estate agency or martial art goods retail store) or eating place within the same and adjoining “V” zones in the vicinity of the Site on the OZP between 2017 and 2021. Details of these applications are summarized in **Appendix IV** and their locations are shown on **Plan A-1a**.
- 7.2 All the applications were approved with conditions by the Committee for a period of 3 years mainly for the reasons that approval of the applications on a temporary basis would not jeopardize the long-term planning intention of the “V” zone; the developments were not incompatible with the surrounding land uses; the proposed developments could provide services to meet some of the needs of the local residents; and relevant departments had no adverse comment on the applications. However, the planning permission of application No. A/YL-KTS/782 was revoked due to non-compliance with planning conditions.

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

- 8.1 The Site is:
- (a) paved, fenced and currently vacant; and
 - (b) accessible via Kam Sheung Road.
- 8.2 The surrounding areas are rural in character intermixed with residential developments/village houses, retail shop, open storage / storage yards, parking of vehicles, car parks, a church and vacant land (**Plan A-2**):
- (a) to its east are two residential developments, namely Greenview Garden (怡翠花園) and Placid Groves (芊逸居), and a church is located to its further east. To the northeast is Kat Hing Wai (吉慶圍);
 - (b) to its south across Kam Sheung Road are open storage yards, a few residential structures / dwellings and vacant land;
 - (c) to its immediate west are an estate agency with valid planning permission (Application No. A/YL-KTS/904) and a storage yard. A residential development, namely Kam Fung Garden (錦豐花園), is located to the further west; and
 - (d) to its immediate north are storage / open storage yards and a site approved for temporary eating place (under Application No. A/YL-

KTS/895). To its further north are a storage yard, parking of vehicles and some village houses, a sitting-out area and vacant land.

9. Planning Intention

The planning intention of the “V” 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.

10. Comments from Relevant Government Departments

- 10.1 The following government departments have been consulted and their views on the application are summarized as follows:

Land Administration

- 10.1.1 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) Should planning approval be given to the application, the lot owner(s) will need to apply to his office to permit the structure(s) to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. Applications for any of the above will be considered by LandsD acting in the capacity as the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of rent or fee, as may be imposed by the LandsD.

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

10.1.2 Comments of the Chief Estate Surveyor/ Railway Development, Lands Department (CES/Railway Development, LandsD):

He has no strong view against the application provided that the Railway Development Office of Highways Department has no objection against the application.

Traffic

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

- (a) He has no comment on the application from the traffic engineering perspective.
- (b) Should the application be approved, the condition on no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period should be included.
- (c) The Site is connected to the public road network via a section of a local access road which is not managed by Transport Department . 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.

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

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

10.1.5 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 area of influence (AOI) of the Northern Link (NOL). The detailed planning and design of the NOL are

still under development. The scheme (including railway alignment, railway structures and the corresponding route protection area, and potential tunnel design and corresponding construction methods, etc.) is subject to further changes. The area within the AOI would be subject to nuisance, such as noise and vibration of the NOL. The applicant should have taken the impacts from NOL, such as the nuisance from the future construction, operation and maintenance of NOL, into consideration.

- (b) If there are any proposed ground investigation (GI) works for the NOL near the application site, MTR may contact the applicant for any arrangement for the GI works at the location concerned.

Environment

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

- (a) There was no substantiated environmental complaint concerning the Site received by DEP in the past three years.
- (b) He has no objection to the application.
- (c) The applicant is advised (i) to follow the relevant mitigation measures and requirements in the revised “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 proposed 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 the Environmental Protection Department’s (EPD's) Practice Note for Professional Person (ProPECC) PN 5/93 "Drainage Plans subject to Comment by the Environmental Protection Department" including completion of percolation test and certification by Authorized Person; (iii) to control the oily 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) that it is the obligation of the applicant to meet the statutory requirements under relevant pollution control ordinances.

Drainage

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

- (a) He has no objection in-principle to the proposed development from the public drainage point of view and no adverse comment on the submitted drainage proposal.
- (b) Should the application be approved, approval conditions requiring the implementation and maintenance of the accepted drainage proposal for the proposed development to the satisfaction of the Director of Drainage Services or of the Board should be included in the planning approval.
- (c) His detailed comments on the submitted drainage proposal are at **Appendix VI**.

Fire Safety

10.1.8 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 FSIs to be installed should be clearly marked on the layout plans.
- (c) The applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (BO) (Cap.123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Building Matters

10.1.9 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Before any new building works (including containers/open sheds as temporary buildings, demolition and land filling, etc.) are to be

carried out on Site, prior approval and consent of the Building Authority 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.

- (b) His detailed comments on UBW, provision of access, temporary or licenced structures are at **Appendix VI**.
- (c) Detailed checking under the BO will be carried out at building plan submission stage.

District Officer's Comments

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

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

10.2 The following government departments have no comment on / no objection to the application:

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

11. Public Comment Received During Statutory Publication Period

On 23.11.2021, the application was published for public inspection. During the three-week statutory publication period, one public comment from an individual was received (**Appendix V**) objecting to the application mainly on the grounds that the proposed eating place would generate public health issue in view of the COVID-19 pandemic in Hong Kong.

12. Planning Considerations and Assessments

12.1 The Site falls within the "V" zone which is intended 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. Although the proposed use is not entirely in line with the planning intention of the

“V” zone, DLO/YL of LandsD advises that there is no Small House application approved or under processing at the Site. As such, it is considered that approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “V” zone.

- 12.2 The proposed development is considered not incompatible with the surrounding areas which are intermixed with residential developments, open storage / storage yards, parking of vehicles, a church and shop and services.
- 12.3 According to the applicant, the proposed temporary shop and services and eating place are intended to serve the nearby locals. The proposed eating place will only have a maximum capacity of 20 seats. The Site is located at the fringe of the “V” zone of Kat Hing Wai. It is readily accessible from Kam Sheung Road and would unlikely cause inconvenience to or affect the residents nearby. DO(YL) states that no objections from the local residents are received during the public inspection period. The applicant further states that all the relevant Code of Practice and requirements issued by EPD regarding the environmental aspects of temporary uses and control of oil fume and cooking odour from restaurant and food business will be followed. It is not anticipated to cause significant environmental, traffic and drainage impacts on the surrounding areas. Also, relevant government departments consulted, including C for T, DEP, CE/MN of DSD and D of FS, have no adverse comment on or no objection to the application.
- 12.4 In view of the above, the application is generally in line with TPB PG-No. 15A for eating place within the ‘V’ zone in terms of accessibility, and impacts in respect of traffic, drainage, sewage disposal as well as fire safety. Sympathetic consideration could be given to the application. Nevertheless, in accordance with TPB PG-No. 15A (paragraph 1(c) of **Appendix II**), a shorter approval period of three years, instead of five years sought, is recommended so as to retain planning control on the development at the Site and to cater for changing circumstances in future. As the proposed use of the current application is for temporary shop and services and eating place uses, the above-mentioned planning assessments and considerations should apply to the entire site.
- 12.5 To minimize any possible environmental nuisances and to address the technical requirements of concerned government departments, appropriate approval conditions are recommended in paragraph 13.2 below. The applicant will also be advised to adopt the latest “Code of Practice on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites” to minimize any potential environmental impact on the surrounding areas.
- 12.6 The Site is involved in one previous application for temporary shop and services use (Application No. A/YL-KTS/884) submitted by the same applicant. The shop and services part of the current application is similar to that approved

application on the Site as stated in paragraph 6 above. The proposed uses of the other two previous applications (No. A/YL-KTS/490 and 508) are different from that of the current application. The Committee has also approved six similar applications for temporary shop and services use or eating place use in the same and adjoining “V” zones in the vicinity of the Site between 2017 and 2011 as detailed in paragraph 7 above. Approval of the current application is in line with the previous decisions of the Committee.

- 12.7 One public comment was received during the statutory publication period objecting to the application as stated in paragraph 11 above. In this regard, the departmental comments and planning considerations and assessments above are relevant.

13. Planning Department’s Views

- 13.1 Based on the assessments made in paragraph 12 and having taken into account the public comment mentioned in paragraph 11 above, the Planning Department has no objection to the applied proposed temporary shop and services (real estate agency) and eating place for a period of 3 years, instead of 5 years sought by the applicant.
- 13.2 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 14.1.2025. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) no vehicle is allowed to queue back to or reverse onto/from public road at any time during the planning approval period;
- (b) the implementation of the accepted 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 14.10.2022;
- (c) in relation to (c) above, the implemented drainage facilities on the Site shall be maintained at all times during the planning approval period;
- (d) the submission of a 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 14.7.2022;
- (e) in relation to (e) above, the implementation of the 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 14.10.2022;

- (f) if any of the above planning condition (a) or (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 condition (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 at **Appendix VI**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

the proposed development is not in line with the planning intention of the "V" zone which is to reflect existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. There is no strong planning justification given in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 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.
- 14.3 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.

15. Attachments

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| Appendix I | Application Form with Supplementary Information received on 15.11.2021 |
| Appendix Ia | FI received on 6.1.2022 |
| Appendix II | Relevant Extract of TPB PG-No. 15A |
| Appendix III | Previous Applications |
| Appendix IV | Similar Applications |
| Appendix V | Public Comment |
| Appendix VI | Advisory Clauses |
| Drawing A-1 | Site Layout Plan |
| Plan A-1a | Location Plan with Similar Applications |
| Plan A-1b | Previous Applications |
| Plan A-2 | Site Plan |
| Plan A-3 | Aerial Photo |
| Plan A-4 | Site Photos |

**PLANNING DEPARTMENT
JANUARY 2022**